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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.

PRIME TIME—FCC relaxes restrictions on access; effective 9–1–74 5585

CRIMINAL INFORMATION SYSTEMS—Justice Department proposes regulations governing dissemination of data; comments by 3–29–74 5636

RAPESEED OIL—FDA announces filing of petition for affirmation for safe usage; effective 4–15–74 5647

FOOD ADDITIVES—FDA announces filing of petition for safe use of aqueous sanitizing solution 5647

FDA povides for safe use of additional substances in preparation of polyester resin; effective 3–18–74 5628

FOOD LABELING—FDA regulation on chemical preservatives as an ingredient; effective 3–18–74 5627

FDA withdraws proposal and terminates rulemaking proceedings on fat preservative, fat antioxidant and standard of identity 5643

(Continued inside)

PART II:

EFFLUENT LIMITATIONS—EPA publishes standards for feed lots point source categories; effective 4–12–74 5704

EPA proposes standards for incompatible pollutants for feed lots point source category; comments by 3–18–74 5709

PART III:

EFFLUENT LIMITATIONS—EPA publishes standards for sheet, rolled, plate and flat glass and automotive glass tempering and laminating; effective 4–12–74 5712

EPA proposes standards for flat glass manufacturing point source category; comments by 3–18–74 5720

PART IV:

HOUSING ASSISTANCE PROGRAM—HUD proposes reguations governing payments by and reponsibilities of Federal and Local Housing authorities; comments by 3–20–74 5723

February 14, 1974—Pages 5579–5740

REMINDERS

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

Rules Going Into Effect Today

This list includes only rules that were published in the FEDERAL REGISTER after October 1, 1972.

page no. and date

FEBRUARY 14

FAA—Standard instrument approach procedures; Miscellaneous amendments..... 1579; 1–11–74

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There are no restrictions on the republication of material appearing in the FEDERAL REGISTER.

COTTON TEXTILES—CITA increases level of imports of certain products from Colombia 5651

TRANS-ALASKA PIPELINE—Interior Department issues order regarding administration and management 5645

MEETINGS—
State: National Review Board for the Center for Cultural and Technical Interchange Between East and West, 3–4–74 5644
Secretary of State's Advisory Committee on Private International Law, Study Group on Enforcement of Foreign Judgments, 3–1–74 5644
Special Action Office for Drug Abuse Prevention: Advisory Committee on Drug Detection, 2–26–74 5671
National Endowment for the Humanities: National Council on the Humanities Advisory Committee, 2–21 and 2–22–74 5669
National Science Foundation: Advisory Panel for Developmental Biology, 3–1 and 3–2–74 5669
AEC: Advisory Committee on Reactor Safeguards Subcommittee on Regulatory Guides, 3–6–74 5648
General Advisory Committee, 2–27, 2–28, and 3–1–74 5649

Contents

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notices
Special Assistants to the Chief, Office of Contract Management; redelegation of authority 5644

AGRICULTURAL MARKETING SERVICE

Proposed Rules
Milk in Boston Regional and other marketing areas; amendments to tentative marketing agreements and orders 5642

Notices
North Dakota Inspection Point; grain standards 5675

AGRICULTURE DEPARTMENT

See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Forest Service.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

Rules and Regulations
Hog cholera eradication and free states; correction 5620

ATOMIC ENERGY COMMISSION

Rules and Regulations
Environmental statements; revision of procedures and policy to be followed 5620

Notices
Louisiana Power & Light Co.; order for fifth prehearing conference and extension of time to file joint discovery request 5649
Meetings:
Advisory Committee on Reactor Safeguards Subcommittee on Regulatory Guides 5648
General Advisory Committee 5649
Public Service Company of New Hampshire; second prehearing conference 5649
Washington Public Power Supply System; receipt of application, availability of environmental report and inquiry 5650

CIVIL AERONAUTICS BOARD

Notices
Aviation Consumer Action Project; order instituting proceeding regarding various financial institutions; correction 5650
Delta Air Lines, Inc.; order of suspension and investigation of non-acceptance of restricted articles in containers 5650

CIVIL SERVICE COMMISSION

Rules and Regulations
Excepted service:
Commerce Department 5619
Justice Department (2 documents) 5619
National Foundation on the Arts and the Humanities 5619
Transportation Department 5619

Proposed Rules
Changes in subscription charges; extension of deadline date 5640

COMMERCE DEPARTMENT

See National Oceanic and Atmospheric Administration.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Notices
Certain cotton textile products produced or manufactured in Colombia; entry or withdrawal from warehouse for consumption 5651

CONSUMER PRODUCT SAFETY COMMISSION

Notices
National Presto Industries, Inc.; postponement of prehearing conference 5652

ENVIRONMENTAL PROTECTION AGENCY

Rules and Regulations
Effluent limitations guidelines for feedlots and for flat glass segment of glass manufacturing category (2 documents) 5704, 5709

Proposed Rules
Effluent limitations guidelines:
Feedlots point source category 5708
Flat glass manufacturing point source category 5720

ENVIRONMENTAL QUALITY COUNCIL

Notices
Environmental impact statements; availability 5652

EQUAL EMPLOYMENT OPPORTUNITY OFFICE — Federal Contract Compliance Off

Rules and Regulations
Affirmative action plans; miscellaneous amendments 5630
Contractor evaluation procedures; supplies and services 5630

FEDERAL AVIATION ADMINISTRATION

Rules and Regulations
Transition area; alteration 5627

Proposed Rules
Airworthiness directive; Slick magnetos 5639
Control zone; alteration 5640
Transition area; alteration 5640

Notices
Change of Airport Traffic Control Towers:
Greenville, South Carolina 5648
Greer, South Carolina 5648
Orlando, Florida (2 documents) 5647, 5648

FEDERAL COMMUNICATIONS COMMISSION

Rules and Regulations
National Broadcasting Co., Inc.; prime time access rule 5585

Proposed Rules
FM stations; table of assignments 5641

Notices
Golden Broadcasting Systems, Inc.; order designating applications for hearing on stated issues; correction 5654

(Continued on next page)

FEDERAL HOME LOAN BANK BOARD
Rules and Regulations
Office of Finance; organization... 5626

FEDERAL POWER COMMISSION
Notices
Hearings, etc.
Algonquin Gas Transmission Co ... 5655
Amerada Hess Corp ... 5656
Cities Service Gas Co ... 5657
Clinton Oil Co ... 5657
Columbia Gulf Transmission Co ... 5658
Consolidated Gas Supply Corp., et al (2 documents) ... 5655, 5658
El Paso Natural Gas Co ... 5659
Exxon Corp ... 5660
Florida Gas Transmission Co ... 5660
Maine Yankee Atomic Power Co ... 5661
Nebraska Public Power District ... 5662
New England Power Co ... 5662
Panhandle Eastern Pipe Line Co., et al ... 5655
Texas Eastern Exploration Co ... 5656
Texas Eastern Transmission Corp ... 5663
Transwestern Pipeline Co ... 5664
Trunkline Gas Co. (2 documents) ... 5656, 5664

FEDERAL RESERVE SYSTEM
Notices
C.I.T. Financial Corp.; acquisition of Fair Finance Co ... 5665
First International Bancshares, Inc.; acquisition of bank ... 5666
First National Bancorporation, Inc.; acquisition of certain assets of the Security Agency ... 5666
First Tennessee National Corp.; acquisition of Tower Loan Co ... 5667
NCNB Corp.; request for determination and order allowing for hearing ... 5667
Northern Illinois Bancorp., Inc.; formation of bank holding company ... 5668
Valley Bank of New York; application for merger ... 5665

FISH AND WILDLIFE SERVICE
Rules and Regulations
Public access, use, and recreation:
Carlton Pond Waterfowl Production Area, Maine ... 5634
Morton National Wildlife Refuge, New York ... 5634
Target Rock National Wildlife Refuge, New York ... 5634
Sport fishing:
Oyster Bay National Wildlife Refuge, New York ... 5635
Tishomingo National Wildlife Refuge, Oklahoma ... 5634

FOOD AND DRUG ADMINISTRATION
Rules and Regulations
Food additives; resinous and polymeric coatings for polyolefin film ... 5628
Labeling of chemical preservatives in food ... 5627
Proposed Rules
Fat preservatives; withdrawal of proposal ... 5643
Notices
Onyx Chemical Co.; filing of petition for food additive ... 5647
Proctor and Gamble Co.; filing of petition for affirmation of GRAS status ... 5647

FOREST SERVICE
Notices
Availability of final and/or draft environmental statement:
Lake Quinault Sewage Collection and Treatment Facility ... 5683
Westside Timber Sale ... 5683
Environmental statements under preparation as of December 15, 1973 ... 5675

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
See Food and Drug Administration.

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
See Low Rent Public Housing Office.

INDIAN AFFAIRS BUREAU
Rules and Regulations
Irrigation operation and maintenance on the Fort Hall Irrigation Project ... 5628

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)
Notices
Applications for initial permits:
Beaver Branch Coal Co ... 5668
C & W Coal Co ... 5668

INTERIOR DEPARTMENT
See also Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Oil and Gas Office.
Notices
Proposed Development Concept Plan—Guilford Courthouse National Military Park; availability of draft environmental statement ... 5645
Trans-Alaska Pipeline; organizational and functional responsibilities ... 5645

INTERSTATE COMMERCE COMMISSION
Notices
Assignment of hearings ... 5684
Fourth section application for relief ... 5684
Motor Carrier Board transfer proceedings ... 5684
Motor carrier, broker, water carrier and freight forwarder applications ... 5684

JUSTICE DEPARTMENT
Proposed Rules
Criminal Justice Information Systems; dissemination of criminal records ... 5636

LABOR DEPARTMENT
See also Equal Employment Opportunity Commission; Occupational Safety and Health Administration.
Notices
Moxees Shoe Corp.; investigation on certification of workers' eligibility to apply for adjustment assistance ... 5646

LAND MANAGEMENT BUREAU
Rules and Regulations
Application procedures; filing in Alaska ... 5633
Selection and reservation of land; rights of Alaskan Village and Regional Corporations ... 5632
Notices
Anchorage and Fairbanks Land Districts in Alaska; reestablishment of boundary ... 5644
Area Managers, Montrose District, Colorado; redelegation of authority ... 5644
Idaho; proposed withdrawal and reservation of lands; clarification ... 5644

LOW RENT PUBLIC HOUSING OFFICE
Proposed Rules
Housing Assistance Payments Program; assignment of responsibilities ... 5723

NATIONAL CAPITAL PLANNING COMMISSION
Notices
Historic preservation; amendments to site, building and urban renewal plans requirements ... 5669

NATIONAL ENDOWMENT FOR THE HUMANITIES
Notices
National Council on the Humanities Advisory Committee; meeting ... 5669

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
Rules and Regulations
Marine mammals; incidental in the course of Tuna purse-seining operations ... 5635
Regulated commercial fisheries; delayed implementation of restrictions ... 5635
Notices
Mehrtens, John M.; issuance of permit for marine mammals ... 5647
Odell, Daniel K.; application for scientific research permit ... 5646

NATIONAL SCIENCE FOUNDATION
Notices
Advisory Panels meetings:
Developmental Biology ... 5669
Oceanography ... 5670

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
Rules and Regulations
Development and enforcement of state standards; amendments ... 5629

OIL AND GAS OFFICE

Proposed Rules

Canadian natural gas imports; correction ---------- 5639
Oil allocations; correction ---------- 5639

SECURITIES AND EXCHANGE COMMISSION

Notices

Hearings, etc.:
Canadian Javelin, Ltd ---------- 5670
Louisiana Power and Light Co. 5670
Royal Properties Inc ---------- 5671

SMALL BUSINESS ADMINISTRATION

Rules and Regulations

Size standards regulations; definition of small business special trade contractor ---------- 5626

SPECIAL ACTION OFFICE FOR DRUG ABUSE PREVENTION

Notices

Advisory Committee on Drug Detection; meeting ---------- 5671

STATE DEPARTMENT

See also Agency for International Development.

Notices

Meetings:
National Review Board for the Center for Cultural and Technical Interchange between East and West ---------- 5644
Study Group on Enforcement of Foreign Judgments ---------- 5644

TENNESSEE VALLEY AUTHORITY

Notices

Environmental Quality Management; policy and procedures ---- 5671

TRANSPORTATION DEPARTMENT

See Federal Aviation Administration.

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, 1974, and specifies how they are affected.

5 CFR

213 (5 documents) 5619

PROPOSED RULES:

890 5640

7 CFR

PROPOSED RULES:

1001 5642
1002 5642
1004 5642
1015 5642
1033 5642
1036 5642
1040 5642
1049 5642

9 CFR

76 5620

10 CFR

11 5620

12 CFR

522 5620

13 CFR

121 5620

14 CFR

71 5627

PROPOSED RULES:

39 5639
71 (2 documents) 5640

21 CFR

1 5627
121 5628

PROPOSED RULES:

55 5643

24 CFR

PROPOSED RULES:

1276 5723

25 CFR

221 5628

28 CFR

PROPOSED RULES:

20 5636

29 CFR

1953 5629

32A CFR

PROPOSED RULES:

Ch. X (2 documents) 5639

40 CFR

412 5704
426 5712

PROPOSED RULES:

412 5709
426 5720

41 CFR

60–2 5630
60–60 5630

43 CFR

1820 5633

PUBLIC LAND ORDERS:

5411 5632

47 CFR

73 5585

PROPOSED RULES:

73 5641

50 CFR

28 (3 documents) 5634
33 (2 documents) 5634, 5635
216 5635
240 5635

Rules and Regulations

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

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Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19622; FCC 74-80]

PART 73—RADIO BROADCAST SERVICES

Report and Order Relating to "Prime Time Access Rule"

1. This proceeding—a general exploration of the "prime time access rule" (§ 73.658(k) of our rules), whether it should be retained or rescinded, what modifications should be made in it if retained, and (in the Inquiry portion of the proceeding) possible extensions of its scope and application—was begun by notice of inquiry and notice of proposed rule making adopted October 26, 1972 (FCC 72-957, released October 30, 1972, 37 FR 23349, 37 FCC 2d 900).[1] After various extensions of time, initial comments and reply comments were filed by January 15 and March 12, 1973 respectively, and after a notice of oral argument issued June 18, 1973 (41 FCC 2d 519), oral argument was held in the proceeding on July 30 and July 31, before the Commission en banc.

2. A total of some 40 comments and 15 initial reply comments were filed through March 12, including filings by the three national television networks and ABC and CBS Affiliate groups, newly formed "independent producer" and independent station associations, seven "major" film production companies and other program producers filing individually, TV station licensees, union and professional groups in the program production industry, and other parties including the American Civil Liberties Union. A total of 54 persons, representing some 36 organizations or themselves, participated in the oral argument, including representatives of 20 entities which had not earlier in the proceeding participated. Some of these also filed formal comments after March.

3. As discussed hereinbelow, and spelled out in Appendix A below, § 73.658(k) is amended in substance as follows:

(a) There are no more restrictions on the programs which stations subject to the rule (network outlets in the top 50 markets) may carry during what is now the first half-hour of prime time (7–7:30 p.m. e.t. and p.t., 6–6:30 p.m. c.t. and m.t.).

(b) The only other restrictions are as to the second-half hour of what is now the access period (7:30–8 p.m. e.t. and p.t., 6:30–7 p.m. c.t. and m.t.), Monday through Saturday. Stations subject to the rule must devote at least 5 of these half-hours to material which is not network, off-network or feature film, and must devote a sixth half-hour to such use unless it is devoted to network or off-network programs which are children's "specials" or documentary or public affairs programs (the latter are defined as any program which is non-fictional and educational or informational, but not including programs where the information is used basically as part of a contest among participants).

(c) Although not stated in the rule, it is expected that some of the five or six half-hours thus "cleared" of network, off-network and feature film material will be used by stations for programs relating to minority affairs, children's programs, or other programs directed to the needs and problems of the station's community and coverage area, as disclosed in its ascertainment process.

(d) The new rule also contains provisions relating to time-zone differences, and sports "runovers" to the small extent necessary now that there are no restrictions on the 7–7:30 p.m. period. It is also stated that the Commission will be much more stringent with respect to some types of waivers than it has been up to now.

I. Background of the Rule and General Description of the Comments

A. Background

4. The matter of "network dominance" in radio and later in television, and its various aspects, have been the subject of Commission concern since the 1930's, an early proceeding leading to the adoption of the "chain broadcasting rules" in 1941. The rules adopted at that time, pertaining to radio networks, are essentially those still applying in the AM and FM aural services (§§ 73.131–73.138 and 73.231–73.238).[2] Shortly thereafter these rules were made applicable without substantial change to television, as several paragraphs of what is now § 73.658, and various additions to the television regulations have been made since as that medium has become more and more important.

5. The regulation which later became the "prime time access rule" was originally proposed by Westinghouse Broadcasting Company, Inc. (Westinghouse), long a major multiple owner of TV stations as well as a producer and distributor of non-network TV programs, in the proceeding around 1960 concerning the restriction or prohibition in television of the "option time" practice (Docket 12859). Under this practice (which still obtains in radio), stations affiliated with national networks give their network an "option" on certain times of day (usually in their affiliation agreements) without the network's yet having scheduled a particular program during such hours. Westinghouse supported the retention of the three hours of evening option time previously permitted under the rule, but also urged that the networks be limited to that amount of prime-time broadcasting over their affiliated stations, thus freeing an hour of desirable evening "prime" time for non-network sources.

6. In the May 1963 decision of Docket 12859 prohibiting the time-optioning practice in television as an undesirable restraint on licensee programming judgments, the Commission refused to adopt the Westinghouse proposal, stating as follows (*in the matter of amendment of § 3.658 (d) and (e) of the Commission's rules and regulations to modify option time and the station's right to reject network programs*, 34 FCC 1103.1131):

68. All of these proposals, particularly those which would limit station access to network programing, involve a restraint on the licensee's freedom of choice with respect to programing his station. As mentioned above, we are reluctant to impose such restraints, or permit their imposition, unless it is clear that they are required in the public interest. In deciding herein to prohibit option time or any arrangement having a similar restraining effect, we have acted to remove a major restraint which has long existed in the industry. Before considering further measures of a restraining nature, we believe it is appropriate to await developments with the industry simply operating without option time or similar arrangements. We do not say that the public interest would never be served by action along some of the lines just mentioned; if it so appears, of course such action will be considered. But for the present, with the major step taken herein, it would be premature to consider further measures until we have the benefit of observation of future developments.

69. In short, for the present we believe that programing in television should be left to free operation of the forces of competition,

[1] Section 73.658(k) has three sub-paragraphs. (1) Sets forth the basic limitation: stations in the top 50 markets may not carry more than three hours of network programs during prime time each evening. (2) Is an exemption for certain network news coverage and political broadcasts. (3) Provides that the time cleared of network programs may not be filled with off-network programs, or feature films shown in the market within the last two years.

[2] These include rules as to exclusive affiliation, territorial exclusivity given stations by networks, terms of affiliation, time optioning, retention by station of right to reject network programs, network ownership of stations, restrictions on dual network operation, and prohibition of network control over station rates for non-network time.

with programs from all sources obtaining exposure on their merits.

7. *The 1965 proposal in Docket 12782.* Docket 12782, the proceeding in which the prime-time rule and other restrictions on the three national networks were adopted in 1970, began in 1959 as an investigatory proceeding (an outgrowth of the general Network Study begun in 1955). The designating Order set forth the general area as "the policies and practices pursued by the networks and others in the acquisition, ownership, production, distribution, selection, sale and licensing of programs for television exhibition", followed by more specific issues concerning network control over programming.

8. Following extensive hearings, in November 1962 the Office of Network Study reported to the Commission, concluding inter alia that network policies unduly restrict creative and economic competition in TV programming development, and substantially impede entry by independent program producers into network TV program markets; and that networks control the source of supply of programs and dominate competition in both network and syndication markets. On the basis of this report, in March 1965 the Commission issued a notice of proposed rulemaking in Docket 12782, proposing two types of restrictions on the three national networks: (1) prohibition of their engaging in domestic syndication or sharing in the profits thereof, engaging in foreign syndication of any programs not wholly produced by the network, or acquiring any right, beyond that of network exhibition, in any program not wholly network-produced; and (2) limitation on the amount of their evening entertainment schedules which the networks may fill with programs which they themselves own, to 50 percent of the 6–11 p.m. schedules excluding news. In other words, 50 percent of network evening schedules (except news) must be programs for which the licenses are held by other parties—generally sponsoring advertisers or producers—rather than programs owned and controlled by the networks.

9. Stating that the networks had progressively achieved "virtual domination of network program markets", the notice stated the purpose of the proposed rules to be:

(a) To provide opportunity for entry of more competitive elements into the market for television programs for network exhibition; and (b) to encourage the growth of alternate sources of television programs for both network and non-network exhibition (evening programs only).

Three main lines of development were specifically noted as contributing to the unsatisfactory situation:

(a) The near-elimination from network evening schedules of independently provided, advertiser-controlled programs, and their replacement by programs which, while the networks do not usually produce them themselves, are generally licensed to and controlled by them, both creatively and economically, with a view toward providing "bulk circulation" to appeal to "mass advertisers."[3] Between 1957 and 1964, "independently provided" programs fell from 32.8 to 6.9 percent of network evening hours, while the total of network-produced and "network participation" programs rose from 67.2 to 93.1 percent.

(b) The concomitant practice of the networks' acquiring non-network interests or rights in the programs taken for network exhibition, such as sharing in the profits from the network run or later syndication, the entire right to distribute in syndication here or abroad, etc., to the substantial detriment of independent producers thus forced to give up these rights.[4]

(c) The expansion of the networks' role in domestic and foreign syndication, and, indeed, the growth of "off-network" programming, distributed both by them and by other syndication distributors, so as to constitute the bulk of syndicated material on which stations not network-affiliated must largely rely. This has become largely "off-network", and "the first-run syndication market appears to have virtually disappeared."

10. By way of tentative conclusions from these developments, the Commission observed that this concentration of control over the nation's TV programs appeared contrary to the public interest in several ways: The traditional public interest in diversification rather than concentration of control over the mass media; decreasing the competitive opportunities for independent program producers, who must deal with the networks on their own terms or give up hope of obtaining network access; and the needs of additional TV stations, particularly UHF stations, will require a vigorous independent syndication industry, whereas that industry has in fact shown a steady decline. As to the "50–50" part of the proposed rules, it was stated that this was designed "to place independent producers and network sponsors in a position to bargain on something approaching an even basis with network corporations in the program production process" and to "broaden the market to which an independent producer could take his wares and hence, foster and encourage competition among such producers * * *". "The principal function of the proposed rule is to promote diversity of sources of network programs and thus to broaden the base from which such programs may be selected by network corporations for their schedules."

11. The 1965 notice also referred to the concept that strict adherence to principles of free competition might perhaps indicate that the networks should be barred entirely from the production and ownership of TV programs. It was stated that it did not appear that the public interest in a nationwide service would be furthered by eliminating the networks entirely from the production and procurement process; but, on the other hand, permitting existing network dominance to continue would likewise injure the public interest and act as a stricture on the "larger and more effective" use of television channels in the public interest.

12. *The 1970 decision in Docket 12782.* After the 1965 notice of proposed rulemaking, comments were filed until mid-1966, those of Westinghouse renewing the "Westinghouse proposal" which had not been adopted in the option-time decision. In September 1968, oral argument in the proceeding was ordered, specifically inviting comment on the Westinghouse proposal and also permitting parties to submit current data. Oral argument was finally held in July 1969; in May 1970 the Commission issues its decision (*in the matter of amendment of Part 73 of the Commission's rules and regulations with respect to competition and responsibility in network television broadcasting* (Docket 12782), 23 FCC 2d 382).

13. In this decision, the Commission adopted the "syndication" and "financial interest" rules substantially as proposed in 1965 (new § 73.658(j)), and, instead of the proposed "50–50" rule, the Westinghouse proposal to limit the amount of permissible network prime-time programming each evening. With respect to the "50–50" proposal, it was stated (par. 4 of the decision) that the Commission was not persuaded that it was unworkable or would have adverse consequences (as various parties had urged), but rather that it would achieve the desired purpose without untoward side effects. However, we also noted ABC's contention that it would be harmed by the proposal vis-a-vis the other two networks (since advertisers had in the past tried to use other networks because of their more complete U.S. coverage), and that the Westinghouse proposal would be a more direct way of opening up time outside the network "funnel" for non-network sources. Accordingly, the latter was adopted, the "50–50" proposal being held in abeyance for the time being to see if the other approach would achieve the intended purpose.

[3] It was recognized that this change involved many possible aspects: the network desire to maintain bulk circulation, increased production costs, and more sophisticated advertising and marketing techniques, including advertiser desire to cut risks by spreading expenditures over several programs on a "participation" basis rather than sponsoring a single program.

The comparatively small extent to which networks themselves produce entertainment programs, which actually declined between 1957 and 1964, was not regarded as particularly a problem.

[4] It was stated that these developments together have the following results as to network programs: (a) Concentration of economic, proprietary and creative control of program production and procurement in the networks; (2) concentration of residual rights in the networks; and (3) limiting the network-program market available to producers to the three network buyers, thus restricting the profitability of independent producer operations—in sum, to centralize control of what is available to the American public and hamper the competitive development of "diverse and antagonistic sources."

14. The decision set forth "reasonably simple and * * * quite compelling" facts and considerations leading to adoption of the rules mentioned. These included: (1) The great importance of the national networks in U.S. television, in terms of the percentage of stations which are affiliated and the small amount of non-network programs presented during evening hours (most of it "off-network"), the decrease (1958–1968) of first-run syndicated evening programming and the increase in "off-network", on independent and affiliated stations alike; (2) the virtual disappearance of advertisers themselves as customers for programs, meaning that all would-be program suppliers have to deal with three customers, and all—even well-established suppliers and the "major" film producers—have had to give up subsidiary interests in their programs to the networks (in 1968, the amount of "independently provided" programs in evening network schedules had declined to 3.3 percent, from 6.9 percent in 1964); (3) the fact that a healthy syndication industry requires an adequate basis of stations to use its product, but it faces the "insurmountable advantage" which the networks have in dealing with their affiliates, with semi-permanent affiliation relationships and a much simpler distribution process—an advantage "inherent in the distribution process and not in the product"; (4) changes in advertising and marketing techniques, so that, instead of former individual or alternate sponsorship, 90 percent of evening network time is sold on a "participating" basis with advertisers simply buying commercial minutes or half-minutes in various programs; (5) network control of the production process "from idea through exhibition", which applies to network programs and, through the use of "off-network" material, the bulk of non-network material as well; (6) use of this control to achieve large circulation—and therefore get advertisers interested in "low cost per thousand" figures—at the expense of program diversity (which, to the extent it is present with books, plays and motion pictures, is simply impossible in the network system); and (7) greatly increased network activity in the non-network distribution of programs (syndication) or profit shares therein, with a close relationship between the programs selected for network exhibition and those in which the networks acquired these and similar interests. See decision, pars. 6–20, 23 FCC 2d 385–393.

15. The total situation was described as unhealthy in several respects, with complete and excessive control in the networks, working against the diversity of approach which would likely prevail if producers could develop shows for both network and syndicated distribution; and with independent producers unable to get access to large evening audiences for first-run syndicated material and hence unable to develop programs for use by new UHF and other independent stations. Therefore, the public interest requires a "limitation on network control and an increase in the opportunity for the development of truly independent sources of prime time programming" by opening up a half-hour of prime time each night. This could not be permitted to be filled with off-network material; "to permit this would destroy the essential purpose of the rule to open the market to first-run syndicated programming." The same was true of the use of feature film. The Commission expressed the view that this "modest action" would provide an impetus to the development of independent program sources, and thus an increased supply of programs, for independent as well as affiliated stations (thus benefitting UHF), as well as increased local programing. It was stated that it may be hoped that diversity of program ideas would increase also. As to the reasons advanced in the 1963 option time decision for not adopting the Westinghouse proposal, it was stated that the record since shows that the prohibition of that practice has not improved the network-control problem, so that the Westinghouse proposal is appropriate for adoption now even though the Commission did not do so before. See pars. 21–23 of decision, 23 FCC 2d 394–396.

16. With respect to the argument of a number of parties that the rule would simply not result in programing from non-network sources comparable in character to that of the networks which it would replace, it was stated that while there was a conflict in the record, the Commission found no compelling reason why such programing should not be forthcoming from independent producers. With respect to arguments concerning the very high production costs of such material, it was stated that advertisers may be expected to pay what they have to in order to reach such large prime-time audiences; and that, while this question cannot be determined with absolute certainty in the absence of operating experience, the chance of success is sufficiently great that the opportunity should be made available to independent production. If the rule fails to achieve its purpose, it can readily be changed or rescinded. (Par. 24, 23 FCC 2d 396–397).

17. It was emphasized that the Commission did not intend to "carve out a competition-free enclave for syndicators", nor to smooth their path nor promote the production of any particular type of program. "The types and cost levels of programs which will develop from opening up evening time must be the result of the competition which will develop among present and potential producers." In other words, the objective is "to provide opportunity—now lacking in television—for the competitive development of alternate sources of television programs so that licensees can exercise something more than a nominal choice in selecting the programs they present" . . . and "to make available an hour of top-rated evening time for competition among present and potential non-network program sources seeking the custom and favor of broadcasters and advertisers so that the public interest in diverse broadcasting service may be promoted". See pars. 24–26, 23 FCC 2d 396–397. At the end of the decision (par. 37), in connection chiefly with the use of "independently provided" programs in network schedules, the Commission also stated that "Diversity of programs and development of diverse and antagonistic sources of program service are essential to the broadcast licensee's discharge of his duty as 'trustee' for the public in the operation of his channel."[5]

18. Chairman Burch issued a dissenting statement to this decision, joined in by one other Commissioner. His chief point was that, however laudable the motives of those Commissioners voting to adopt the rule, the economics of the situation simply preclude the development of comparable non-network programming for the "cleared" portion of prime time. Unlike the networks, independent suppliers cannot count on "selling" most of the top 50 markets, and the "fractionated top 50 market" simply will not sustain quality programing effort, in view of the very high present costs of program production. He also predicted little diversity, with more game shows and light entertainment, following "tried and true" lines, with the economics of the situation likely to dictate programing produced with reduced resources. As he saw it, harm would come to the public in the major markets, through loss of high-quality network programs without any real chance of replacement, to small-market stations and viewers because these markets can even less support expensive program efforts, and to independent stations (particularly UHF) because they will have to compete with VHF affiliates for non-network material to fill the vacated portions of prime time. He favored reliance on the promotion of other forms of television, such as subscription TV and cable, as the most promising approach to the "diversity" question. Along with Commissioner H. Rex Lee in a concurring statement, Chairman Burch also expressed dissatisfaction with the failure to afford a wider exemption to networks news and public-affairs broadcasts. Commissioner Lee also said in his statement that if the networks actually cut back their prime-time schedules "across the board" to three hours a night—as they said they would and later did—this would be definitely contrary to the public interest and the Commission should consider remedial action. See 23 FCC 2d 411–16, 428–29.[6]

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[5] In summarizing this decision, and the later decision on reconsideration issued August 7, 1970, discussed below, we have not included the discussion relating particularly to the "syndication" and "financial interest" rules which are not involved here. We have also not included the detailed discussion in this decision of the "50–50" proposal (Appendix II).

[6] Former Commissioner Cox also had a concurring statement. See 23 FCC 2d 416–428.

19. *The August 1970 decision on reconsideration.* Numerous parties sought reconsideration of the May 1970 decision in Docket 12782; these were disposed of in a memorandum opinion and order issued August 7, 1970, generally affirming the rule (25 FCC 2d 318). As to the basic substance of the prime-time access rule, this decision dealt chiefly with two lines of argument: (1) The character of the programming which would result, and (2) the possible impact on small-market affiliated stations if the networks cut back their prime-time programming throughout the country to 3 hours a night, as they did. As to the first, the decision noted that this was the subject of conflicting predictions in the record (as noted above), and that a number of independent producers had come forward since the May decision, expressing hopes and plans for the production of prime-time material. The same conclusion reached before was affirmed. See 25 FCC 2d 325–326. One aspect of the matter noted was the benefit from the rule to local and regional advertisers, who again have opportunity to buy time in, or even sponsor completely, syndicated prime-time programs, whereas they cannot afford to participate in national network programs. As to the small-market impact, the decision analyzed in some detail the potential costs and revenues to these stations if the networks reduced their schedules. It was concluded that the only small-market stations which might be seriously affected are the 58 with annual revenues of less than $1,000,000, of which 33 reported losses in 1969. These might lose income in amounts ranging from zero to about $44,000 a year. The decision concluded that this should not be enough to cause the demise of any of these stations, though it could affect their local and other non-network programming; and that, in view of the small amount of the nation served by these stations (3 percent for the 58 stations, 1½ percent by the 33 stations), "we consider the disadvantage occasioned these few stations to be outweighed by the public interest benefits in a more diverse and competitive broadcast market." (25 FCC 2d 329)

20. One other aspect of this matter noted was the high degree of dependence which these station licensees appear to have on the networks, if a half-hour reduction in network schedules causes them such concern. It was stated (25 FCC 2d 329–330):

> * * * This confirms our conclusion that our television broadcast structure is over-centralized and poses a serious question as to whether the basic concept of a competitive, locally responsible television structure as envisoned by Congress and this Commission is being implemented. One principal objective of our Prime Time Access Rule is to lessen the degree of network domination of station operation. The stations in effect are pleading this domination as an element essential to their economic viability. If, as many licensees say in their letters and petitions, affiliates at present are so dependent on national networks that their economic viability and their ability to serve the public interest turn on whether they continue to receive revenues from an additional half-hour of network programming, they clearly are not in a position to exercise the appropriate freedom of choice and the responsibility for television service which are essential to the proper discharge of their broadcast trusteeships. [Footnote 26 omitted] The present degree of network dominance of television broadcasting, now so graphically confirmed by the letters and petitions filed on reconsideration herein, emphasizes the need for Commission action to improve the situation, and to seek to re-establish licensee individuality and responsibility as operable factors in television broadcasting.[7]

21. *"Off-network" and "feature film" restrictions in the rule.* Section 73.658 (k) (3) of the rule contains restrictions on the programming which top-50 market affiliated stations may use to fill the time from which network programs are excluded: "off-network" programs or "feature films". As noted in paragraph 15 above, these were adopted along with the basic three-hour limitation, in order to preserve the "cleared" time for access by non-network sources of first run syndicated programming.[8] As originally adopted in May 1970, the restriction ran against "off-network syndicated series programs" and "feature films previously broadcast in the market." These were both modified in the August 1970 decision on reconsideration mentioned above, to read in terms of "off-network programs" (without any exception thereto) and "feature films which within two years have been previously broadcast by a station in the market." The second change was designed to meet the arguments of some parties that it is difficult or impossible to tell, as a practical matter, whether a given feature film may have been run in the distant past by another station in the market; accordingly, the previous showing which serves as a bar is only one within the last two years. See 25 FCC 2d 334. At the same time, the effective date of these restrictions was moved back to October 1, 1972, a year after the October 1, 1971 effective date of the basic three-hour limitation on network programs, in order to permit stations to use during prime time, for a year, the off-network programs and feature films already contracted for.

22. These restrictions, particularly that concerning "feature film", have been the subject of the two Commission public notices since the rule went into effect, issued in April and November 1972 (FCC 72–305 and FCC 72–1032 respectively). In these, it was ruled that: (1) The "off-network" restriction applies to "special" programs run on a network though not on a regular basis, but does not apply to material which is a continuation of a network series but which itself has not been shown on a network; (2) these restrictions do not apply to independent stations; (3) the "feature film" two-year restriction does apply to the station in the market which showed the film the previous time; (4) pending consideration in the general rule-making proceeding, the Commission will not take action against licensees which construe "feature films" as indluding and applying to movies previously shown on a network (which may thus be shown in "cleared" prime time two years after their previous network showing, whereas, if these were regarded as "off-network" programs, they would be barred permanently from use during "cleared" prime time).

23. *Network news and public affairs programs.* Section 73.658(k)(2) of the rule, as adopted in May 1970 and affirmed in August 1970, contains an exemption for network programs which are "special news programs dealing with fast-breaking news events, on-the-spot coverage of news events and political broadcasts by legally qualified candidates for public office." This area gave concern to some Commissioners, as to whether a broader exemption should not be adopted, to encourage presentation of this important kind of material. Since the rule became effective in October 1971, there has been in effect a waiver, sought chiefly by CBS, under which there is also an exclusion of "one-time" network news and public affairs programs, those not part of a regular series, even though they are not "on the spot coverage", etc. so as to fall under the exemption. See 32 FCC 2d 55 (October 6, 1971), 37 FCC 2d 570 (October 11, 1972), and 42 FCC 2d 615 (August 29, 1973). One of the issues in the present proceeding is what approach in this area should be adopted for the future.

24. General waiver has also been granted in another area, which was delineated in "Footnote 36" of the May 1970 decision (23 FCC 2d 395). This is where stations present a half-hour of network news in the early evening along with an hour of local news or public affairs material. It was recognized that they could comply with the rule by presenting first a half-hour of local news, then the network news before prime time (at 6:30 e.t.), and then another half-hour of local news at 7; but there seemed no reason to force stations arbitrarily to this "bracketing" format, so that they should be permitted to present the network news at 7 under these conditions, if desired, without its counting against the permissible three hours of network prime-time programming. This matter is also at issue in the present proceeding.

25. *Other developments after August 1970.* Other developments since August 1970 should be noted:

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[7] Chairman Burch dissented to this decision as he had to the May 1970 decision, emphasizing the likelihood of injury to these small-market affiliated stations. See 25 FCC 2d 337–8.

[8] These restrictions were not part of the orginal "Westinghouse proposal". In opposing petitions for reconsideration filed in June 1970, Westinghouse took the position that these restrictions are not absolutely necessary to the operation of the rule in the public interest. It suggested as possible alternative approaches either a policy statement to the effect that the Commission hopes stations will fill the "cleared" time with new material, or limiting the "off-network" restriction to only the half-hour of time which actually represents a cutback in network programming (7:30–8 p.m. e.t).

(a) *Judicial affirmance.* The rule received judicial affirmance on May 3, 1971, in *Mount Mansfield Television, Inc. v. FCC*, 442 F. 2d 470 (C.A. 2). Thus, the basic prime time access rule (which had not been stayed) went into effect October 1, 1971, some five months later, and the "off-network" and "feature film" restrictions went into effect October 1, 1972.

(b) *Network schedules under the rule.* As they had indicated they would, the networks cut back their prime-time programming "across the board" to three hours a night when the rule became effective in October 1971. The rule does not specify any particular hour of prime time which is to be "cleared" of network programs, but in practice it has generally been the first hour, 7–8 p.m. e.t. and p.t., 6–7 p.m. c.t. and m.t. In a letter of March 12, 1971, to the three networks, the Commission noted that they were apparently considering either 7:30–10:30 or 8–11 p.m. (e.t.) as the network portion of prime time, and expressed a preference for 8–11. This was based on what individual stations had indicated as to their plans for carrying non-network material, and also other considerations such as the impact on the Central zone from an earlier hour (7:30 e.t. would be 6:30 c.t.). In the first year under the rule—September 1971–September 1972—the networks' schedules were somewhat irregular, in light of waivers granted to NBC and ABC discussed below. Since then, the hours have been much more regular: 8–11 p.m. e.t. for all networks Monday–Saturday and, on Sunday 7:30–10:30 p.m. e.t. for all networks this year and for CBS and ABC last year (for ABC on Sunday in 1972–73 the hours were 8–11).

(c) *Waivers looking toward a "21 hours a week" standard.* In February and March 1971, the Commission granted waivers of the rule to NBC and ABC, respectively, to continue to program 3½ hours during prime time on one evening, provided the network and its affiliates cut back on another evening. See 27 FCC 2d 647 and 905. The NBC request was to continue its traditional Sunday programming including the *Disney* program at 7:30; ABC wanted to continue its strong Tuesday evening lineup. NBC cut back its programming accordingly to 2½ hours on Friday, and ABC cut back first on Wednesday and later on Monday. Commission grant was based largely on the fact that 1971–72 would be a "transitional" year under the rule anyhow, with stations free to present off-network material during "cleared" prime time. A similar request by ABC for 1972–73 was denied in March 1972 (33 FCC 2d 1038), in view of the fact that the "transitional" period would no longer be involved, and the importance of making prime time available to non-network sources on a regular basis. Thus, while the Commission in effect adopted to some extent a "21 hours a week" instead of a "three hours a night" standard for 1971–72, it refused to do so for the future as far as network scheduling is concerned. The latter approach has generally also been taken with respect to individual stations seeking permission to exceed three hours of network material during prime time on one evening each week (using a delayed program from another night) and reduce correspondingly on another evening. However in a few cases where special circumstances were involved, such as preemption of network material for a sports event on one or two evenings, with request to "make up" some of the network programming later, such waiver has been granted.

(d) *Other waivers.* Numerous waiver requests have been made, and usually granted, in some other areas: (1) Waivers to accommodate possible sports "runovers", where the telecast as scheduled on the network should be over before prime time (e.g., a football game starting at 3:45 p.m. e.t.) but unexpected delays might cause it to run over into prime time;[9] (2) special events including evening sports events and also programs such as NBC's *Academy Awards* and *Miss America* presentations, where simultaneous broadcasting throughout the U.S. is involved and this presents problems in the West because of time-zone differences (it has been held that in these cases if the schedule complies with the rule in the Eastern and Central zones, waiver will be granted for the rest of the country; see 33 FCC 2d 743); (3) other waivers to take into account the particular problems of the Mountain time zone, where there is usually no regular network "feed" at a particular hour to be used for broadcast when received (these have been largely eliminated by our action of June 1972 re-designating 6–10 p.m. as prime time in that zone); (4) waivers of the "off-network" restrictions of the rule to permit stations to carry certain material which has previously been on the nework but was independently produced and controlled, without it counting toward the permissible three hours of network and off-network material. Waiver was granted in three such cases (involving the *Wild Kingdom, National Geographic* and *Six Wives of Henry VIII* programs) and denied for the *Lassie* program. See 33 FCC 2d 583, 35 FCC 2d 758 and 773, and 37 FCC 2d 933. This has been one of the most controversial areas which has arisen in application of the rule.[10]

B. BRIEF DESCRIPTION OF MATERIAL FILED IN DOCKET 19622

26. Forty initial comments, totalling slightly over 1,200 pages, were filed in response to the notice of inquiry and of proposed rule making herein. By over-all number, the majority, 24, expressed opposition to the prime time access rule and urged its repeal. These included the comments of CBS and NBC (later NBC changed its position at the oral argument); five "major" film production companies (MCA, Inc., Warner Brothers and Screen Gems Division of Columbia Pictures Corp., all filing lengthy comments, and shorter comments from Twentieth Century-Fox and Paramount), ABC and CBS affiliate groups, two smaller producers or syndicators (QM Production and Wrather Corporation), comments filed jointly by Screen Actors Guild and three other Hollywood labor or professional groups, 10 comments from other station licensees (including 16 licensee interests totalling 28 stations, all of them affiliated and 17 in the top 50 markets)[11] and two from smaller Hollywood interests. Fourteen comments supported the rule, including those of ABC, the National Association of Independent Television Producers (NAITP), the Association of Independent TV Stations, Inc. (INTV), Metromedia, Inc. and Westinghouse Broadcasting Company, Inc. (both of them large multiple owners as well as TV program suppliers), three other producers or syndicators, five other station licensees (totalling 8 stations including 5 top 50-market affiliates, two affiliates in smaller markets, and one large-market independent UHF), and the American Civil Liberties Union. Two parties took no basic position as to the rule although they sought modifications of it: The Wolper Organization, Inc., a well-known producer of documentary programs,[12] and the licensee of Station WHTN–TV, Huntington, W. Va. The commenting parties are listed in Appendix B hereof.

27. Fifteen formal reply comments were filed, 12 by parties filing previously (6 proponents of the rule, 5 opponents and Wolper), and three by parties participating for the first time. The latter included comments by two producers of "documentary" material supporting the Wolper position, and joint comments from MGM and United Artists taking no basic position as to the rule but urging considerable relaxation of the "feature film" restriction.

28. At the oral argument, the parties who had filed comments early in the

[9] "Footnote 35" of the May 1970 decision (23 FCC 2d 395) indicated that waivers would be granted under these circumstances.

[10] Mention should also be made of the denial of waiver to ABC to present 3½ hours of Summer Olympic coverage on 10 week nights in August and September, which aroused considerable opposition. See 35 FCC 2d 340 and 765.

[11] Of the large multiple TV owners other than the networks filing comments herein (those with more than two stations), Westinghouse, Metromedia and General Electric Broadcasting Co. (GEBCO) supported the rule; Corinthian and Newhouse opposed it. At the oral argument, representatives of two other groups (Post-Newsweek and The Outlet Co.) and of one station owned by a third (Wometco) expressed general support for the rule, although some urged changes such as abolishing the "off-network" restriction. The term "licensee" as used in this summary counts as one licensee—two or more subsidiary companies of a common parent.

[12] Wolper urges either an exemption from the rule for network programs of "educational value" (documentaries, etc., such as those made by Wolper) independently produced, or, if the rule is repealed, adoption of a rule *requiring* the networks to present a certain amount of such material. See Section III, below.

year took essentially the same positions as before, except for NBC (see par. 33 below). Of some 16 parties basically new at this stage, 8 supported the rule at least in its basic element, the limitation on network programming (3 licensees; Worldvision Enterprises, Inc., a syndicator; Viacom International, Inc., a producer for networks and syndicator; Action for Children's Television; National Citizens Committee for Broadcasting; and Adam Young, Inc., a national representative). Seven opposed the rule: National Committee of Independent Television Producers (a newly formed group of producers who work mostly with the networks); National Conference of Motion Picture and Television Unions (along with other union groups who had previously filed); Hughes Sports Network, Inc. (suggesting as more beneficial a "forced preemption" rule); Tomorrow Television, Inc., a producer for the networks and syndicator; and individuals Cleveland Amory (TV critic), Bernard Gifford (New York City-Rand Institute, though appearing for himself) and Clarence Jones, publisher of the New York City Black periodical *Amsterdam News*. One party, Robert R. Nathan Associates, Inc., took no basic position. Viacom, Worldvision and the National Committee of Independent Television Producers also filed comments in June 1973.

II. MAIN LINES OF ARGUMENT AGAINST AND FOR THE BASIC RULE AND CONCERNING THE OFF-NETWORK AND "FEATURE FILM" RESTRICTIONS.

29. In the next several pages there are summarized the basic arguments against and for the basic rule, and then concerning the "off-network" and "feature film" restrictions. The arguments against and for the rule, which are often in direct conflict, are set forth in parallel columns. The arguments against are set forth first because the arguments for the rule are, in substantial part, responses to criticisms and charges which have been made against the rule since before its adoption; and these are better understood in light of the opposing comments filed herein, which repeat and expand the same lines of opposition to the rule.

30. In the following discussion of principal arguments, only enough factual data is set forth to indicate what the arguments really are about. More detailed factual data and specific arguments are contained in Appendices C and D to this report and order, referred to in the discussion below.

31. Most of the discussion is based on the 12 longer comments filed: among the opponents, CBS, NBC, CBS Affiliates, three "majors"—film producers MCA, Inc., Warner Brothers and Screen Gems Division of Columbia Pictures—and Peninsula Broadcasting Corporation (WVEC–TV, Hampton-Norfolk, Virginia); and, among the proponents of the basic rule, National Association of Independent Television Producers, Inc. (NAITP), Association of Independent Stations, Inc. (INTV), ABC Metromedia, and Westinghouse. Shorter comments referred to herein include among the opponents the joint comments of Screen Actors Guild and three other Hollywood labor or professional groups (herein "SAG et al" or "the Guilds") mentioned particularly in connection with asserted effect of the rule on U.S. program production; and, among the proponents, GEBCO, the American Civil Liberties Union (ACLU), and (particularly as to "game shows") Goodson-Todman Productions. Not all of the parties on either side make all of the arguments mentioned: for example, among the opponents, the "majors" urge that the rule diminish, network dominance, a point naturally not urged by any of the networks. However, in general, the arguments made by parties in various categories on each side are sufficiently similar so that they can be dealt with together. Reference is also made to significant oral argument material.

32. A. OUTLINE OF ARGUMENTS AGAINST AND FOR THE RULE

1. *The rule as a "restraint" on licensee freedom in programming and on free speech and expression.*

Against	*For*
(a) The rule is an improper restraint on licensee freedom in programming and on freedom of speech and expression, contrary to the regulatory scheme set up in the Communications Act and to the Constitution.	(a) The restraint involved is minimal (since it applies only to one hour a day on certain stations and thus does not really preclude *any* program) and is necessary to reduce inordinate network control and open up valuable time to independent sources of new material. Its propriety has been affirmed beyond argument in the *Mount Mansfield* decision; and, in any event, the present proceeding is a narrow one, to look at the operation of the rule in light of its stated objectives, and is no place for such philosophical arguments or "ponderous debate on established first principles". NAITP claims that the rule cannot be abandoned for reasons not related to its stated objectives such as philosophical arguments of this sort.

2. *Whether the rule has had an adequate test at this point.*

Against	*For*
(a) The rule has had an adequate test and there is no reason to believe that results under it in the future would be better than the poor showing so far, considering: (1) The fact that while off-network material could be used in 1971–72, in fact it filled only 22.6 percent of access time, so that there has been a two-year test; (2) the pattern—extensive use of game shows (often "stripped"), other network-spawned material, and foreign productions, with only a small increase in local programs—has been set, and in fact was more pronounced in 1972–73 than the previous year (less local, more game shows); (3) the alleged "uncertainty" was not really a factor; it did not deter Westinghouse and Metromedia in 1971 but their efforts were total failure; (4) the traditional station preference for "tried and true" material (plus inexpensive foreign product); (5) Reliance cannot be placed on statements of producers as to their plans, since experience shows these do not materialize; (6) rather, the programing on the proponents' stations (ABC et al., using stripped game shows, etc.) shows what is to be expected.	(a) The rule cannot conceivably be viewed as having had an adequate test at this point, because of (1) basic uncertainty as to whether there would be a rule at all until May 1971 (the *Mount Mansfield* decision), which left Westinghouse, Metromedia, etc. only 5 months to produce material for the first year; (2) continuing uncertainty as to the future, in view of talk of repeal by the Commission and others, and repeated Commission "waivers" (permitting off-network material the first year, letting ABC and NBC juggle their schedules the first year, waivers for "off-network" programs such as *Wild Kingdom*, etc.), which inhibits producers from trying expensive or "innovative" programs and stations from trying to develop new program audiences rather than short-run maximum profit from game shows and similar fare; (4) the traditional preference for the "tried and true", which can be overcome only with time (e.g., in the 1940's, the great majority of successful TV shows were adaptations of radio shows); (5) uncertainty at first, and even now, as to which part of the time would be "access time" and at what audience the producers should aim. It is claimed that, certainly, as to study of the rule's operation beyond its stated objectives—where it has worked reasonably well—this proceeding is premature.

[12] Wolper urges either an exemption from the rule for network programs of "educational value" (documentaries, etc., such as those made by Wolper) independently produced, or, if the rule is repealed, adoption of a rule *requiring* the networks to present a certain amount of such material. See Section III, below.

3. *The character of the access-period programming which has resulted.*[13]

Against

The character of access-period programming on the top-50-market affiliated stations is inferior to the programing previously presented, in diversity and in quality by any test-comparative production costs, audience acceptance (ratings), and critical acclaim, or lack of it. In particular:

For

Generally, these areas, particularly "quality", are not appropriate for Commission consideration, which makes the Commission a censor or "national program director", imposing overall national rather than locally attuned standards in a tyranny worse than the networks'.[14] The rule is not properly chargeable with shortcomings not its fault, such as "wrong" programing decisions by the stations or the network cutback outside of the top 50 markets; and the Commission should adhere to its position, in the decision adopting the rule, that it is not designed to promote any particular type or cost-level of programing. Moreover, the rule has certainly not had an adequate test in these respects, and such inquiry improperly focuses on only one hour of the day, excluding all other time. Moreover, "quality" is a subjective matter and it would be impossible to find suitable objective standards to measure it. Cost is not appropriate; it is not closely related to quality or appeal, and this would penalize cost-effective producers in favor of less efficient entities. Audience acceptance is not suitable because, even if it showed any significant difference, this would emphasize "mass appeal" programs while penalizing the showing of programs of slightly less mass appeal but more completely meeting the needs and interests of particular groups or areas (*Hee Haw* is cited as an example). A comparison with network programs is inappropriate, since one of the ultimate objectives of the rule is to provide different programs, and it would have to take into account numerous network failures and a spotty record in programing this difficult part of the evening, as well as the fact that the networks have been in the business for over 25 years compared to two years. More specifically:

Against

(a) Greatly increased use of game shows (up fourfold from 1970 to 1972, from about 8 percent to about 32 percent of access-period half-hours on these stations; and still higher in 1973–74 as shown in Appendix C).

(b) Greatly increased use of "strip" programing, that presented 5 (or sometimes 6) nights a week, usually game shows (see Appendix C; actually, the number of "strips" is about the same as in 1970 for the 7–7:30 p.m. e.t. period, but much greater for the 7:30–8 p.m. segment).

(c) *Nearly all U.S. material is "network derived"*, either continuations of U.S. network series such as *Lawrence Welk* and *Hee Haw* or game shows such as *To Tell the Truth*, or "sixth episodes" of current stripped network daytime game shows such as *Hollywood Squares*, or material more generally derived from former network shows.

(d) *Greatly increased use of foreign-produced material*, for example 75 percent of access-period dramatic programs (in terms of time devoted to them in 1972) were produced abroad, compared to virtually none in 1970. This percentage is even higher in 1973, with the demise of the U.S. *Dr. Kildare* program. Usually these shows are "off-foreign network", and can be sold here cheaply.

For

(a) *The rule has greatly increased the amount of first-run non-network material shown in prime time;* ABC lists 58 syndicated programs in 1972 compared to 26 in 1970, and other parties list over 60 in 1972. ABC lists increases in numerous categories—drama, mystery, adventure, science fiction, comedy, cartoon, musical-variety, "personality" and children's—in addition to game shows and such programs as *Lawrence Welk* and *Hee Haw* (saved from extinction when their network runs were cancelled and now very popular), *Dr. Kildare, Black Beauty, Lassie, George Kirby Hour* and *Golddiggers*. It should be noted that none of the last five are still in production, though *Lassie* and perhaps others are still shown to some extent in access time. Some programs, such as *Norman Corwin Presents* and *Story Theatre*, were quite innovative even though not successful enough to continue. The increase in local programing is noted, and also programs particularly beneficial in presenting new minority-group and other talent such as *George Kirby*, or particularly relevant to American problems such as *Black Omnibus*. Westinghouse asserts that, to an increasing extent, stations are preempting other prime time (network programs) to present such material. Documentaries, rejected by networks, have gained exposure.

(b) *"Game Shows"*, like all types of material, some are good and some not so good, but overall they are popular and a legitimate form of programing featuring "real" people and stories and as entitled to exposure and access as any other kind of programing. Moreover, they were a feature of network prime time schedules in the 1960's (*Let's Make a Deal* on ABC as late as the end of 1970) and still are extensively stripped on the networks in the daytime.

(c) *"Stripping"*, to perhaps an excessive extent, is something which will pass with time; anyhow, the Commission can move against the practice as such if it believes it undesirable (by rule or close examination at renewal time).

(d) *"Network quality"* which is being compared is not always so high, as shown by critical reactions, numerous failures (all 7 of one network's new shows in 1971 failed to return in 1972), and some less than glorious material used by networks in recent years in this demographically mixed and difficult time-segment.

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[13] The term "access period" where used herein generally means that portion of prime time "cleared" of network and off-network programs in practice under the rule. As used by the major film producers in their "Joint Appendix" and later filings, it means the hours so cleared in 1972–73, which were 7–8 p.m. e.t. and p.t. (6 p.m. c.t. and m.t.) Monday through Saturday, and for ABC affiliates on Sunday; and, on Sunday for CBS and NBC affiliates, 7–7:30 and 10:30–11 p.m. This year, ABC also follows that schedule on Sunday.

[14] The argument in the text is largely that of NAITP, a narrow view of the proceeding not shared by all the proponents. ABC mentions three arguments advanced against the rule—impact on small-market stations, alleged audience decline and dearth of "quality" programs—and states that "Although these three criticisms of the Rule are worthy of serious Commission consideration . . . to whatever extent valid, they seem on the facts presented an acceptable price to achieve the objectives which the Commission found to require adoption of the rule.

Against

(e) *Less diversity through a larger amount of time being devoted to a smaller number of programs.* In 1970, the 23 network shows, wholly or partly during the access period, took 74 percent of entertainment time, whereas in 1972 the 25 top syndicated programs took more than 86 percent, five of them over 40 percent.

(f) *The small amount of local programming which has resulted from the rule.* While locally produced access-period programming has increased threefold (from 44 half-hours in 1970 to 135 in 1972, and 145 this year) it still is small in amount, less than one half-hour per station (some markets have none) and less than the time devoted to either one of the top two stripped game shows.

(g) *The lack of relevance of access-period syndicated programing,* which—largely game shows and foreign product—does not deal to a substantial extent with current American life and problems, and does not employ minority-group talent to anything like the extent of current network productions. According to producer Bud Yorkin, network programing is the best way to approach minority-group situations and problems, citing the extent of Black participation and interest in his *Sanford and Son* program.

(h) *Commission inquiry into the nature of programing in general terms is appropriate,* just as in renewal applications where program type classifications are used.

(i) *Extensive use in small markets of "off-network" stripped material* instead of former network programs.

(j) *The rule has prevented the network exhibition of much valuable material,* including programs of value for minority groups. Of 217 pilots produced in 1972–73 and 1973–74—offered to the networks—only 33 became regular series and 24 received partial exposure; 160 were shutout entirely. Network regular public affairs and "news documentary" programs have largely dropped from prime time.

For

(e) *The opponents use the term "network-derived"* so broadly as to be meaningless, since this is characteristic of all programing (*All in the Family* spawned *Maude,* etc.). Rather the public interest is served by enabling *Lawrence Welk* and *Hee Haw* to continue even though no longer consistent with the networks' plans and ideas.

(f) *It is ridiculous to claim greater "relevance* on the basis of network-program characters such as a domestic in *Maude:* Rather, the greater relevance is in programs presenting new minority-group talent (*Kirby*), especially concerning minority problems (*Black Omnibus*), or local material concerning such problems and employing minority-group members as hosts and talent.

(g) *Use of foreign material* is justified as an "early weapon" against the entrenched networks; in any event, the networks have done so also (Metromedia lists 16 network series in the recent past—*The Saint, Tom Jones,* etc.) plus perhaps 30 percent of the ⅓ of network prime time devoted to movies.

(h) If *overall prime time* is looked at, the programming picture is much more diverse, for example drama has increased overall in 1972 as compared to 1970.

(i) One reason for the limited kinds of U.S.-produced material is that in general it must fit a half-hour segment. If a full hour were available, there would be more drama and similar material.

4. *Level of commercial activity and benefit to non-national advertisers.*

Against

(a) With 4 to 6 minutes of commercials in syndicated programs as compared to 3 minutes in network programs (and a longer station break), the rule leads to over-commercialization, with the level of commercial activity up as much as 66 percent, in addition to numerous product "plugs" in game shows. While this may have resulted in increased opportunity for local and other non-national advertisers, it has been at the expense of turning the access period into a "commercial quagmire".

For

(a) The rule has significantly increased opportunities for local and other non-national advertisers by giving them access to valuable time for their messages even though they do not need, or cannot afford, the expensive network system, a source of concern to Government agencies and Congressional Committees in the past. The benefit accrues both to local advertisers getting spots in syndicated and locally produced programs, and to smaller national advertisers (e.g., a furniture company) who can choose programs suited to their needs and sponsor them in selected markets. Also, while syndicated programs may contain more commercials, this is governed by codes of practice, and some licensees (e.g., Westinghouse) have not raised their commercial level. While national advertising in prime time was up 23 percent in 1972 compared to 1970, local advertising was up 38 percent.

5. Effect on "independent production." [15]

Against

(a) While the rule was designed to diversify the sources of prime time programs, it has had the opposite effect, with 43 producers represented in the access period in 1972 (syndicated programs) compared to 54 in 1970 (total of syndicated, off-network and network programs), and an even greater decline if only U.S. producers are counted. There have been no new entrants, virtually all of the present producers having been on television before and often with prime time material (including network "specials" and in some cases regular network series). There has been a benefit chiefly to a few game-show specialists and importers of foreign product.

(b) Moreover, other equally "independent" producers in the sense that they are not associated with networks (including the "majors", Tandem Productions, QM, etc.) have been seriously hurt by being foreclosed from access to a substantial portion of prime time, since they rely on the network process for obtaining exposure for their quality product. It is claimed that the non-network producers have sought and secured not the "right to compete" but freedom from legitimate competition.

For

(a) The rule has had a sharp impetus on independent production for prime time, with some new entities, producers formerly working chiefly for the networks who are now in independent production, and other independents expanding their activities—developments which will increase with time and the certainty of the rule's continuance. ABC puts the number of first-run syndicated producers in prime time in 1972 at 43, compared to 21 in 1970. The same opportunity is there for the "majors" and others if they choose to enter the field. Producers are also benefitted by having much more freedom to display creativity in ideas and production, rather than having to conform to the ideas and supervision of 3 network program executives. Local programing and advertiser-developed programs are also said to represent healthy development of sources independent of the networks.

[15] The term "independent producer" has never been precisely defined; one suggestion is that it should mean any producer when he is producing for non-network distribution, but not when he is producing for network use.

6. Effect on U.S. program production; "impact on Hollywood". (See Appendix D for detailed facts and arguments)

Against

(a) By eliminating 12 hours (24 half-hours) of network-programmed prime time each week, the rule has had a very serious impact on U.S. program production activity (particularly in Hollywood) and employment in it. The gross loss is computed to be in the order of $60 million total, or about $53 million annually in payroll for talent, technicians, etc. (24 half-hour program slots, times 24 original episodes each year on the average, times $100 thousand per episodes) representing 16,000 production jobs. This loss is made up only in small part by syndicated program production because of its nature, game shows, foreign product, etc., and not by local activity in most cases, so that overall there is a loss of $25 million to $30 million. Unemployment rates in Hollywood are extremely high, 85 percent for Screen Actors Guild members and over 50 percent for some technician unions, as a result of this and other problems, endangering the "pool" of talent and skilled technicians necessary for a developing industry. Most other countries recognize the need to protect their TV industries, by quotas, subsidies, etc.; here, the U.S. is doing just the reverse by encouraging foreign competition, contrary to the national interest. The loss has required shelving numerous network programing projects which would have been of value to minorities and would have employed minority-group talent and technicians; the same is true with respect to situation comedies which are of interest to, and employ, women. The quality of access-period programs which have resulted is extremely poor (see above), and a few local successes should not obscure this. In sum, the decline in employment represents a decline in production values and therefore in program quality for the U.S. audience, contrary to the public interest and the national interest.

For

(a) This argument is not relevant; it is not up to the TV industry or the Commission to guarantee the welfare of Hollywood (the Department of Justice indicated a similar view in its filing in one of our proceedings).

Against

For

(b) This argument is essentially a myth, if employment all over the U.S., and not just in Hollywood, is considered, for example, the 14 people added to the staff of ABC's Chicago station to handle its expanded early evening news program. In general, there is bound to be more employment from more than 60 syndicated programs shown in the access period, combined with local increases, than in 23 network shows, particularly since the former have as good, or often a better, "new-repeat" ratio. While there doubtless are, and will be, "shifts" in employment, for example access-period variety shows employing musicians compared to "network-type" shows employing actors, and with respect to various parts of the country, overall there should be a gain rather than a loss.

(c) The analysis by the unions and "majors" ignores certain realities, such as the shift from film to tape production (which means AFTRA rather than SAG members as actors) and the rising amount of income derived from producing TV commercials.

(d) Conditions in Hollywood are improving—unemployment was less in 1972 than in 1971, the "majors" showed, in most cases, better profit pictures, the number of Hollywood movie "starts" was up and foreign "runaway production" starts were down, and movie boxoffice receipts increased.

(e) To the extent that there is a problem, it is a complex one resulting from a number of factors, several of them resulting from extremely high production costs and obsolescent business practices (which some of the majors have acted recently to eliminate). ABC mentions padded costs and "featherbedding". Some of the particular factors are increased TV re-runs, increased network prime-time use of made-for-theatre movies, "runaway production" and declining box office receipts ever since the 1940's.

7. Effect on "Network control and dominance".

Against

(a) As to the objective of lessening network dominance, the rule has been definitely counterproductive, increasing this rather than lessening it. This is because the rule creates an artificial scarcity of network prime time by reducing it one-seventh (3½ to 3 hours a night), and thus increases the network "lock" on the remaining three hours. Thus, since the three networks are in a dominant position both as sellers of advertising time (vis-a-vis several hundred potential national advertisers) and as buyers of programing (vis-a-vis more than a hundred producers), their control in both markets is increased. They are able to raise prices to advertisers considerably (the average price per prime commercial minute went from $50 thousand to $60 thousand in 2½ years) and at the same time makes little or no increases in the prices they pay producers for programs. Moreover, they are increasing their dominance of other time, such as weekend late afternoons for sports and NBC's late late show, and, out of a sense of loyalty, affiliates have cut down their preemptions of network prime time programs.

(b) The network companies' control over programing is also exercised through their owned station purchases of access-period material. Since all network outlets in the top 3 markets are network-owned, each network also has two other stations in major markets so that overall it reaches about 23 percent of the U.S. through its owned stations, and the five stations usually buy syndicated material as a group, this means that it is highly important, if not indispensable, for a program supplier to make a deal with one of the network groups in order to have an economically viable product. Thus "network control" is very important even as to non-network material.

For

(a) "Network control" is obviously reduced by removing an hour of prime per night on 150 stations from the "network funnel" through which prime-time material would otherwise have to pass. As a result, the number of buyers of prime-time material has increased from 3 to 150, and, often for the first time, stations are making individual decisions as to prime time programing, as envisaged by the Communications Act. Having alternative potential buyers, producers are freed from network control, and from having to limit their ideas and conform the execution of these ideas, to what suits the plans and views of network program executives at the time.

(b) "Network dominance" is still a serious problem, as indicated, for example, by the extent to which the amount of station time devoted to network programs has increased over the last 20 years (in the case of NBC, from about 44 percent of the typical broadcast day to about 74 percent), the extent to which it continues to increase as the networks expanded their programming in other parts of the day, and circumstances such as the election campaign of 1972, when the networks were able to, on a number of occasions, clear time on affiliates during the "access period" for political broadcasts, rather than preempting their own programs during network prime time. The rule, in short, is only a small weapon in the struggle against this tendency, but at least it is something, and should clearly remain as long as the problem exists.

(c) Moreover, without the rule there would be increase in another kind of dominance, that of the "major" film production companies, who among them have more than 50 percent of network prime-time non-sports entertainment time in 1973–74, with MCA by itself having some 20 percent. The access period should remain clear from the programing of this limited number of sources.

8. "Audience acceptance" (ratings) (7:30–8).

Against

(a) Audience ratings for the access period (7:30–8) were considerably less in 1971–72 than they were in earlier years when network programs were shown then. While this was not true in 1972–73 (when ratings were overall back to their earlier levels or slightly higher), it was still true in a few markets and, moreover, there was generally a shift in audience from network outlets to independent stations, harming the former. This shift results from the fact that the independents may, and do, present off-network material during this period, and this shows the basic inferiority of new access-period material, less attractive to audiences than either network or off-network programing.

9. Effect on stations.

Against

(a) All affiliated stations are harmed through the degradation in quality of the programing they are able to offer. This is particularly true of small-market stations, whose limited economic base does not enable them to generate enough advertising revenue to afford programing of reasonably good quality to replace the network programs lost.

(b) As to economic consequences, affiliates in the large markets are making more money through getting all, rather than 30 percent, of the revenues from the access period; but these stations have always been quite profitable and do not need help. Medium-market stations are not affected either way, and smaller-market stations—both those in the lower portion of the top 50, and those outside—are seriously harmed, since they are not highly profitable in any event and must pay the cost of programing the time themselves, with limited revenue return if any. Also, some stations have been hurt economically through not being able to make full use of costly feature film packages they have purchased.

For

(a) After dropping for the 1971–72 year, ratings during the access period have returned to their previous levels, or even higher. ABC refers also to an "audience preference survey" (TV–Q) which shows only slight differences between access shows and following network programs.

For

(a) While impact on small-market stations (and others) was one of the strongest arguments against the rule in 1970, this has simply not materialized. Only one station (KROC–TV, Rochester, Minn.) specifically claimed economic hardship in its comments, and this was much too vague to meet the Notice's requirements in this respect so as to be probative. Affiliates in large markets, down to about the 75th, are better off under the rule, since they can keep all of their access-period revenues.

(b) *Independent stations* are greatly benefitted, both from the impetus to the production of more non-network material which they can use, and, of more immediate consequence, the fact that during these hours they may present popular off-network material which their competitors cannot, giving them an audience advantage. This is highly important, such stations now getting as much as 40 percent of their revenues from the 6–8 p.m. hour (and are able to use spots in the access period to sell other time in "packages"). Ratings have increased by 100 percent or often more. This is important to the survival and viability of some of these stations, and enables independents to engage in more extensive local efforts (including news and public affairs) and to buy desirable first-run syndicated material for other times.

10. Effect on the networks.

Against

For

(a) The networks had more net income in 1972, under the rule, than ever before, and should not be heard to complain against the rule. ABC and the cause of "inter-network competition" have particularly benefitted, with ABC having achieved approximate parity with the other two networks and in 1972 showing its first profit on network operations in 10 years. The reduction in network prime time, and the cost of programing it, came at a good moment, since in 1971 cigarette advertising was banned for the first time, and generally "soft" economic conditions prevailed.

11. Effect of repeal.

Against

For

(a) Repeal of the rule would have a disastrous effect, both on individual independent producers who have made personal financial commitments to its success and continuation, and on the public interest. Repeal would cause some producers to cut back their operations by 50 percent, others to withdraw entirely, and would break the back of independent production for years to come, depriving the public, perhaps permanently, of the one real opportunity to receive fresh, imaginative programing. It would be worse than no rule at all, tending to establish a Commission view that the network way is the only way. It is inconceivable that repeal at such an early date should be considered seriously, when the rule was adopted after years of study and is clearly in furtherance of the antitrust tradition, and without the "safe period" on which independent producers and syndicators were entitled to rely.

12. The "barter" distribution system.

Against

(a) The "Barter" system widely used with syndicated access period programing—under which a national advertiser acquires a series or secures its production, and offers it to stations in return for part of the commercial positions in the program (no other payment)—presents some problems and should not be encouraged. First, stations are often required to take the program in advance of production, without knowing much about it. Second, cancellation is difficult, because of problems of "making good", to the sponsor, the commercials in the remaining programs. Third, there are anti-competitive aspects—these sponsors are often large national spot advertisers, and "tie" the purchase of spots on a station to station acceptance of the program.

For

13. Whether the networks "control" producers or their programs.

Against

(a) No (producers Bud Yorkin and Lee Rich). The networks do not control what the independent producer, doing business with them, produces or how he produces it. Rather, the networks are simply one conduit by which the producer can gain exposure for his product on the nation's TV screens, first-run syndication being the other; and producers who choose the network route because of its advantages (cheaper and easier access) should not be barred from competition.

For

(a) Definitely yes, both as to basic program ideas which they will and will not accept, and in the production of a program, for example, ordering a scene of an episode to be shot and re-shot until they are satisfied (which adds to the costs; whether it adds to "production values" is a matter of individual judgment).

14. Whether network or syndicated programing is more likely to be "new" or "innovative".

Against

(a) Definitely network programing (producer Lee Rich) because only the networks have the fortitude, or resources, to start and continue a new type of program which is not immediately successful in gaining audience, advertisers and clearances, although later it may be a tremendous success (*All in the Family*, somewhat controversial at first, and *The Waltons*, a "gentle" show without violence, are cited as examples).

For

(a) Independent producers, who are freed from the need to tailor their ideas to obtain acceptance from one of three networks, and from control over the production process. Moreover, "independent" producers do not have the tremendous competitive stakes and investments which the networks do, and therefore are more free to experiment even though they may not always be successful.

15. Whether the rule can result in programing of network-comparable quality and diversity (See Appendix D for more detailed facts and arguments).

Against

(a) No, because of the inherent advantages of the network system; what the Commission has tried to do is to achieve the impossible, having programing like that of the networks without using the network system. Dramatic program production is a very risky and high-cost business, with costs in the order of $100,000 per half-hour episode and $200,000 per hour episode, and several hundred thousand for a pilot, with only a small proportion of pilots becoming successful series. This is difficult with the network distribution process, and impossible without it (it was possible years ago, with much lower costs and before the networks had complete national interconnected coverage, but those days are long gone). Essentially, there are three problems: (1) The "fractionated market", with many more syndicated programs than there are available slots on top-50-market affiliates; (2) the uncertainty; even if a program may ultimately be sold in nearly all the large markets, this will not be known in advance so the producer will know how much he can spend; (3) the inherently higher costs of syndicated distribution anyhow, with a "syndication fee" in the order of 30–35 percent, or the need for multiple sales efforts, and the cost of making and shipping multiple prints (said to be as much as $5,000 per program).

For

Definitely yes, because:

(a) Costs of production are less for first-run syndication than for network programing. Talent will work for less (e.g., the *Hee Haw* performers when that show went independent), producers are free to "shop around" for facilities at cheaper prices rather than use those of the networks at high prices (as producers for the networks are pressured to do), and the production need not be saddled with the high "overhead" characteristic of network and major-studio productions.

(b) It is also claimed that the syndication market cannot possibly produce revenues approaching $100,000 per episode; one estimate is that the syndication process could produce a gross of no more than $58,000, or a net after commissions, etc. of $45,000, for two runs of a program. (However, see the proponents' data as to sums actually gained).

(c) Aside from the facts as to what might be possible, there is also the matter of what is likely to happen. Since a first-run syndicated program such as a "network-quality" dramatic program is going to be expensive to produce, it will have to be priced rather high, and stations are not likely to want to pay that kind of money when they have obviously cheaper alternatives: (1) Game shows, which cost $10,000 or less to produce, and many of which have a proven "track record" of audience appeal; or (2) foreign material, including dramatic shows, which can be sold cheaply in this country when it is "off-foreign network" and most or all of the production costs have already been recovered.

(b) Costs of distribution are considerably less than claimed by the opponents; for example, while Metromedia would charge a fee of 35% or so for syndicating someone else's production, it figures distribution costs on its own material (*Primus* and *Dusty's Trail*) at only about 10%, including the cost of some five salesmen.

(c) Syndicated programs draw more revenue than that claimed by the opponents; for example, Metromedia's *Primus* took in $63,000 per episode domestically and about $20,000 in overseas sales, even though it was a failure rating-wise (this resulted in a slight profit over production cost of $75,000), and the mid-1973 figures for its new *Dusty's Trail* program are about the same. *Let's Make a Deal* will have grossed $80,000 per episode.

(d) It is expected that stations will be willing to pay more than they do now for access-period material (estimated at often a sum equal to three 30-second spots),[16] when the rule is given assurance for the future and the idea of quality access-period material becomes established.

(e) Independent producers for syndication do not expect to make a profit, or even break even the first year, on a program series, any more than producers for networks do on the network run. Rather, the hope is for the program to be successful, so that it continues in production and exhibition for four years, and the entire package of 104 or so episodes can then be sold on a "strip" basis. This is the big "killing" for the producer, which he hopes for whether it is a network or first-run syndicated program initially.

(f) Access period showing on stations subject to the rule is not the only source of revenue to producers; many programs are also used by additional stations in non-prime time, and by stations in other markets.

16. Performance in light of the commission's stated objectives.

Against

(a) The rule has been a failure in terms of the Commission's objectives in adopting it. Network control and dominance has been increased rather than lessened, there are virtually no new sources of programs (and fewer producers in the access period than were there before) and the resulting programing lacks both diversity and quality.

For

(a) The rule has worked at least reasonably well in terms of the Commission's objectives. An important amount of valuable time has been freed from the network "funnel", there are many more producers of first-run syndicated prime-time programing than previously, and more such programs, including material of diversity and quality. Competitive conditions for producers are much improved with 150 instead of 3 customers for their product.

17. Benefits and Detriments.

Against

(a) The rule has harmed most of the components of the industry—producers who seek to use the network route (the "majors" and many other producers); talent technicians and their unions from the loss of activity and production of quality network programs; affiliated stations with respect to the quality and diversity of programing they are able to present and, in the smaller markets, economically as well; and the public through loss of good and diverse material during these hours.

For

(a) The rule has benefitted, or will benefit, most groups in the industry—independent producers, probably, at least ultimately, talent and technicians through a greater number of prime time programs, affiliates in the majority of markets (without any significant harm to those in smaller markets), independent stations, the networks, and the public through getting a chance to see new and innovative material.

[16] The total of the 30-second national spot rates in typical access-period programs for one station in each of the top 50 markets is just about $25,000. Assuming that eight 30-second spots are sold in each half-hour at the straight national rate without discounts, that each episode is used twice during a year, and that the program is sold in 40 of the 50 markets, representative as to size, the total per program revenue which a half-hour series would generate for the 40 stations would be $320,000 gross, or $272,000 after 15 percent agency commission.

33. *NBC's position.* Of the three networks, ABC has vigorously supported the rule, and CBS has opposed it (although in the final oral-argument stage its arguments were largely philosophical and it specifically asked that repeal not be effective until September 1975). NBC, originally and through early 1973 one of the most vigorous opponents of the rule, changed its position at the oral argument, and in a sense supported it. Its position was in substance that it had doubts about whether the rule was originally a good thing, but it was adopted, and extensive changes in the industry have resulted. It is questionable whether the status quo could really be restored in light of these changes; therefore the rule might as well be retained (with some adjustments of a fairly mechanical nature) and the controversy thus finally ended.

B. "Off-Network" and "Feature Film" Restrictions

34. As mentioned in paragraph 21, above § 73.658(k)(3), as adopted in May and modified in August 1970, provides that the time cleared of network programs may not be filled with "off-network programs; or feature films which within 2 years prior to the date of broadcast have been previously broadcast by a station in the market." In practice, these restrictions and their application have been among the most troublesome areas of the rule, and the notice beginning this proceeding proposed for consideration a number of modifications (see notice, pars. 37–44.[17] With respect to the "off-network" provision generally, the proposals were mostly in the direction of liberalization; as to use of "feature film", proposals in both directions, toward a more liberal and a tighter rule, were put forward. A number of parties, on both sides of the basic question, commented on these matters. Their arguments are discussed at this point, since they are for the most part general in nature concerning some of the basic ideas involved, rather than the details of particular modifications.

35. *General arguments in favor of the restrictions.* Some of the proponents of the rule—including NAITP, INTV, Metro-

[17] As to the "off-network" restriction, modification along four possible lines was proposed, in addition to continued ad hoc consideration but on a more orderly basis. The four (Notice par. 37) were: (1) Exemption for "short series", e.g., 6 or fewer episodes; (2) Exempting packages consisting very largely of new material but with a few off-network episodes (e.g., Christmastime "specials" of certain series); (3) providing that stations may present, either without limitation or up to a certain number of hours a year, off-network material which has not been on the network for some time (e.g., 5 years for the material itself and 2 years for the series); (4) the "MCA proposal", under which a series could be presented if it consisted of about 25 percent new material (an extension of the waiver granted to *Wild Kingdom*).

media and Westinghouse[18]—argue vigorously in favor of these restrictions and against any relaxation of them by waiver or over-all liberalization. Among the arguments advanced are:

(a) Relaxation is unnecessary because *the rule does not preclude the broadcast of any program.* A given off-network program may be shown outside of prime time or, by preemption, during the network portion of prime time; it may be shown at any time on independent stations (in 36 of the top 50 markets) and, of course, without any restriction outside of the top 50 markets. NAITP also suggests a way it can be presented by top 50 market affiliates during the access period: in the spring and summer, when the stations may run it and comply with the rule by substituting a first-run syndicated series for a network program, which by then will be all re-runs anyhow.

(b) The vital importance of the rule in *stimulating the independent production of new material,* and the harm to that objective which results from relaxation of the rule, in two ways: first, the impact on the amount of access-period time actually available to new material; and second, the uncertainty or potential harm to independent producers of material similar to that for which the rule is relaxed. It is said that development under the rule requires stability, not the possibility of relaxation which makes it a "floating crap game" or a "house of cards" likely to tumble around the ears of producers entering it.

(c) *The additional importance of the rule in minimizing network control* which would result from widespread use of former network material which had its origin in a system of high network dominance. This point is urged by NAITP but not much by other parties.

(d) Waivers of the "off-network restriction"—and general relaxation also, if it involves concepts such as "fact v. fiction", "educational value," etc.—involve subjective Commission quality judgments and are therefore inadmissible, as well as essentially irrelevant to the rule's objectives, which were concerned with a program's origin, not its nature.[19] Metromedia asserts that the Commission's desire to permit the free presentation of off-network material "a cut above the average" is understandable; but it must resist the temptation in the interest of achieving the rule's objectives. NAITP asserts that this impermissible "quality" test is implicit even if not expressed, for example the "cost" of all-new production of the *Wild Kingdom* series, mentioned in the decision granting waiver, reflects essentially a Commission view that the program is too good to be lost. This is wrong, in view of the amount and variety of new material available. If a program is really so good, and the Commission believes this kind of evaluation is appropriate, NAITP asserts that the Commission should "bite the bullet" and make the networks run the material again.

(e) *The various proposed "off-network" modifications (footnote 17, above) are all bad,* in that they are unnecessary ((a) above) and would have an impact on prime-time availability. As to the possible "short series" exemption, it is said that there is no public-interest basis for distinguishing between these and longer series, that the Commission's judgment here too is probably a "qualitative" one, and that waiver for even one of these series, and certainly for more than one, would have a substantial impact on access time availability to new material. The proposal involving broadcast at a certain length of time after the program ran on the network is said simply to exclude current network shows to permit the showing of *old* network shows. The "MCA proposal" is more vigorously opposed, as being extremely harmful to sources of new material, and redounding only to the benefit of a few parties, such as the "majors", who have off-network packages. It is claimed that this would be highly damaging and unfair competition, in that such material could be offered at much less than an all-new package with its high production costs, has an established "track-record" which helps it competitively also, and represents an almost risk-free operation since the supplier (having most of the package in hand already) does not even have to start new production until success is assured.

(f) Relaxation or repeal of the "off-network" restriction *would hurt the cause of program diversity* (by making old material more widely useable) and decrease the total pool of programing by discouraging the production of new material—in favor of material which is "neither new nor independent". Unemployment would thus be increased. NAITP claims that the prime-time rule without the "off-network" and "feature film" restrictions would be worse than no rule at all, for these reasons. It is also claimed that there would be no programing aimed particularly at specialized audience groups, since this is one of the chief absences in network programing and thus in off-network material.

(g) *Independent stations will be hurt* through not having the exclusive right to show off-network material in access time, as well as losing the other benefits of the rule through an increased supply of new material.

(h) There would be less of a process of *educating audiences* and stations to enjoy and use new first-run syndicated material.

(i) The rule would benefit only a few, at the expense of all other groups—independent producers, independent stations and the public—for reasons mentioned above.

(j) Waiver or relaxation would simply breed more similar requests. However, it is urged that any relaxation should be codified rather than ad hoc, so that parties involved can plan their activities.

36. *General arguments against the "off-network" and "feature film" restrictions.* The continuation of these restrictions, at least in anything like their present form, was opposed by a number of parties, including those opposed to the basic rule—CBS and NBC, the "majors", the CBS and ABC affiliate groups, etc. (sometimes opposing these even more strongly than the basic rule)—and some individual licensees who support the basic rule restricting network programming but opposing these additional limitations. These included the licensees of Boston and Wilkes-Barre-Scranton affiliates and of two stations outside the top 50 markets (both in Iowa). Much of the argument is along the same general lines already indicated, including: (1) The assertedly dismal quantity and diversity of the access-period material which has developed, and its lack of real "newness", which makes it ridiculous to deprive stations and the public of much more attractive off-network material; (2) the restriction on licensee freedom of choice, said to be in violation of the Constitution and the Communications Act, particularly since there is here no relation to reduction of "network control"; (3) the assertedly subjective and impermissible "quality judgments" which the Commission has had to make in applying the rule. The latter line of argument is basically the same as that of proponents of the rule; but these parties, such as CBS Affiliates, reach the opposite result: Since the waiver process is impermissible, and since a "no-waiver" policy which would bar fine off-network material would be even worse, the only solution is to get rid of this restriction (even if not the basic rule).

37. The essence of the opponents' case is set forth in the comments of Boston Broadcasters, Inc., as follows:

> The principal objections to the prime time access rule have not been its limitation upon network offerings, but its attempt to regulate the content of the access period by proscribing off-network and feature film material from that period. These proscriptions were justified at the time of their adoption as useful means of encouraging independent syndicators to come forward with new programs. Measured by its achievements, this aspect of the rule has been a failure. This failure should be acknowledged as soon as possible, and the proscription removed. So long as the networks are precluded from direct or indirect control over access programming, the principal purpose of the rule will have been achieved, and marketplace forces should result in the best mix of quality and independent production.

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[18] ABC also opposes repeal or wholesale relaxation of the rule at this time, though it may be possible in the future, when new first-run syndicated material has become better established. It agrees with the other parties mentioned concerning the specific proposed modifications. GEBCO does not oppose relaxation of the rule in this respect.

[19] NAITP: "And quality of access shows is not a proper criterion for anything at all since the subject is one to be avoided. . . . "Moreover, PTAR has nothing at all to do with what the affected programs are but only with how they were produced. Thus, since their nature has nothing to do with their original exclusion, there is no way in the world that their nature can be reason for lifting that exclusion."

38. Some other points urged are:

(a) WBRE–TV, Wilkes-Barre-Scranton, stating that stations are limited by the lack of good-quality access-period material and their reluctance to accept "barter" programming, asserts that stations in its market are handicapped in competing with the many independent stations carried in their area by CATV, which can present the popular off-network material.

(b) With the lack of good-quality material, some stations are forced to run movies, which present scheduling and other problems (WVEC–TV, Hampton-Norfolk).

(c) These restrictions discriminate against and harm certain independent producers—chiefly the "majors"—in favor of others (e.g., game-show and foreign-program suppliers). It is claimed that the "majors", and others producing for network use, often do not recover costs from their network sales, and must look to the "after market"—much curtailed by these limitations—to be successful.

(d) Elimination of the "off-network" restriction would not have a serious impact on the rule's objectives, in view of the rather small amount of off-network material used in 1971 when it was permitted (the 22 percent figure cited above), less than the amount of time devoted to game shows.

(e) Westinghouse's statement in mid-1970, in opposing petitions for reconsideration of the rule, that the off-network restriction is "not absolutely essential" to its success.

(f) The licensee of the two Iowa stations urges that top 50-market affiliates should be able to use off-network programs so as to spread the cost of such programs, which now falls largely on smaller-market stations.

39. As noted above, one of the proposed modifications of the rule is the "MCA proposal", under which a package of off-network plus 25 percent new material could be shown without restriction in the access period. MCA no longer advances this, stating that it was advanced as an interim measure, to get relief for the 1972–73 season, and that, instead, the rule should be repealed entirely (or at least the off-network part of it).[20] On the other hand, CBS Affiliates and some other parties claim that this relaxation would be a good thing in the absence of complete repeal—the minimum the Commission must do to avoid complete absurdity. It is also claimed that this would not necessarily have a severe impact, since many older off-network series are out of production by now.

40. We also note a proposal advanced by the licensee of Station WHTN–TV, Charleston-Huntington, West Virginia, to the effect that the "off-network" restriction should be of only two years duration, similar to the "feature film" limitation now in the rule. It is claimed that this is to be preferred because there is little new material of good quality.

41. *The "feature film" restriction.* The general arguments above of course apply as well to the "feature film" restriction in § 63.658(k)(3); but this subject also presents some particular aspects.

42. The August 1970 modification of the rules provides that stations may not fill the access period with "feature films" previously shown by a station in the market within the last two years. This, combined with the general "off-network" restriction in the same paragraph, appeared to some to create ambiguity as to whether a movie which previously ran on a network (either one made for television or one made originally for theatre use) is "off-network", permanently barred from the access period, or a "feature film" barred only for two years. In a Public Notice of November 1972, we took cognizance of this possible ambiguity and stated that, pending this overall reevaluation of the rule, stations subject to the rule may construe it to bar such "off-network" movies only for two years from their previous showing.

43. Aside from the semantic problem of what is a "feature film", the discussion of this subject in the Notice (pars. 41–44) and comments raises essentially the following issues:

(a) Whether there should be any distinction in the rule among three categories of movies or "feature films"[21]—those made for theatre and distributed for TV only in syndication, those made for theatre originally but later shown on a network, and those "made for television" (which, at least up to now, means "made for network television").

(b) To the extent that the rule is to be based on a certain period after the previous network or non-network showing in the market, should the period of restriction be less than in the present rule (e.g., one year), or more (e.g., 5 years), or longer, or even permanent, with respect to reuse by the same station (which normally would have little difficulty in determining whether a film had been shown on it in the past)?

(c) With respect to any or all of the above categories, should there be no restriction at all, or, on the other hand (as urged by NAITP) a total ban on using previously shown movies during the access period (the original May 1970 provision) or even (as claimed by NAITP to be the most consistent with the rule's objectives, but not actually advanced as a proposal) a total ban on any use of movies during the access period, since they are not new material created for this TV use?

44. The proponents of tight restrictions in this area are the same as those mentioned above, particularly NAITP, INTV, Metromedia and Westinghouse, NAITP taking the firmest line.[22] These parties claim generally that an off-network program is just that, whether it is a movie or something else, and should be barred from the access-period if the rule is to fulfill its objective of providing opportunity for sources of first-run material (syndicated or local). NAITP also makes the argument noted above concerning the importance of barring from access time material which has reflected network control; while it concedes that this is less applicable to "made for theatre" features, it asserts that they should be treated the same because of the inhibiting effect on the development of new material. NAITP, alone among these parties, asserts that even as to "made for theatre" features never shown on networks, the rule should impose a permanent ban against reuse in the market during the access period, the same as that originally adopted in May 1970 (the other parties mentioned apparently are reasonably well satisfied with the present two-year limitation as long as all movies shown on networks are permanently barred).[23]

45. In support of its position that the ban on re-use of any movies should be a permanent one, NAITP asserts that the two-year restriction is illogical and inconsistent with the purpose of the rule; that it encourages stations to re-run older movies rather than newer ones, and to preempt network movies for their own because they can re-use the latter but not the former; and that if stations really have a question about whether a movie has been shown in the market in the distant past—the chief reason for modifying the permanent bar to a two-year restriction—they can simply play new movies instead. In short, all movies previously shown on TV in the market, regardless of origin and of whether they were shown locally or on a network, should be forever barred from "cleared" prime time, at least unless the Commission can be sure that the use of such material will be highly limited in quantity. In rebuttal, NAITP urges some other points: (1) The welfare of the "majors" is not a legitimate concern of the Commission (even less than that of our own broadcast licensees); (2) no heed should be paid to stations who talk about "cheap" game shows and then want to use movies which—not generally, but because they already have them—are just

[20] MCA suggests that some of the problems raised by the "off-network" restrictions could be met by tightening the rule, to bar to the same extent material which is technically "new" but simply is a continuation of network material, and also material which is "off-foreign network". However, it states that this is really not practicable; there simply would be virtually no suitable programing left.

[21] In the joint reply comments of MGM and United Artists, it is pointed out that the term "feature film" has been judicially defined so as to limit it to "made for theatre" material. *U.S. v. Columbia Pictures Corp.*, 189 F. Supp. 153, 157 (S.D.N.Y. 1960).

[22] ABC's position is that the present rule, with the liberal interpretation adopted in the November Public Notice, is satisfactory; anything is a compromise, and this is probably as good as any other. It is urged that there is no basis for distinguishing among the three types of features, that this material is popular and of high public interest, and that there should be no further restrictions.

as "cheap" to them; (3) any relaxation here, as with the "off-network" restriction generally, will hurt employment in the production industry by encouraging the use of already-produced material. Metromedia in its comments urges that any relaxation as to "off-network" material would create an extremely serious loophole, because lots of programs could be labelled "movies". INTV stresses the extent to which the "majors" and other film distributors still have a TV market—independents, other times of the day, etc.

46. The "feature film" restriction, at least in the form adopted in 1970, was vigorously opposed by several parties, including especially the "majors"—particularly Warner Brothers, Screen Gems, MCA, and, in joint reply comments, MGM and United Artists—and the licensees of two top-50 market affiliates which use movies in the access period, WTIC–TV, Hartford, Conn., and WVEC–TV, Hampton-Norfolk, Va. (Peninsula). The "majors" urge that the rule is an illegal restraint on freedom of speech and licensee freedom of choice, and also an improper and invalid distinction against this form of program—which may represent material of extremely high appeal and quality—in favor of technically "new" material which may be neither truly new nor of value (game shows, etc.), and which under the rule may be run an infinite number of times. It is also claimed that any distinctions between "made for theatre" and "made for TV" films, and those broadcast on a network initially vis-a-vis those distributed for TV only by syndication, are arbitrary and invalid; since the films shown on networks tend to be better, it is obviously contrary to the public interest to discriminate against them in favor of films otherwise reaching television.[24] It is claimed by MGM and United Artists—who are concerned particularly with "made for theatre" product—that a restriction on "feature films" simply increases network dominance. The argument is that the good films will go to the networks, whereas in syndication a station can use the material only once every two years.

47. The majors also urge two other main lines of argument: (1) The 2-year restriction (or, indeed, any restriction) is contrary to other Commission policies; and (2) their serious economic problems, resulting in part from regulation. In connection with the first, it is said that in Docket 18179 the Commission has expressed the view that there are too much "exclusivity" and too long "rest periods" involved in the showing of feature films, and in the Pay TV area we have adopted rules to present the "siphoning" of feature films away from free television; but here we are restricting any repetition of a film for at least two years, thus making a two-year "rest" period mandatory and preventing the full use of the product on free television which we adopted the "anti-siphoning" rules to protect. The matter of appropriate "rest" periods between exposures, it is said, should be left to the licensee. Second, it is claimed that the majors badly need relief from a number of adverse economic developments: The general and severe decline in theatre attendance during the last 25 years; declining sales of films to the networks and to TV stations via syndication (the latter declined from $94 million in 1970 to $49 million in 1971); and the "whipsawing" effect of restrictions on cable and pay TV usage on the one hand, and free-television usage under the prime time access rule on the other. It is said that the rule operates to severely curtail the "aftermarket", thus complicating these problems; and that a healthy motion-picture industry is as important as a healthy first-run syndication industry which the rule was expressly designed to further. In sum, the majors claim, the rule is not good, and should be repealed; certainly it should not be extended beyond the August 1970 provisions as applied in the November Public Notice. It is also claimed that the rule is basically unnecessary; movies occupied only 4.5 percent of access-period time in 1972–73, and only 7.1 percent in 1971–72.

48. The two licensees mentioned raise some of the same and other points. Peninsula (WVEC–TV) raises the scheduling problem: To the extent that films are barred entirely from access time, it is often difficult to show them at all,[25] and the station cannot recover the cost unless it can get two showings in access time (out of 5 showings in 5 years which is the customary basis on which film is licensed to stations). It is also claimed that it is simply ridiculous to bar from access time, and keep the public from seeing, a package which Peninsula is considering buying from MGM, of made-for-theatre material—thus with no "network control"—which ran on the network 5 or 6 years ago and thus would be largely new to the audience. It is claimed that it should be up to the licensee to decide what "rest" period is appropriate, and whether a package of this sort is desirable for early-evening use, and also that the rule hurts the station economically in that it cannot make full use of its inventory of 1,500 titles (an investment of $275,000). WTIC–TV, Hartford, the other station commenting on this point, urges that a permanent bar on network-shown movies is extremely restrictive in effect; there were some 549 titles available for purchase in the Hartford-New Haven market at the beginning of 1973, and of these, 397 or 72 percent were off-network. Even higher was the percentage of the movies the licensee regards as "suitable" for early-evening showing judging by the title; of 183 such films, 151 or 83 percent were off-network.[26]

III. Comment on Various Other Rule-Making Proposals in the Notice

49. There are discussed in this section the comments concerning various specific changes in the rule advanced in the Notice of Inquiry and Proposed Rule Making herein (other than "off-network" and "feature film" changes discussed above), and also two other proposals advanced in comments. In some cases, involving fairly simple and noncontroversial matters, our conclusions are set forth.

A. Changes Related to Time in Different Locations ("Daylight Saving" and Time-Zone Differences)

50. *Daylight Saving Time*—We are adopting herein, as set forth in Appendix A, the rather simple proposal set forth in the Notice herein (Notice, par. 32(a)) providing that where one of the "top 50 market" cities in the Eastern and Central time zones does not observe daylight saving time (e.g., Indianapolis), "prime time" in that market is an hour earlier, during the "daylight saving" portion of the year, than it would be otherwise. This proposal drew some support and no opposition in the comments. Two points should be noted: (1) We are adding a provision, in light of certain developments late this summer regarding Indianapolis, that where a station wishes to follow a general practice of delaying network programing an hour during this period, upon notification to the Commission, it may use the regular prime time hours for its time zone (e.g., 7–11 p.m. e.t. in Indianapolis); (2) We are not extending this rule to Phoenix, Arizona, the other large city not observing daylight time in 1973, as to which no comments were submitted, and where Mountain time is already two hours behind New York time even without this adjustment. If there are problems there, they can be handled by waiver. The general adoption of year-round daylight saving time recently may have rendered this a less significant matter, but it appears that at least one market (Indianapolis) will still be involved, and accordingly the change is adopted.

[24] NAITP in fact suggests that the objectives of the rule would be best served by a total ban on access-period use of movies, at least until some "made for syndication" are produced, since they do not represent new material created for the access period. However, it does not actually advance this suggestion.

[25] In this respect as in some others, the proponents and opponents of a tight rule make a common objection, but reach opposite conclusions from it. NAITP claims that any discrimination between films on the basis of source or method of distributon is improper; therefore the ban on all should be permanent. The "majors", on the other hand, claim that there should be no restriction on any of them.

[25] CBS Affiliates points out that a restriction on access-time usage means that a given movie—e.g., one suitable for young viewers—cannot start at 7:30, but must start after 8 p.m.

[26] We also note a suggestion by the licensee of Station WHTN–TV, Huntington, W. Va., that the present two-year restriction be modified so as to apply only as to previous showings in prime time. It is claimed that movies shown at other times reach largely different audiences so that they should be disregarded for this purpose.

51. *Time-zone differences.* The notice herein (par. 32(b), 33 and 34) invited comments on a possible change in the rule urged by NBC previously in our 1972 proceeding concerning prime hours in the Mountain time zone (Docket 19475), and also involved in a number of waiver requests by NBC and certain individual stations (e.g., *Academy Awards and Miss America programs*, 33 FCC 2d 987 (1972). NBC's proposal relates essentially to evenings when the network's programming includes special material, such as sports or special events such as the Academy Awards or Miss America pageant, which is broadcast simultaneously throughout the 48 states (unlike most regular network programming, which is delayed in the West). It is designed to permit viewers in the mountain and pacific time zones to watch the same network programs as eastern and central time zone viewers on these evenings, for example by presenting after the special event, in the west, other network programs which have been shown before it in the east (e.g., the *Academy Awards* telecast begins at 10 p.m. e.t., and runs until shortly after midnight, and it has been preceded by two hours of regular NBC programs; the event starts at 7 p.m., p.t., and runs till shortly after 9 p.m., p.t., and NBC wants to present, in that area during the remainder of prime time, the same two hours of regular NBC material).[27] NBC's proposal is that on evenings where there are such simultaneous telecasts, a schedule of network programming which complies with the rule in the east should also be regarded as complying in the west (if it includes only the network's evening programming for that day).

52. There was relatively little discussion of this in the comments, the only real opposition being that of INTV, opposing any waiver of this sort except where the network devotes its entire prime-time broadcasting in an evening to the same programming. Some of the proponents of the rule (ABC and Metromedia) expressed support for such relaxation in the mountain time zone, whose two or three markets in the top 50 are not crucial to the rule's objectives. NBC advanced two general arguments in support of its proposal: (1) Particularly in the mountain zone, any restriction affects stations outside of the top 50 markets and not within the rule, since the stations in Denver, Salt Lake City, etc., feed programs to smaller-market stations; (2) in these western zones, there is actually less network broadcasting than there is elsewhere on these days. It was claimed that in the absence of liberalization or waiver, these western stations are going to have to forego these special events or cut them short, or forego the other, regular network material.

B. "21 HOURS A WEEK"

53. Since the rule went into effect in October 1971, one of the complaints against it, and the source of a number of waiver requests, has been the alleged lack of "flexibility" entailed in the "three hours per night" limitation. It has been claimed that stations should be free to rearrange their schedules so as to present more than three hours of network or off-network material some nights, compensated by a cutback on other nights of the same week, so as to be governed in effect by a "21 hours a week" instead of a "3 hours a night" standard. After some actions early in 1971, the Commission has usually refused to permit such rearrangement on a regular basis, although it has been permitted in "one time" situations, such as "making up" network programs preempted on a particular evening for local sports. The notice herein (pars. 29–31) invited comments on modification, either to a flat "21 hours a week" or various possible changes not going that far (deviations one or two nights a month, or regularly where necessary to clear for news plus an hour-long program, or 21 hours a week but continuing to present a half-hour of "eligible" material each night).

54. The flat "21 hours a week" concept drew little support and considerable opposition, from the staunch proponents of the rule, licensees, networks and others. It was feared that networks or individual stations (or both) would rearrange their schedules from time to time in such a way as to preclude the presentation of first-run material on a regular basis so as to build a regular audience. Thus, the networks could put all of their 21 hours on six nights, leaving a "junk night" for the presentation of the station's required non-network material, or at least juggle their "special" programs to achieve somewhat the same result. The networks, similarly, feared station rearrangement of network programs which would destroy "audience flow" and network ability to guarantee advertisers a particular time slot. CBS claimed that the only significant result would be an increase in use of local movies on certain nights; Metromedia said there would be enough "flexibility" to subvert the rule. The disadvantage of juxtaposing "access-period" programs on one station and network programs on others (to the detriment of the former) was also asserted, along with the uncertainty for independent producers as to what time period, and therefor what audience, they should produce for. In short, highly desirable certainty and stability would be impaired.

55. However, there was some support, particularly in reply comments, for partially moving in this direction, for example, permitting stations to present up to 3½ hours of network or off-network material on two nights a week and to reduce to 2½ hours on two other nights. NAITP suggested that this be permitted only for networks (not stations), only if they notify the stations long in advance, and only if all "cleared" time after 7:30 e.t. is contiguous. With this relaxation, it was said, there would be no excuse for waivers. Metromedia, while stating it saw no real need for change, suggested that the "long" network evenings be on weekdays, and that stations have an option of going to such an arrangement or following the present rule. ABC's reply comments were to the same general effect. It was claimed that this would give more flexibility to networks, stations and non-network sources, for example, permitting the "clearing" of an hour-long period after the news on some nights (said to be one of the limitations of present practice under the rule), and non-network program access to the larger after-8 audiences, and giving the networks a chance to start programs such as children's "specials" at a desirably early hour on other nights (this has been a source of substantial complaint under the rule).

C. SPORTS "RUNOVERS" AND OTHER SPORTS WAIVERS

56. Paragraphs 35–56 of the notice herein requested comments on the appropriate policy for the future with respect to waiver of exemption for "sports runovers" situations, which have given rise to numerous waiver requests, chiefly by the networks, which have generally been granted. These are situations—chiefly late-afternoon network broadcasts on weekends or holidays—when the event begins at an hour such as 4 p.m., e.t., and normally would be expected to conclude before the beginning of prime time at 7, but, if weather delays, overtime etc., occur, may not conclude by the anticipated time.[28] "Footnote 35" of the report and order adopting the rule (23 FCC 2d 382, 395) stated that waiver requests would be considered in such circumstances. Waiver is of course not necessary for complete coverage of the event itself, but to enable the network to carry it plus the regular three hours of prime time evening material later. The notice advanced the following possibilities: (1) A required "roll-back" of evening schedules following such a runover, so as to leave a full hour for non-network material during prime time (e.g., if the sports event runs until 7:10 p.m., e.t., network evening programing could not start until 8:10 p.m.); (2) simply assuming that events of various types will last a certain length of time, and ignoring any runovers if the events as scheduled would normally be completed within that time (e.g., 3 hours for baseball and football, 2 hours 15 minutes for basketball); (3) requiring the networks, if there is such a "runover" by more than 5 minutes or 10 minutes, to "give back" a half-hour of time within the next few days;

[27] A variation of this situation—really a "sports runover" problem—is where an event such as the World Series starts at 8 p.m. e.t., or 5 p.m. p.t., and runs until about 11 p.m. e.t. or 8 p.m. p.t. NBC has requested, and we have granted, waiver so that West Coast stations may "assume" the event runs only one hour into their prime time, and they may run two additional hours of "off-network" material. See 37 FCC 2d 110 (September 1972).

[28] Such "runovers" may also occur in connection with evening sports events, but in such cases the runover typically occurs outside of prime time, in the Eastern and Central zones, and therefore they fall into the category of time-zone difference situations already discussed.

(4) granting a blanket exemption to certain events of great appeal such as the World Series, the Super Bowl, New Year's Day and other college bowl games, Olympic coverage, and possibly some, but few, others.

57. Most of the commenting parties favored either the status quo or the second proposal above, ignoring runovers if the scheduling has been reasonable. ABC, NBC et al stated that the present arrangement has worked reasonably well, with few runovers in fact (only 6 for ABC and 14 for NBC in more than a year's operation through the end of 1972) and those small, usually five minutes or less (ABC's six totalled some 31½ minutes; of NBC's 14, 8 were 5 minutes or less, and some others ran over half an hour). It was also urged that these highly attractive events should be permitted to run to completion (since in other connections we have recognized their importance), and that very occasional runovers do not affect the demand for non-network programming since stations cannot count on it.[29] The "roll-back" and "give-back" proposals above were labeled "administrative overkill", and described by NBC as highly impractical (e.g., where more than one game is presented on the network on a given day)[30] or unfair (the "give-back" would put the networks and stations to a difficult decision as to whether to carry the event to completion and give back a half-hour later, or not). In sum, flexibility would be jeopardized without any benefit. Some proponents, such as INTV and Metromedia in reply comments, took basically the same position favoring the second proposal above, based on reasonable scheduling.

58. NAITP had a different proposal: since, assertedly, the networks are responsible for these situations both by their basic decision to "clear" early prime time and by the scheduling of these sports events, they should have the burden of adjusting them—either by scheduling in a different manner so as to completely avoid the possibility, or by giving up the commercial positions in the "runover" period to the local stations to run the local commercials they would have carried in the absence of the runover. This would assertedly avoid the troublesome problem of "making good" to the advertiser the commercial time lost (said to be a problem between stations and program producers). It was also pointed out that the loss of a local commercial position costs the station considerably more than does the loss of a network commercial.

59. The matter of "post game" shows drew some comment, NAITP taking the position that these should never be permitted by way of waiver, since they could be run early in network time rather than immediately following the event. ABC agreed with a general policy not to accommodate these, as did NBC but only on condition that there be a general waiver for a number of "important" sports events. As to the latter, some parties, including proponent Metromedia, favored a blanket exemption for the World Series, the Super Bowl and the Olympics; NBC would go much further and include baseball and football division or conference playoffs, as well as NCAA, NIT and professional basketball playoffs, and Stanley Cup hockey. NAITP argued against any exemption by specific event, asserting that this would discriminate against growing sports such as soccer and tennis, and provide a growing loophole as "playoff" arrangements increase.[31]

D. EXEMPTION FOR NETWORK NEWS IF PRECEDED BY A FULL HOUR OF LOCAL NEWS

60. Paragraphs 45(a) and 46 of the notice invited comments on whether we should continue, for the future, a policy adopted by general waiver (envisaged by "footnote 36" of the report and order adopting the rule, 23 FCC 2d 382, 395) exempting, from the three-hour limitation on network material during prime time, regular network newscasts if carried at the beginning of prime time (7 p.m., e.t., 6 p.m., c.t. and m.t.) preceded by an hour of local news or public affairs material. The basic reason for this concept was that stations would comply with the rule if they carried a half-hour at 7 p.m., as numerous stations did and some still do; but there seemed no reason to arbitrarily force stations to this "bracketing" type of scheduling if they did not wish voluntarily to adopt it. It was also pointed out in a later decision granting such waiver that it may tend to promote an hour of local news or public affairs coverage, including "in-depth" treatment of important local matters which should be encouraged. About 25 top 50-market affiliates operated under this waiver in 1971–72, and about 23 do so this year, roughly half the number which carry a half-hour of local news at the beginning of prime time.

61. Some parties, such as proponent Metromedia and opponent CBS Affiliates, supported this as a desirable concept, promoting local news efforts. Others on both sides were opposed, on the ground that it represents an impermissible "quality" judgment that an additional local half-hour is better than something else would be, or inordinate "government fine-tuning". INTV opposed the concept both because of the impact on the availability of time to new non-network material and because stations should not have to be "bribed" in this fashion to fulfill their public-interest obligations if this requires a full local news hour. CBS and ABC, for the latter reason, urged that the same privilege should be accorded stations which present previously a local half-hour (which practically all do). It was also urged that stations should be permitted to make their own scheduling judgments, including getting, for network news, the greater audience after 7 p.m. if they choose to do so. NAITP, while basically against this exemption concept, suggested that it could serve a useful purpose if it were modified to require an hour of local news or local or syndicated public affairs material, which would encourage non-network production of such material (hitherto largely a network preserve) and tend to achieve presentation of such "serious" material opposite similar material rather than its having to compete with more popular entertainment programs.

E. NEWS AND PUBLIC AFFAIRS GENERALLY

62. In paragraphs 45(a) and 47 of the notice herein, we raised the question as to what the future policy should be with respect to network news and public affairs programs generally—whether we should continue, or terminate, the waiver granted up to now for "one-time" programs of this nature (those not part of a regular series), or whether we should go further—as some parties, including some members of the Commission, have urged in the past—and grant a complete exemption for such material.[32] As we have pointed out on a number of occasions, there are important considerations involved here which to some degree may conflict: On the one hand, the importance of providing such material for the information of the public on significant issues, and, on the other, the importance of the presentation of such material from "diverse and antagonistic sources," so that all significant viewpoints may have a chance to be heard.

63. Comments on the subject were sharply divided. Four staunch proponents of the rule (NAITP, INTV, Westinghouse and Metromedia) urged that the networks do not need access time to do this material and should not have to be "bribed" in this fashion, but rather made to do it "on their own time"; that this exemption simply helps to preserve the virtual network monopoly in this area where diversity is highly important, and discourage new sources which, inter alia, could contribute by treating general matters from a regional or local standpoint; and that such material is now available from non-network sources to some extent, and will be to a greater extent if the sources can have assured access to prime

[29] In paragraph 36 and elsewhere in the Notice, we asked for information as to the effect of such runovers, particularly when short, on the use of and thus the demand for non-network program material. No specific information was supplied; as indicated in the text, some of the networks and others said there is little real effect, and NAITP did not deal with this question.

[30] NBC asserts that "rollbacks" occur at times in network operations, but only in unusual circumstances and with the consent of the affiliates to the special arrangements involved.

[31] The 1972 denial of ABC's waiver request for 3½ hours of Summer Olympic coverage—probably the most controversial action taken by the Commission under the rule—is regarded by most commenting parties (on both sides) as wrong, and it would be changed under either of two approaches urged—an exemption for specific sports events as mentioned in the text, or, under NAITP and INTV proposals, by blanket exemption to permit additional material where the network devotes all of its prime time to one kind of "special" programing.

time. (Metromedia refers to the Wolper-Metromedia-Xerox documentary on China, rejected by the networks and then successful in syndication). The three networks and some individual licensees vigorously supported a total exemption for news and public affairs or, at least, the present blanket waiver. The longest discussion was that of CBS, urging that a general exemption is required (to avoid having to pass on any specific material, which would present First Amendment problems) and that this whole restriction flies in the face of a number of cases stressing the importance of freedom of expression, with *Mount Mansfield* not really to the contrary because that decision (like the rule) dealt chiefly with entertainment programing. CBS claimed that this material, because of its high cost and relatively little return, has been and will be left largely to the networks to provide, certainly as to "hard news" and most documentaries, and any restriction has a chilling effect on the wide dissemination of material from diverse sources. Having to do this on "the network's own time" would be a real burden and not provide the "breathing space" required for such broadcast activities.

64. CBS referred to some specific programs or types of material. On December 26, 1972, the date of the late President Truman's death, CBS presented two programs about him and his career, one at 7:30 and one at 11:30 p.m. CBS asserted that there should not be any question about the propriety of either of these under the rule. The question was also raised as to four types of material, how they could be presented under a strictly applied rule (particularly if all the law under section 315 is held to be applicable). These were: (1) Political broadcasts which are not really a candidate "use," such as Governor Connally's address in support of President Nixon last year; (2) other "political" material such as the *Democratic National Telethon* program; (3) documentaries of high importance in connection with current issues but not quite "hard news," such as the CBS 1970 program "The Senate and the War"; (4) material required to fulfill the network's and its affiliates Fairness Doctrine obligations such as the "Loyal Opposition" type of program.[32]

65. *Political uses.* The rule also contains an exemption for network programs which are "political broadcasts by legally qualified candidates for public office." The notice proposed nothing on this subject; a few parties commented on the matter. NBC, INTV and NAITP all urged that the exemption be expanded to political broadcasts whether or not they are a "use," for example the Connally address mentioned above, the Democratic telethon, etc. NAITP had one proposal in the nature of a restriction: That before the exemption applies, it would have to be established that the network had not refused the candidate or other proposed user later prime time if he requested it.

F. THE "WOLPER PROPOSAL"

66. The entity now called the Wolper Organization, Inc., headed by David Wolper, has long been a well-known producer of "special" programs, including documentaries (e.g., the *Appointment with Destiny* and *National Geographic* series). In its comments herein, it took no position as to the basic rule, but asked for a provision designed to promote the presentation of so-called "educational value" programing from independent production sources. This was defined as "programs of a factual nature produced by independent production companies and involving subject matter of a scientific, cultural, historical, anthropological or other educational nature." The request is that if the rule is continued, such material be exempt from its provisions both as to network showing and later "off-network" distribution; or, if the rule is repealed, there be a requirement that the networks each devote an hour a week to such material.

67. Wolper's argument basically is the network exhibition is the only way this material—very costly at least as Wolper produces it—can be produced and distributed at all. Wolper emphasizes that it is not talking about a "panel discussion," or a program with a lecturer and a blackboard, but much more elaborate material which will have considerable "mass appeal" as well as educational value, and that typically this costs from $250,000 to $400,000 for a single one-hour program, in direct costs alone. It can recover these direct costs from the first network run, relying on network reruns, off-network sales, sales to schools, etc. for its profit later, but even recovery of initial direct costs is far beyond any potential income from syndicated distribution, either by direct sale or barter. Syndication is more expensive anyhow, with a 35 percent distribution fee (Wolper is not itself in the syndication business) and $5,000–10,000 per program for additional prints and shipping. In any event, individual stations will not buy without seeing a program; and these cannot be produced "on speculation." Rather, Wolper must rely on the network process, and it states that network prime-time clearance—difficult under any circumstances, because the networks are reluctant to preempt their regular programs and often do not use "outside" documentaries—is virtually impossible with the curtailment of network prime time resulting from the rule. It is claimed that there are numerous large corporate sponsors willing and anxious to sponsor such material, in promotion of their corporate image rather than for hard product-selling; and with pressure from such enterprises and Wolper's past ratings successes it is possible to get network prime-time placement in the absence of the rule's restriction, but not with it in effect. It is also claimed that the "off-network" market—relatively large because this material has a rather long life—is necessary to justify the risks involved. Wolper states that it is simply asking for access to prime time for its material and similar programs, not necessarily as expensive, produced by others, in a fashion which will clearly further the public interest by encouraging the use of such material but not involve any ad hoc waivers or "quality" judgments. Wolper claims that the character of access-period programing so far shows the impossibility of presenting Wolper-type material on a syndicated basis.

68. This proposal was supported in reply comments by two similar organizations. It was vigorously opposed by NAITP, as a "censor's dream," involving the Commission deeply in judgments about what kind of programs are "worthwhile," e.g. a dubious "fact-fiction" distinction, and also presenting very substantial definitional problems. NAITP pointed out that, for example, "game shows" could well be included, since they are factual rather than fictional and often involve informational matters (quizzes, etc.). Wolper also submitted reply comments, devoted to a legal argument in support of using its proposed program classification, and to an attempted rebuttal of Metromedia arguments that documentaries can feasibly be produced for distribution via syndication.

[32] The rule contains an exception for network programing which is "special news programs dealing with fast-breaking news events, on the spot coverage of news events * * *" No party opposed continuation of this exemption as such. However, the Notice pointed out that if waiver for "one-time" network programing of this sort is not to be continued, it might be necessary to define these concepts more exactly, and NAITP stated that any use of film in such programs should have to be strictly incidental. INTV urged that the quoted definition be tightened so as to make it clear that it refers only to "one-time only" news coverage, not regular network newscasts.

[33] In reply comments NAITP's comment on these specific matters was that much of the material would be exempt under its proposed definition of "political programs," or otherwise; as to the fairness doctrine point, if CBS presented in its own prime time a program giving rise to such an obligation, why should it not present the balancing program on its own time also; and as to the two Truman programs, why should not CBS present these in its own prime time (especially since it ran one of them entirely after prime time).

IV. Other Matters

69. We discuss in this section the comments on various other subjects: (1) those concerning the matters raised in the Inquiry portion of the notice herein, section C (pars. 51 to 57); (2) various problems and possible approaches suggested by some of the opponents of the rule in dealing with the matter of network domination, if, as they urge, the approach represented by the prime time access rule is abandoned; and (3) appropriate effective dates for rule changes.

A. Subjects in the Inquiry Portion of the Notice

70. In the inquiry portion of the notice herein, comments were invited on four general types of changes in the rule:

(a) Extension of the scope of the rule either as to time (e.g., making the "access period" 1½ hours per night instead of one hour) or as to the number of markets covered, possibly to all having three or more affiliated stations; or extending the "off-network" and "feature film" restrictions to independent stations, or at least to independent VHF stations in the top 50 markets.

(b) Possibly requiring a certain amount of the "cleared time" of the access period to be devoted to certain types of programs, such as local "live" programs, programs of particular significance to minority groups or children, or those relating particularly to the important problems of the community as the station has ascertained them (usually local but also possibly including syndicated programs as well);

(c) Encouraging the presentation of the same kinds of material by exemption from the rule's restrictions on network and "off-network" material.

(d) Changing the form of the rule so as to specify a particular hour as the "access period", e.g., 9–10 p.m., e.t. or 8–9 p.m., c.t. (the third hour of prime time).

71. *Extensions in the markets or time covered.* Several parties commented in this area, nearly all adversely. The opponents of the rule asked why a bad rule should be extended; proponents asserted that what is needed is affirmance and vigorous application, and working out the rule's problems, not extension. It was said that the present rule gives a substantial economic base for non-network programing. There is no need to expand the rule to cover other markets, because it would add nothing significant in terms of economic support, and could harm smaller-market stations with their thinner economic base.

72. *Extension to independent stations.* ABC and some other parties expressed mild support for extending the "off-network" and "feature film" restrictions to independent stations, particularly VHF, since they are potential customers for first-run product and that product would be helped, audience-wise, if it did not have to compete with popular off-network material; but ABC also suggested that many such stations are already complying with the rule by presenting an hour of "eligible" material each evening, so that a suitable and effective rule would be hard to draft. CBS and CBS Affiliates expressed approval of this theoretically, to remove discrimination; but likewise doubted that it would have much effect and at best would represent more "Government intrusion"; and urged that the rule be repealed instead. Metromedia (with 5 independent stations) and INTV naturally expressed vigorous opposition, stressing the basically different position of independent stations (who must buy their programing) as against "network-riding" affiliates, with long-standing disadvantages to the independents now being partly corrected by the rule. Other arguments, such as the need for at least some "after-market" for network programing which independents now provide, were also stressed.

73. *Requiring or encouraging certain certain types of programs.* The proposals to require or encourage (by exemption) certain types of material drew general opposition, as involving simply further Government intrusion into programing decisions which are supposed to be for the licensee, subjective and sometimes unwarranted judgments that certain types of programs are generally preferable (e.g., mediocre local vis-a-vis highly worthwhile non-local), and serious definitional problems—e.g., are *Bridget Loves Bernie* and *Sanford and Son* to be considered "minority" programs, and how could a "children's program" possibly be defined for this purpose? It was also urged by ABC that emphasis on either local programing, or on network programing of certain types by way of exemption, might work to frustrate one of the rule's key objectives: encouraging the production of independent first-run syndicated material. It was claimed that the rule is already working to further the objectives which might be promoted by such regulations, e.g., the increase in local prime-time material, and no additional impetus is needed. It was asserted that any approach of this sort would simply breed requests for the inclusion of other types of programs in the "approved" or "preferred" categories, and any exemption for network programing of certain types would simply increase the uncertainty on the part of independent producers as to how much and what time will be available for their products. It was also contended that the renewal process may and should be looked to in order to achieve desired results in the area of meeting particular local needs.

B. Alternative Approaches to the Problems of "Network Dominance"

74. Some parties opposing the basic rule—notably some of the "majors" and Screen Actors Guild et al.—asserted that "network domination" and how to control it are a major problem, even though the present rule is not a suitable, and indeed is a counterproductive, approach to meeting it. Various matters were mentioned, including the semi-permanent affiliation relationship, low interconnection costs, and control of non-network programing and its development through their owned stations, as all entering into the basic situation of network dominance. None of the parties advanced really specific proposals in this area; some approaches touched on generally were possibly getting the networks out of entertainment program production (a potential threat of great leverage in dealing with program suppliers), opening network prime time to program sources generally (such as the "50-50" rule originally proposed herein) and making sure that stations are able to preempt network programs without fear of reprisal. At oral argument, the matter of possible network pressure on producers to use their facilities was mentioned.

C. Effective Date of Rule Changes

75. Paragraph 28 of the notice herein asked for comment on appropriate effective dates of various rule changes which might be adopted herein. Of the parties commenting on this point, some, chiefly the "majors" Warner Brothers and MCA, urged repeal effective almost immediately, or for the 1973–74 broadcast season. It was urged that the rule is clearly contrary to the public interest and therefore should be repealed as quickly as possible, without taking into account the asserted private claims of parties that quick repeal will harm them. It was also urged that this is possible; the networks can accelerate programing projects already on the drawing board, and there was reference to a telegraphic comment from QM Productions, a smaller producer opposing the rule, stating that CBS has been able to get delivery of a series three months after it ordered it. Warner Brothers also urged that at least the rule should be repealed effective January 1974, when the networks normally make substantial programing changes anyhow, sometimes as much as would be involved in expansion to 3½ hours a night. Some individual licensee opponents of the rule also requested "prompt" or "immediate" repeal, but without any specific target date or any discussion of this particular point.

76. On the other hand, other parties including NBC as well as proponents ABC, Metromedia and INTV—urged that a longer period is necessary, and that at least as to any change such as repeal, or even a substantial relaxation to something like a "21 hours a week" standard, the effective date should be only the beginning of the 1974–75 season, or roughly October 1, 1974. This was urged basically for two reasons. First, Metromedia and ABC claimed that it would be most unfair and highly injurious to independent producers who have been relying on the rule—and who have had to proceed for the near future in spite of the uncertainty—to repeal the rule effective in 1973. ABC asserted that such parties would be seriously injured

by a "cavalier" action of this sort. Metromedia urged that the Commission should not put in jeopardy those who have risked substantial money and effort in attempting to bring life and substance to the rule's objectives. ABC and NBC also emphasized the need for adequate lead time in program planning, which begins some 18 months ahead of the season, or at least a year before. It was said that programing plans are made the previous summer, pilots are produced during the fall, the final program selection is made in the first two months or so of the calendar year, and then scheduling and selling begin. It was claimed that at least this much time is necessary for orderly planning, and much less will lead to network programing of lower quality and thus defeat the purpose of repeal or relaxation. CBS did not take any position on this point in its comments, but at oral argument stated that while the rule should definitely be repealed, this should not be effective before September 1975—CBS needs that much lead time to develop programing.

V—Discussion and Conclusions

A. The rule adopted and the basic reasons for it

77. *The rule adopted.* As outlined in paragraph 3, above, the rule adopted herein provides:

(a) There will be no restrictions on the 7–7:30 period (6–6:30 c.t. and m.t.), nor on Sunday 7:30–8 p.m. (6:30–7 c.t. and m.t.).

(b) As to the remainder of what is now prime time, the only restrictions relate to the 7:30–8 p.m. period (6:30–7 c.t. and m.t.), Monday through Saturday. Of these six half-hours, at least five must be devoted to programing (local or syndicated) which is neither network, off-network nor feature film. The sixth half-hour must be devoted to the same use except to the extent that it may be devoted to network or off-network programs which are either children's "specials" (*Cinderella, The Grinch, Charlie Brown* programs, etc.) or public affairs or documentary programs. The latter are defined as "any program which is nonfictional and educational or informational, but not including programs where the information is used as part of a contest among participants in the program." See paragraph 88, below, concerning uses which the Commission will expect licensees to make of an appropriate portion of these "cleared" periods.

(c) The rule also contains provisions—not immediately pertinent to the basic analysis, and therefore discussed briefly later rather than here—to deal with sports runovers (to the small extent necessary now that the rule applies only after 7:30), time-zone differences, where "simultaneous" programing is involved, and "Summer Olympic" type situations where the network devotes all of its prime time to a special type of programing and wishes to extend it to the 7:30 half-hour.

78. Thus, there are essentially five areas of change (in addition to the expectation concerning use of part of the "cleared" time for material of particular local significance): (1) The removal of all restrictions on the first half-hour; (2) permitting an increase in network programing on Sunday of up to an hour, or a total of four hours; (3) tying "cleared" prime time specifically to the second half-hour of prime time Monday–Saturday (7:30–8 p.m., e.t. and p.t., 6:30–7 p.m., c.t. and m.t.); (4) permitting one of these six half-hours to be used for network or off-network material of certain types—children's "specials" or public affairs or documentary material; and (5) barring "feature film" entirely from these six half-hours.

79. *Reasons for removal of 7–7:30 p.m. restrictions.* We have been prompted to remove restrictions from the first half-hour of present prime time (7–7:30 e.t. and p.t., 6–6:30 c.t. and m.t.) by various considerations. First, as far as Monday–Friday is concerned, the use of this period by top-50-market affiliated stations represents singularly little in the way of opportunity for the development of really new syndicated material. This was true before the rule—when this was "station time" not used by the networks—and it has continued to be true, since the basic programing pattern has not changed much except that stripped game shows have increased their share of the time by the elimination of stripped off-network shows such as *I Love Lucy* and *Dragnet*. Four of the six stripped games shows now involved—*Truth or Consequences, To Tell the Truth, What's My Line* and *Beat the Clock*—were shown in this time slot on top-50-market affiliated stations before the rule, although not as much as now. As shown in Appendix C, of 139 affiliated stations in 46 of the top 50 markets, 66 present local or network news (the latter under waiver) at this time, and another three show blocks of movies, which are not "new" material. Of the remaining 70 stations, 56 strip one of the six game shows mentioned, and at most 14 present what could be called "new" material—two stripping the *Merv Griffin* talk show, and 12 presenting "variegated" programing, pretty much a different access-period program each night. Thus, only about 10 percent of the stations covered, one in the top 10 markets, present material which needs the rule's encouragement.[34] We do not view a contest between stripped game shows and stripped off-network material as one the Commission can profitably get into. This consideration does not apply particularly to the weekend, but we have concluded that some increase in network programing should be permitted, and Sunday appears a desirable time for this, including the 7 as well as 7:30 half-hours, traditionally a popular family entertainment network period. There seems little point in maintaining a restriction only for Saturdays. Thus, in this respect, it appears that maintenance of the rule's requirements with respect to the first half-hour would be a restraint without sufficient justification.

80. There are also some problems in connection with the present restriction on the first half-hour, and more are beginning to develop. The "network news" waiver arrangement has worked reasonably well so far, but we are faced with increasing demands for its relaxation, including the arguments mentioned in par. 61, above, requests for waiver in connection with ABC's *Reasoner Report* program (to permit it to be carried after 7 on Saturday or Sunday), requests to carry network news at 7 on Saturday or Sunday when a sports event preempts the station's usual hour for network news, and a request in comments herein (which might have public interest benefits) to permit network news at 7 in markets where there is now none (without a preceding full local hour). The possibility of increasing network news time from its present half-hour has also been mentioned, a development which might well be in the public interest. These are not insoluble or terribly difficult questions, but they would require some careful adjustments; and in view of the very little benefit accruing from this period to the cause of promoting really new non-network programing, we conclude that the need for such "fine tuning" should be dispensed with. There is also another consideration: for reasons discussed below, we have decided to adopt herein two provisions which in some ways cut down licensee flexibility compared to what it is now—barring feature film entirely from the six Monday–Saturday 7:30–8 p.m. periods, and requiring that these specific periods, and not simply an equivalent amount of prime time during an evening or a week, be cleared of network and off-network material. It is therefore appropriate to provide stations with some compensating flexibility elsewhere, and, in view of the small contribution which these hours make to the development of really new material, the best course is to provide for this flexibility during the first half-hour of prime time. Thus, for example, on Saturdays (or any other day, for that matter) a station may present a feature film from 6:00 to 7:30 or a one-hour off-network show from 6:30 to 7:30. Moreover, this action may, to some extent relieve the problems of the "majors" and similar parties, by increasing the after-market for former network material.

81. In reaching this decision, we recognize that it may in some cases work to the disadvantage of independent stations, in that they may for the first time under the rule be faced with the competition of popular off-network material during the first half-hour. However, we do not regard this as a serious reason not to adopt this change. While probably the advantage which the independents have at present for a full hour is, overall, in the public interest, nonetheless the rule in this respect represents a form of disparate treatment of competing entities, and therefore should not be carried further than it can really be justified. We conclude that the remaining half-hour

[34] The situation seems to bear out the Westinghouse statement, made in response to petitions for reconsideration of the rule filed in 1970, that it is not absolutely necessary to apply the same restrictions to this period as to the 7:30 half-hour.

of this advantage to the independents is sufficient to satisfy the demands of the public interest.

82. *The network increase and retention of five or six "cleared" half-hours.* In these respects—which are probably the crux of the decision we are required to make at this time in this proceeding, representing an adjustment of competing demands for access or for exclusive access—we have reached what, at this point, appears an appropriate balance. This provides the networks with opportunity to increase their programing by one or two half-hours. Sundays from 7 to 8 or half of that hour, and reserves either five or six half-hours per week cleared of network programing or off-network material or feature film.[35] It may be that, like many compromises, this will entirely please no one. It represents certain judgments which we believe are required by the material set forth above—that the performance under the rule so far certainly does not warrant the complete reservation to non-network material of the entire week's time, even of 7:30–8 half-hours; but conversely, particularly since the rule has not yet had an adequate test, neither does its performance warrant either repeal or a really substantial reduction in cleared time such as to three or four half-hours a week. Both of these matters—evaluation of the rule's performance, and whether it has had a fair test up to now—are discussed below. In reaching the balance, we regard it as important to preserve substantial "cleared" time for the development of local programing efforts—one of the really significant benefits from the rule so far—and at the same time also to preserve considerable potential for the development of first-run syndicated programing. We emphasize that this is a judgment made in light of facts at this time, fairly early in the rule's existence and after it has an adverse life psychologically even if not otherwise.

83. *Permissible uses of one of the six periods.* We have provided that one of the six "cleared" periods may be used for network or off-network material if it is of certain types—children's "special" programs, public affairs or documentary material (the latter defined rather broadly). In reaching this decision, admittedly we have rejected the views of numerous parties who asserted that this is impermissible "quality judgment" of one kind of program as being better than another, making the Commission in effect a "national program director", inevitably leading to requests for similar preferred status for other types of material, and often presenting serious definitional problems. Bearing in mind the limited scope of the action taken—that it is permissive, not a requirement, and that it relates to only a half-hour a week—we do not conceive these objections to have merit. Moreover, our action reflects not so much a view that these kinds of material are "worthwhile"— although admittedly this is a factor—as that under the present rule its presentation involves certain special problems. For about the last year, one of the most common complaints from viewers (including parents, educators, and children themselves) is that desirable and well-received children's "specials" such as *Cinderella, The Grinch that Stole Christmas* and the *Charlie Brown* programs, may start on the network only at 8 p.m. in the normal course of programing, and this makes them too late for children's viewing if they are to observe a reasonable bedtime hour. Therefore, it is desirable in the public interest to facilitate the showing of such material earlier, if this is what stations choose to do. As to public affairs and related documentaries, one of the criticisms of the rule is that it has resulted in the total or partial disappearance of such material from prime time. The rule may well not be the sole, or even the major, cause of this; but in its present form it certainly does not make any easier the presentation of such programing, which is expensive and not commercially lucrative; and the rule should be changed to make such broadcasting easier. At least so far, there is relatively little new product of this type available from non-network sources.

84. Moreover, this relaxation will make easier certain other kinds of documentary material which is otherwise difficult under the rule, for example the kind of factual network documentaries mentioned by The Wolper Organization (par. 66 above), and off-network material, particularly that which is an hour long, such as the *National Geographic* and *America* series. In various "off-network" waiver actions we have found such presentation to be in the public interest; but we agree with Westinghouse, NAITP and other proponents of the rule that this process is an undesirable one, getting the Commission, at least to some extent, into the evaluation of "program quality" with respect to individual material, and creating uncertainty on the part of independent producers (the "house of cards" or "floating crap game"). The rule change adopted affords leeway to permit stations to use such material if they choose to do so, without getting us into individual evaluations. This is the chief reason for not limiting the documentary exemption to those relating to news and public affairs.[36]

85. *Tying the cleared time specifically to the 7:30–8 p.m. period.* As mentioned earlier, one of the complaints against the rule has been its "lack of flexibility", in requiring one hour of "cleared" time every evening rather than permitting deviations to 3½ hours of network or off-network material on some nights with a corresponding cutback on other nights, or a flat weekly "21 hours a week" limitation on such material. The Notice proposals and the comments in this respect have been noted above. We are, of course, moving in the other direction in the rule amendment adopted herein, by specifying not only the amount of cleared time each evening Monday–Saturday, but the portion of the evening when it is to occur. We have done this in the interest of certainty and stability—letting networks and stations know what time will or will not be available for general use (for them and for their competitors as well) and giving independent producers a specific time-period, and therefore a particular composition of audience, to aim at. Moreover, there is substantial significance in the argument that it is better, at this still rather early stage of the rule, for "access period programing" to be shown opposite similar material on other stations, rather than to have it shown in competition with perhaps the most popular network shows (for example, stations affiliated with ABC or NBC might choose to present locally produced public affairs material opposite *All in the Family* on CBS, when they would likely not get a large share of the audience anyhow; and the same could apply to ABC and CBS affiliates vis-a-vis NBC's *Sanford and Son*). For these reasons, it appears that the cause of flexibility is outweighed by the additional stability and certainty thus gained—particularly with the flexibility which has been added with respect to the first half hour of prime time.

86. *Barring feature film from the 7:30 periods Monday–Saturday.* We have decided to bar feature film entirely from the 7:30–8 p.m. "access period" slots (6:30–7 p.m., c.t. and m.t.). This total ban was not proposed in the Notice, nor was it really urged as a proposal by any of the parties (although NAITP suggested that it would be the best way of promoting the rule's objective of encouraging new material, which feature films, either made-for-theatre or made-for-television, obviously are not). We conclude that this is an appropriate, and indeed the best, approach to what is otherwise a difficult and rather complex problem—how to apply such distinctions as "made for theatre" or "made for television", or previously shown on a network or not, or previously shown in the market within a given period or not (and if so, at what time of day they were shown). All of these distinctions were somewhat artificial at best, and served chiefly to provide a limitation on use of movies to fill "cleared" time, which is necessary if the production of new non-network material is to be encouraged. There appears to be merit in the arguments, by opponents of restrictions, that the present rule unduly restricts licensees

[35] The networks may, of course seek to clear programs during the first half-hour of prime time on any day if they wish to do so. However, in general they have never regularly programed this time any day but Sunday, except for a few Saturday sports events.

[36] We also realize that in a sense this action could be regarded as inconsistent with the notice herein, in which we raised this question—permitting certain particular types of programs by way of exemption—in the Inquiry portion, among matters as to which we did not contemplate adopting rules without further proceedings. However, in view of the limited amount of time involved, the permissive rather than mandatory nature of the change, the extensive exploration which this subject received in comments in various connections, the fact that this is in effect a partial repeal of the rule, and the obvious interest in reaching a final and complete decision in this proceeding as early as possible, we find rule amendment at this time to be in the public interest.

in the selection of movies they believe desirable (whatever their origin or last telecast), and that stations should be able to present a movie fairly often during prime time in order to recover its high cost, if their judgment so indicates. Therefore, we believe it preferable to approach the objective directly, by removing restrictions on use of this or any material from the 7–7:30 p.m. time slot, and barring it completely at 7:30. This will enable stations, for example, to present a 90-minute movie on Saturday from 6 to 7:30 or indeed any other day of the week.

87. As shown in Appendix C, this does not involve a drastic change with respect to most stations. As of October 1973, three affiliated stations in the top 50 markets "strip" movies between 6:30 and 8 p.m. on weeknights, including ABC's two owned stations in California and a station in the Norfolk-Hampton area. The ABC stations followed the same practice in 1970, except that the movies were run from 6 to 7:30, and they may, of course, resume this practice. The Hampton-Norfolk station has so programed movies only since the rule, apparently because of the dearth of other non-network material it finds suitable, and is not entirely happy with this type of programming, according to its comments. With the removal of the 7 p.m. restrictions, it may be able to dispense with the practice without substantial impact. Some 15 other stations would be affected with respect to one (or in one case two) nights a week. We do not conclude this to equal the benefits which will flow from keeping 5 or 6 of the 7:30 segments free from this, as well as from network and off-network, material. Stations may, of course, preempt network time later, as a number do and long have done, if they wish to present their own movies, in addition to the 7 p.m. period mentioned.

88. *Use of "cleared" 7:30 periods for locally significant material.* It is important to set forth here our expectations in this connection. We expect that stations subject to the rule will devote an appropriate portion of this "cleared" time, or at least of total prime time, to material designed for children, material which is of particular significance with respect to interests, problems, and affairs of minority groups, and/or other material particularly directed to the needs and problems of the station's community or coverage area as disclosed in its regular efforts to ascertain community needs. Such programing efforts are necessary if the benefit of the rule in stimulating locally meaningful programing is to be significantly achieved, as well as to carry out the licensee's obligation to serve the public interest. We point out, however, that programing of the significant character mentioned need not necessarily be all locally produced; a syndicated program such as *Black Omnibus* may well represent significant programing in the minority-affairs area.[37]

[37] Network programing during the uncleared portion of prime time may of course also make a significant contribution in this respect, where it deals with needs or problems common in substantial degree to many communities.

B. DISCUSSION OF SIGNIFICANT ARGUMENTS

89. *Whether the rule has had a fair test.* As mentioned in par. 32(2) above, the proponents and opponents of the rule differ sharply as to whether, at this point, the rule has had a fair test. In our view, it has not, at least in the sense that the somewhat mediocre showing so far can be regarded as showing that nothing different is to be expected in the future. As indicated above, this is one of our chief reasons for not moving further at this time in the direction of either repeal or of opening up more prime time (particularly former network time) to network programing and to those producers who prefer the network route. In reaching this conclusion, we note the rule's relatively new status—in the first half of its third year, with the first in a sense "a different ball game" in that off-network material and all feature film could be used—and the historic preference of stations and others for the "tried and true" which takes time to overcome (e.g., ABC's showing concerning the pouplar TV shows of the 1940's as being continuations of radio programs). Of equal, and perhaps greater, importance is the unfavorable climate which has prevailed, due to the uncertainty as to the rule's future, for a number of reasons mentioned previously. This would obviously tend to discourage the investment by producers in costly, and particularly in "novel", programing, and —as NAITP et al urge—might also discourage stations fom being interested in such material, and of building an audience for it, when they have the easier and cheaper alternative of going with less expensive material (such as game shows, with a "track record") and thus simply showing greater profits for the short time the rule would likely be around.

90. In reaching this conclusion, we have noted the arguments of the opponents, particularly the "majors" and their representatives, that nothing different will develop in the future because of certain built-in factors which have been made manifest by now and which will not change. These include, notably, the asserted ceiling on the amount per episode a first-run syndicated program can be expected to gross (and the greater cost of distribution)[38] and the fact that stations will always tend to prefer cheaper material, such as inexpensive U.S. game shows (which have at least some degree of established popularity) or foreign "off-foreign network" product also available relatively cheaply. Undeniably, these may be long-term factors. But we believe the rule has not yet had a test sufficient to demonstrate conclusively that these are, or will forever be, the iron-clad limitations which they are claimed to be. We note, for example, two new programs this season (*Dusty's Trail* and *Ozzie's Girls*) which have won wide station acceptance and which represent the re-entry and entry, respectively, of two if the industry's more powerful entities into production for first-run syndication. There is also the possibility—as ABC and others urge—that stations may be persuaded, with time and the firmer establishment of the whole idea of first-run syndicated material other than game shows, to pay prices higher than those they are now paying. Certainly, there is nothing inherent in their revenue picture to prevent this (see footnote 16, above).

91. In sum, while we do not believe the record is such as to warrant the complete restraint on network and off-network programing which the present rule provides, we do not believe thet rule has had a sufficient test to demonstrate what its future performance will be, so as to warrant further abandonment of it, in view of the benefits accruing, such as stimulation of local programing efforts, a return to individual licensees of a portion of the decision-making process as to prime time, and opportunity for producers not choosing to operate through the networks.

92. *The programing record under the rule so far.* In light of our conclusion, immediately, above, that the rule has not yet had a fair test to determine its potential, we need not look too closely at the programing record under the rule so far. As set forth in Appendix C, based largely on the various filings by the major film producers (which was the most comprehensive of the program showings),[39] this can hardly be called distinguished, and there are certain developments which unquestionably are, as they should be, grounds for concern, and will be grounds for much greater concern if the picture, three years from now, is generally the same. These include such matters as a marked increase in the stripping of programs (generally game shows) in the 7:30 period (compared to the variety of network material pre-

[38] This ceiling does not appear to be as low as the opponents claim (in the order of $50,000 per episode). Metromedia grossed over $80,000 (including foreign sales) for its 1971–72 *Primus* series, and expects to do about the same for *Dusty's Trail*, and *Let's Make a Deal* will have grossed $80,000 domestically, although it does not take anything like this to produce this game show. Moreover, it is clear from the record that producers such as Metromedia do not expect to make a profit, or necessarily break even, on the first run. Considering that there are savings possible compared to network production (talent will work for less, and there are other items) this ceiling is not too much below the $100,000-plus per half-hour cost figure estimated for network programs.

[39] As discussed in Appendix C, the "majors" exhibits have not been questioned for accuracy using the assumptions on which they were prepared, and our staff's check indicates that they are approximately correct on the same assumptions. The proponents of the rule strongly criticized them, inter alia for emphasizing the access-period time devoted to particular programs, rather than the number of programs actually available for access-period use. We find this objection without merit. The greatest program on earth is of no value to the public unless some station will buy it and show it.

sented then in 1970 and before),[40] and the increased use of foreign product, which—while it should not be prohibited or seriously discouraged—nonetheless cannot be regarded as a favorable result of the rule, since it means less use of U.S. material (and thus U.S. production activity and employment) and also likely these programs do not have the same overall potential for "relevance" as do programs produced here (dealing with current American themes and problems, etc.). Also, the greatly increased use of game shows itself can hardly be regarded as a favorable result of the rule, not necessarily as such but in view of the extent that these are either stripped in prime time or represent "sixth episodes" of game shows made for network daytime stripping. There has been a corresponding decline in other categories of programing, such as drama, and much of what there is, is foreign product (in 1972–73 75% of dramatic-program time in the access period was devoted to foreign programs; the figure is considerably higher this year because of the demise of the *Young Dr. Kildare* series).

93. But the picture is by no means entirely unrelieved. For example, with the advent of two new U.S.-produced comedy programs in 1973, *Dusty's Trail* and *Ozzie's Girls*, there is more time in the access period devoted to comedy programs, and a much greater percentage of this is U.S.-produced than was previously true. Overall, the percentage of foreign product is down somewhat now compared to 1972, and local programing efforts have continued to increase. Programs of the nature-outdoor or "animal" category have also continued to expand in number and exposure.

94. Moreover, there are serious limits on the extent to which we can take action based on judgments in this area. We certainly do not agree with NAITP et al. that we cannot properly look at the character of the resulting programing at all; but certainly any operational judgments based on such a look must be made with circumspection. Otherwise, we find ourselves tending to impose our own judgments as to what is or is not "program quality", and "over-used" or "under-used" type of material. There is the additional problem of what any judgment of program quality would use as a basis for comparison—the 7:30 network programs of 1970 (even though there have been some general changes in the networks' approach to prime-time programing since then), the 8 p.m. network programs of today (even though the audience then is larger overall than it is at 7:30, and less "mixed", and the networks do not have any half-hour time limitation), or only the successful network programs of any year, disregarding the numerous failures, including some already this year. These are comparisons which are difficult to make. We see no need for it at this time, in view of our conclusion above that the rule has not yet had a fair test as to its potential.

95. *"Number of producers represented in access time."* As mentioned in par. 32, above, the proponents and opponents of the rule differed sharply as to the comparative numbers of producers represented in access time (or total prime time) in 1970 before the rule and in 1972 under the rule. The difference was basically one of semantics; the number of producers of first-run syndicated material was greater in 1972, but it was less than the total number of producers represented in 1970, including network and "off-network" programs as well as first-run syndicated material. (If the producers of "off-network" programs included for 1970 were not counted, since this was not new material, the result might well be pretty much a standoff numerically between 1970 and 1972). In view of our basic conclusion above that it is too early to evaluate the full potential of the rule, we need not at this point get into this question.

96. *Exclusion of network programing which would otherwise be presented.* This point was vigorously urged by various opponents of the rule, including the "majors", union and guild representatives, and independent producers who oppose the rule and are members of the National Committee. The argument runs that the rule has produced nothing good in the way of programing, and at the same time, by lessening the amount of prime time available to the networks, has reduced the time they can devote to significant new programs, such as programs including members of, and of interest to, minority groups, situation comedies of particular interest to women, etc. It is said that this unfairly penalizes producers preferring the network route. In this respect also, we conclude that it is too early to make a judgment. There are various points to be noted. First, these independent producers are free to enter the non-network production activity whenever they wish to. Second, no conceivable change in the rule is going to permit all, or even a much larger part, of program ideas to gain network exposure. For instance, the major film producers in their latest filing (September 1973) claim that of 217 pilots presented to the networks for new program series in the last two years, only 33 became regular series and 24 were given partial exposure; the remainder, 160, got nothing. Adding 24 half-hours per week for the three networks might reduce this last figure to something in the order of 140, still nearly two-thirds. The third point is related to the same matter—if considerable amounts of prime time were given back to the networks, it is hard to say how they would fill it to the extent they decide to use it—with additional programs or largely to increase the length of existing shows. For example, NBC's announced program schedule for the January 1974 "new season" includes only 19 programs filling the 21 hours of prime time, with movies 5 nights per week. Thus, the result might be largely to add to the length of existing movies or other material, rather than to increase the number of programs. This is perhaps particularly true since two of the networks, ABC and NBC, do not support a change in the rule in this respect.[41]

97. *"Network dominance"*. It was vigorously urged that the rule works to increase network control and dominance, rather than lessening it, by creating an artificial scarcity of prime time and strengthening the networks' control over what remains vis-a-vis advertisers and program suppliers. This must be regarded as somewhat speculative, in view of the strong degree of dominance inherent in the networks' position, as long as they are three sellers on the one hand, as against hundreds of potential national advertiser customers, and three buyers on the other hand facing more than 100 producer-sellers. By contrast, the reduction in control through removing 11 or 12 hours a week from "the network funnel" is definite and readily apparent. It is true that the role of the owned stations in the success of access-period material is considerable, but this appears to be somewhat less true now, when these stations are buying somewhat less as a group. We do not find in these considerations any reason, at this time, to act to relax the rule any more than indicated above.

98. *"Impact on Hollywood" and use of foreign material.* These two related lines of argument, vigorously urged by opponents of the rule such as union and guild groups and the major film producers, involve areas outside of the normal ambit of the Commission's expertise. Moreover, in some respects, such as the degree of protection from foreign competition which should be afforded, they involve questions of general national policy which are basically beyond our jurisdiction to decide. At this juncture, when there is not yet an adequate basis on which to evaluate the full potential of the rule in these respects as in others, we conclude that they do not afford a basis for any present relaxation of the regulation beyond that adopted herein.

99. Moreover, there are other uncertainties and complexities which make any evaluation difficult, particularly as to the "impact on Hollywood" question (see Appendix D). These include the lack of any real information as to how much the loss in Hollywood network-program production activity has or has not been "made up" by syndicated and local programing efforts, other factors

[40] This is particularly true in situations where a station strips Mondays through Fridays two game shows, one at 7 and one at 7:30, and in markets where all three affiliated stations strip game shows at the same time.

[41] A related argument advanced by some opponents of the rule is that only the networks have the resources or the fortitude to start a "different" or controversial program and to continue with it when it is not initially popular. We find this much too speculative to afford basis for modifying the rule beyond the increase in permissible prime time mentioned, in view of the uncertainty mentioned in the text, the fact that we cannot at this time evaluate the rule's full potential with respect to the programs which are likely to be offered and presented in the future (already discussed) and the problems which have often been presented in programing the 7:30–8 p.m. period, which is what is basically involved here.

affecting the situation, some of them of long standing (including increased network prime-time use of movies and "reruns," each regarded by OTP as about equal in impact to the prime-time rule, and long-standing developments adversely affecting U.S. motion picture production), the substantial income accruing to Hollywood in recent years from the making of TV commercials, the extent to which any decline in film production activity and employment simply represents a change over to videotape production which involves to some extent different unions, and the uncertainty mentioned above as to what kind of use the networks would make of any additional time. As to the use of foreign product, this is down slightly in 1973 compared to 1972, and it is not possible to tell how much it may be affected in the future by recent changes in international currency and trade relationships, as well as by possibly increased U.S. program production coming with greater certainty as to the rule.

100. *"Commercialization" and increased access to non-national advertisers.* These two considerations, mentioned in paragraph 32(4) above, are conflicting but difficult to weigh because they are quite different. We conclude that, bearing in mind that individual licensees may, and some do, limit the level of commercial activity in syndicated programs, these considerations are about equal pro and con.

C. OTHER MATTERS

101. *News-public affairs and the "Wolper proposal".* As mentioned previously, the rule adopted herein permits one of the six normally "cleared" 7:30 segments each week to be filled with network or off-network material of certain types, including public affairs and documentaries. One of the important reasons for this is to encourage the presentation of regular network prime-time public affairs or "news documentary" programing, which has recently declined considerably.[42] A second reason is to encourage the presentation of other kinds of network or off-network documentaries, such as those produced and discussed herein by Wolper.

102. The question for decision at this point is what further provision for such activities should be made, if any. As to news and public affairs, should we grant a blanket exemption, or continue the "one-time only" waiver for such material now in effect? Should there be any further exemption for other documentary material, as urged by Wolper?

103. With respect to documentaries generally, such as those involved in the "Wolper proposal", in our view the rule change adopted, permitting one of the six weekly "cleared" half-hours to be used for such material from the network or when it is off-network, is all that is warranted, consistent with the rule's objectives and the public interest. As to news documentaries and public-affairs programs, we have decided that the best way to deal with this is by liberalizing slightly the exemption now in the rule for "on the spot" coverage and fast-breaking news events, by adding the phrase "and related programing" to that sub-paragraph. This will make it clear that when an important event occurs, warranting unusual network coverage, that coverage need not consist only of on the spot material, but may include programing such as the CBS broadcasts in the evening of the death of former President Truman (interviews with him filmed some years ago).

104. It appears that the two modifications thus made—permitting regular network (or off-network) public affairs programs during one of the six weekly "cleared" half hours, and permitting coverage of important events to include "related" as well as actual on-the-spot coverage—will provide sufficient opportunity for the presentation of this important material. We are extending, until the effective date of the rule changes, the waiver granted to the networks for "one-time" news and public affairs programs. We do not now decide finally the question of whether this kind of waiver should be extended further into the future, but we are inclined to the view that with the liberalizations mentioned, and the availability of network prime time in quantity for this purpose, further waiver of this sort will not be appropriate.

105. *Political broadcasting.* This exemption to the rule was not discussed in the Notice, but was in some of the comments; see par. 65, above. We are adopting herein the request that the rule not be limited to political candidate uses, but may include any political broadcasting activity by or on behalf of a candidate or candidates. This will resolve questions such as the Connally-for-Nixon broadcast of 1972. We are not adopting, at least at this time, the NAITP suggestion that the exemption apply only where the network has not refused the candidate time during its regular network programing hours, as happened in 1972. It may be that there is merit in this suggestion, but we do not have enough information to evaluate it with assurance. With the next general election nearly three years away, there is enough time to consider this if it is raised again in the near future.

106. *"Off-network" programing.* As noted above, the 7 p.m. (e.t.) half-hour is freed from any restrictions, which means that if stations choose to do so, they may fill it with off-network programs. We are not prepared to go further than this toward liberalizing the rule, for example abolishing this restriction altogether, which a number of parties urged. There is merit in the NAITP observation that such a course would simply mean curbing current network shows in favor of old network shows, with a corresponding decline in any new program production, either network or first-run syndicated. Considering the substantial impact on new material which this would have, it does not appear that it should seriously be considered.[43]

107. *Sports runovers.* The general rule structure adopted and discussed above makes somewhat easier the problem of dealing with straight late-afternoon "sports runover" situations, e.g., football games starting at 4 p.m., e.t. and usually, but not always, ending by 7. Since the 7–7:30 p.m. period is no longer subject to restrictions, this becomes less of a problem. However, if the objectives of the rule are to be properly served, we also believe it desirable to insure a higher degree of protection from impingement for the remaining portion of "cleared" time, the 7:30–8 p.m., e.t. period, than that which has prevailed up to now for the preceding half-hour. Accordingly, the formulation adopted in Appendix A is that sports runovers of late afternoon games will not be considered "network programing" if the game was scheduled so that in normal course the telecast (including post-game shows, if any) would have been over by 7 p.m., e.t. We realize that no rule will prevent all runovers—triple overtime basketball, 13-inning World Series games, an hour's weather delay in a golf tournament, etc.—but this should eliminate all but a very few of them. Since the networks have been following such scheduling arrangements in the past, this should present them with no difficulty.

108. *The "time zone difference" problem.* This subject discussed in pars. 51–52 above, acquires a new aspect in light of our decision to tie the access period to a certain time of the evening, 7:30 p.m. e.t. and p.t. (6:30 p.m., c.t. and m.t.). This means that not only will these Western situations arise in connection with the *Academy Awards* program and similar events, which start at 10 p.m. e.t. and are preceded in the East by two hours of network programs; they will also occur with every evening network sports event originating in the East. For example, a World Series game starting at 8 and running until 11 e.t. (5 to 8 p.t.) will preempt the access period that evening for Mountain and Pacific time zone stations, and therefore the station will not be able to comply with the rule if it carries the game. These much more numerous situations have not been a problem under the present rule, since, when the network presents a sports event at 8 p.m., e.t., normally it presents no other network material that evening. But with the rule in its changed form, the situation will occur fairly often, for example with NBC's 15 or so regular Monday night baseball games (plus the All-Star game and up to three World Series evening games) and ABC's 13 or 14 Monday night NFL games, which start at 9 p.m. and are preceded in the East by one hour of network material. All told, taking into

[42] Providing for regular presentation of news and public affairs material will eliminate questions which have occurred in the past, as to when a "one-time" program becomes a regular series, for example a series of post-primary election analyses which, naturally, come on Tuesdays.

[43] With the more liberal provisions adopted, it appears that it will no longer be necessary to consider further "off-network" waivers for particular programs, once the rule goes into effect. This *ad hoc* process presents some difficulties and dangers.

account "special events", the total could be as much as 25 times a year for a given station under present scheduling patterns.

109. Clearly, it would not be in the public interest to forbid carriage of the games themselves. The question is whether stations doing so, during one of the access period 7:30 slots, should be required to "clear" a corresponding half-hour later that same evening. We conclude that this should not be required, as a matter of regulation; the rule as adopted states simply that these occurrences are not considered to be "network programing" for the purpose of § 73.658(k). There are too many complexities to warrant the formulation of an iron-clad rule, including the desirability of permitting the presentation later in the evening of network news when it has been preempted by these events at its usual time, and some variations in network practices with respect to filling the time after the sports or other special event. However, in situations where the network does not present material for the West after the event, and where therefore these stations have considerable prime time at their disposal, we expect that some of it, at least, will be devoted to the type of material which it is the purpose of the rule to promote, local or first-run-syndicated programing.

110. *"Summer Olympics" situations and pre-game shows.* We are adopting herein the suggestion of the parties that when a network devotes all or substantially all of its prime time to a certain type of special programing, use of the additional half-hour between 7:30 and 8 for that purpose should also be permitted (the "Summer Olympics" type of situation, which all commenting parties agreed should have been the subject of waiver). The chief problem in this connection is what should be considered "special" programing, particularly as to evening sports events—fairly common, as noted above—and movies, e.g., a four-hour presentation such as *The Ten Commandments*. If left without limitation, it would be fairly easy for the networks to arrange their schedules so as to include such programing to an extent which would be an inordinate impingement on the availability of the access period to non-network sources. Likewise, it appears undesirable to attempt to define exactly all of the kinds of material, sports events, etc., which would warrant such treatment. Accordingly, we limit the exemption on this basis to: (1) International sports events (Summer and Winter Olympics, and perhaps some others such as Pan-American games, (2) New Year's Day bowl games (an established situation) and (3) other network programing of a "special" nature which is neither sports events nor motion pictures.

111. *Pre-game shows.* Some past waiver requests, chiefly by NBC in connection with the baseball All-Star game and the World Series, have involved the presentation of pre-game shows starting at 7:30, before the game itself starting at about 8. In our view, it is appropriate for the new rule to provide for such programing, but only to a very limited extent. It appears that the best way to approach the matter is simply to specify a number of times each year which each network and its affiliated stations will be permitted to present pre-game shows during the "cleared" time periods, rather than attempting to list events which appear important enough to warrant this departure from the general rule. Five each broadcast year appears an appropriate number, which, in the case of NBC, would accommodate three evening World Series games plus the All-Star baseball game plus one other event.

112. *Changes in determination of top 50 markets.* We are not adopting herein certain suggestions advanced during the oral argument by the representative of one multiple owner (The Outlet Co., with stations in Orlando, Providence, San Antonio and Syracuse) concerning the determination of what are the top 50 markets each year. One suggestion was that our ranking should use ARB's "area of dominant influence" (ADI) figures and ranking, rather than "prime time households" as at present. The former was said to be the basis used by advertisers. The other was that the ranking, according to any given year's list, be effective further in the future rather than the next season; for example, our current list should be effective only at the beginning of the 1975–76 season. This would give stations additional lead time in planning when they come into the top 50 for the first time, and they would already know, when in, how long they will remain. The first point would make very little difference (one in terms of 1974–75 listings; Syracuse is out and Orlando-Daytona Beach back in under either). The second matter does not appear to represent a major problem, considering the small number of changes which occur each year (two between 1973–74 and 1974–75, with Syracuse and Toledo dropping out and Orlando-Daytona Beach and Salt Lake City re-entering). In view of the complexities which might be involved, and the fact that these suggestions were raised for the first time quite late in the proceding, they are not appropriate for consideration here. These questions may be raised by separate petition for rule making if a party wishes to do so.

113. *Effective date.* We have concluded that essentially as far as the basic changes involved are concerned, the rule should be made effective as of the fall of 1974. In order to avoid the need for temporary readjustments lasting only a few weeks (which have been the subject of waiver requests in the past) we are providing, rather than October 1, an effective date of "the date between September 1 and October 1 which the station's primary network designates as the start of the fall season". Generally, this will be a Monday. Our reasons for picking a date some 8 months away—rather than the much longer time requested by CBS, or the more immediate effectiveness urged by the "majors"—are that this appears to be the most satisfactory resolution in light of all of the circumstances and the nature of the changes made. Clearly the public interest is served by making improvements in any rule effective at a reasonably early date, and we cannot agree with CBS that so much lead time is necessary in view of the limited expansion of network programing which we have decided to permit. On the other hand, we believe that an earlier date would create confusion and possibly work a hardship on some parties. The 8-month period thus allowed appears adequate for all parties to make plans and preparations in light of the fairly small changes which have been adopted. Pending the effectiveness of the amendments adopted herein, the present rule remains in effect and must be complied with.

114. In reaching this conclusion, we have considered a "Petition for Clarification" filed herein on December 14, 1973, after our November 29 public notice of instructions to the staff to prepare a document amending the rule essentially as set forth herein, by two of the most vigorous supporters of the rule, National Association of Independent Television Producers and Distributors (formerly NAITP), and Association of Independent Television Stations, Inc. This pleading, while initially asking that our public announcement be clarified by the specification of an effective date for the new rules (not mentioned therein), is chiefly devoted to argument that the date should be the beginning of the 1975–76 season, or about October 1, 1975. It is urged that the issuance of the public notice has created confusion and paralysis, both because of the uncertainty of the effective date and as to whether the rule adopted will be exactly the same as that outlined in the public notice. It is stated that affiliated stations are refusing to buy until they know for sure what they and their competitors will be able to carry and how much first-run syndicated product they will need; independent stations are similarly afraid to move because of uncertainty as to what they must program against on affiliated stations or even what programs will finally be available to them; and in both cases the weight of this paralysis falls on independent producers, who are thus unable to sell their material. It is argued that the only way to remove the uncertainty as to the coming season is to state clearly that the new rules will not become effective until fall 1975; otherwise, with the inevitability of petitions for reconsideration (and likely modifications at least in minor respects as a result thereof), and of court appeal lasting into 1975, there will be only an illusion of certainty if the Commission issues now a decision effective this fall, and it is virtually certain that a stay of an October 1974 date will occur, either from the Commission or from a reviewing Court. Meanwhile, however, considerable damage from the present uncertainty would have been done; therefore the Commission should

recognize the realities and itself impose now a year's delay.[44]

115. It is also claimed that a fall 1974 effective date would in effect contribute chiefly to the use of cheaper off-network re-runs, since the networks have stated that they need greater lead time before increasing their programing (e.g., CBS urges the fall of 1975), and first-run syndication production efforts will be to some extent diminished by the uncertainty (further hurting production activity in a recession period) so that there will often be little choice except to use off-network material. Producers of new one-hour programs, it is said, are particularly affected. This would inter alia, hurt independent stations, by the siphoning of off-network material to their affiliate competitors and also by putting them in a second choice position as to scarce first-run product. These parties also urge that the Commission should follow the example of its earlier handling of the rule, making it applicable only some 17 months after its adoption (May 1970 to October 1971) and then giving an additional year for stations to run off-network material in the access-period. A greater grace period here is said to be a fortiori, since here it is a matter of re-runs replacing new material rather than vice versa. Lastly, the matter of equity is claimed—that many independent producers have in good faith prepared new material for syndication in this fall's season, and are suffering economic damage from the uncertainty. In sum, it is said, equity, the public interest and precedent all dictate an effective date no earlier than fall 1975.

116. We do not find in these arguments reason to delay the effective date of the rule changes longer than until this fall, whatever date in September 1974 the station's network selects as the start of its fall season. As mentioned above, the rule is in effect a restraint, whose maintenance to the full extent it now exists we cannot find to be justified. Therefore it is appropriate to lessen the restraint at the earliest date consistent with the need for reasonable advance planning. The period of some eight months from this decision should be sufficient for that purpose, or, for that matter, the period of roughly five months which should elapse between any decision on reconsideration and the effective date. Appeals to court may of course delay the ultimate finality of the decision, but in view of the compromise nature of the changes adopted, it is far from certain at this point who the appellants (if any) would be, or what kind of stay would be sought or would be appropriate if requested. In our view, any further delay on our part, if it should ultimately be appropriate, should be granted only after we have had a chance to consider the matters raised on reconsideration (which may, of course, raise this point as well as substantive matters). Moreover, as mentioned earlier, the changes adopted herein are basically not great. As to additional network programing, this may be only up to one hour on one night a week as far as the time the networks have used up to now is concerned. The other significant change here is the removal of restrictions on the 7–7:30 p.m. half-hour; but, as mentioned above, some 90 percent of stations subject to the rule devote this time Monday through Friday either to news or to stripped game-show programs most of which were in existence before the rule and shown in this time period to some extent. The petition states that the new rules will not provide any one-hour access slots; but in practical terms this is really a significant change only as to Saturdays (the networks all begin their Sunday programing at 7:30 e.t.). We adhere to the view expressed, that the reasonably prompt removal of the restraint involved is appropriate.

117. *Interim procedures pending effectiveness of the rule changes.* Pending the effectiveness of the new rules this fall, we contemplate that in general the administration of the rule should proceed as it has up to now, with generally the same treatment of waiver requests relating to operation during this interim period (often, these may be handled by staff action under the expanded delegation of authority to the Chief, Broadcast Bureau, which was effective November 13, 1973; see § 0.281(b)(7) of the rules). We note two areas in which requests have recently been made and in which waiver appears appropriate if similar requests are received in the future, particularly in light of our determination herein that the maintenance of strict restrictions on use of the 7 p.m. (e.t.) period is no longer appropriate.[45] These are:

(a) Sports runover waivers for network coverage of golf tournaments, where the coverage is scheduled to conclude by 7 p.m., e.t., but a tie and "sudden death" playoff, or weather delays, or a combination of both, may make it run later; and

(b) Permitting stations to carry network news at 7 p.m., e.t. or p.t. (6 p.m., c.t. or m.t.), without its counting toward the three hours of permissible network prime-time programs that evening, and without the requirement that it be preceded by a full hour of local news or public-affairs programing, on evenings when the station's regular network news time during the previous hour is preempted for a sports or other special broadcast (network or non-network).

118. *Consideration of the rule in the future.* As noted above, many of the proponents of the rule urge that it needs some certainty in order to achieve its potential, and a number of them urge that the Commission give some assurance that the rule, as modified herein, will remain substantially as is for a number of years (two, three or five years are suggested).

119. While we recognize the desirability of certainty in this respect, it is very difficult for this or any other similar agency to give assurances of the sort requested. The Commissioners who have participated in the decision obviously cannot bind others who may be appointed in the future; nor is it necessarily appropriate to bind ourselves to a given course of action or non-action under any and all circumstances. However, certain facts are apparent. This proceeding has taken nearly 15 months to resolve from the date of the notice, including two rounds of comments, later written submissions and two long days of oral argument, and intensive Commission consideration this past fall and early winter. With the very many other important, complex and pressing matters now before us, it is not anticipated that another look at the prime time access rule will be taken in the immediate future, nor that, if and when the matter does receive further consideration, resolution will be within a brief period from the commencement of the proceeding.

120. Authority for the rule changes adopted herein is contained in sections 1, 2, 4(i), 301, 303(b), (f), (g), and (i), and 313 of the Communications Act of 1934, as amended.

ORDER

121. In view of the foregoing, *it is ordered*, That:

(a) Effective September 1, 1974, § 73.658(k) of the Commission's rules, the prime time access rule is amended, to read in its entirety as set forth in Appendix A below.

(b) The "Petition for Clarification" filed on December 14, 1973, by National Association of Independent Television Producers and Distributors and Association of Independent Television Stations, Inc. is granted to the extent that an effective date for the new rules is adopted, and in all other respects is denied.

(c) The waiver exempting "one-time" network news and public affairs programs from the three-hour limitation now in § 73.658(k), last granted in FCC 73–888 (released August 31, 1973) until a period 30 days after release of this decision, is extended to the date in September 1974 which each network designates as the start of its new season.

(d) Petitions to correct the transcript of oral argument held July 30–31, 1973, filed by the following parties are granted:

Boston Broadcasters, Inc.
National Association of Independent Television Producers
American Broadcasting Companies, Inc.
Westinghouse Broadcasting Company, Inc.
Goodson-Todman Production
National Broadcasting Company, Inc.
Columbia Broadcasting System, Inc.

[44] No specific details in support of the general assertions are given, but it is stated that this is for reasons of confidentiality, and if requested NAITPD will supply information as to station nonrenewal or refusal to purchase, on a confidential basis.

[45] We do not here pass on two other pending waiver requests, which might involve impingement on the availability of prime time to a larger extent: One is a petition for reconsideration of our deferral of waiver for the off-network program *Animal World*; the second is by a station for waiver to permit regular presentation of the ABC public-affairs program *The Reasoner Report*, during prime time on Saturdays, when followed (but not preceded) by a half-hour local public-affairs program. Decision on these will be forthcoming in the very near future.

122. *It is further ordered*, That this proceeding, Docket 19622, is terminated.

(Secs. 1, 2, 4, 301, 303, 313, 48 Stat., as amended, 1064, 1066, 1081, 1082, 1087 (47 U.S.C. 151, 152, 154, 301, 303, 313))

Adopted: January 23, 1974.

Released: February 6, 1974.

FEDERAL COMMUNICATIONS COMMISSION,[46]

[SEAL] VINCENT J. MULLINS, *Secretary.*

APPENDIX A

Effective September 1, 1974, paragraph (k) of § 73.658, the prime time access rule, is amended to read as follows:

§ 73.658 Affiliation agreements and network program practices.

* * * * *

(k) *Evening programming requirements.* The provisions of this paragraph apply to stations in the top-50 U.S. television markets (see Note below) which are regular affiliates of, or commonly owned with one of the three national television networks (as defined in paragraph (j) of this section), with respect to their evening programming starting on the date between September 1 and October 1, 1974, which their network designates as the start of its "new season".

(1) After such date in September 1974, each station shall devote not less than six (6) half-hours between 7:30 p.m. and 8 p.m., e.t. and p.t. (6:30 and 7:00 p.m., c.t. and m.t.), Monday through Saturday to programs which are not network, off-network or feature film: *Provided, however*, That;

(i) One (1) of these six (6) half-hours each week may consist of children's specials, documentaries or public affairs programming, either network originated or off-network.

(ii) "Documentary" programming means any program which is non-fictional and educational or informational, but not including programs where the information is used in a contest among participants.

(2) The following types of material are not considered "network programming" for purposes of this paragraph, so that they may be presented without limitation during the Monday–Saturday time periods mentioned in subparagraph (1) of this paragraph;

(i) "Runovers" of sports events carried on the network during late afternoon or early evening hours, if the telecast of the event (and accompanying pre-game and post-game material, if any) is scheduled so that in the normal course it would be concluded by 7 p.m., e.t.

(ii) For stations in the Mountain and Pacific time zones, the "live" broadcast of any "simultaneous" network programming, such as sports events or some other special events, which are broadcast simultaneously throughout the 48 contiguous states; provided the network's schedule for the evening including such telecasts complies with the provisions of this paragraph with respect to stations in the Eastern and Central time zones.

(iii) Telecasts of an international sports event such as the summer or winter Olympic games, New Year's Day college football games, or any other network programing of a "special" nature other than sports events or motion pictures, when the network devotes all of its time after 8 p.m., e.t. or p.t. (7 p.m., c.t. or m.t.), the same evening to the same programing, or all of it except brief incidental "fill" material.

(iv) "Pre-game shows" in connection with important sports events carried by the networks (e.g., the World Series), on no more than five occasions per broadcast year.

(v) Special news programs dealing with fast-breaking news events, on-the-spot coverage of news events or programing related to such events, and political broadcasts by or on behalf of legally qualified candidates for public office.

(vi) Material carried on a commercial or other network other than the three national networks as defined in paragraph (j) of this section.

(3) For those portions of the Eastern and Central time zones where "daylight saving time" is not observed for part or all of the year, during the portion of the year when it is not observed, the times which must be "cleared" of network, off-network and other feature film material shall be one hour earlier than those specified in subparagraph (1) of this paragraph, except for stations which regularly delay network evening programs and rebroadcast them an hour later.

NOTE: For the purpose of this paragraph, the "top 50 U.S. television markets" are the 50 largest markets, in terms of average prime-time households, listed each year by the American Research Bureau (ARB) in its publication *Television Market Analysis*. Shortly after this publication is issued, the Commission will issue a public notice setting forth the top 50 markets as indicated in that publication. This listing will apply for the following "broadcast year", that period of about twelve months starting the following September on a date which each network designates as the beginning of its "new season".

* * * * *

APPENDIX B

PARTIES PARTICIPATING IN THE PROCEEDING BY FILING FORMAL MATERIAL OR PARTICIPATING IN ORAL ARGUMENT

This Appendix lists the parties who participated formally in the Docket 19622 proceeding, either by formal filing of material or in oral argument. There are listed first those parties filing initial comments (with an indication of their later participation, if any), then the additional parties filing reply comments (with a similar indication as to later participation), and then those participating in the oral argument without having filed regular initial or reply comments. After the names of TV licensee parties (except the three national networks, and some other parties, such as certain major film producers, whose main interest in the proceeding did not appear to be as licensees), there are listed the cities in which their stations are located. "Ind." following the city indicates that the station is independent; otherwise it is network-affiliated.

In addition to the written material covered herein, a substantial number of letters and other informal submissions were received and have been included in the docket herein.

I. Parties filing formal initial comments through about Jan. 15, 1973

Name	Later participation		
	Reply comments, March 1973	Oral argument, July 1973	Written material, after March 1973[1]
Networks:			
American Broadcasting Co., Inc. (ABC)	×	×	×
Columbia Broadcasting System, Inc. (CBS)		×	
National Broadcasting Co., Inc. (NBC)	×	×	
Associations:			
National Association of Independent Television Producers (NAITP)	×	×	×
Association of Independent TV Stations, Inc.	×	×	
ABC Television Affiliates Association			
CBS Television Affiliates Association	×	×	
Licensees [2] who are also program suppliers:			
Metromedia, Inc. (Cincinnati, Kansas City, Minneapolis-St. Paul, Los Angeles, New York, Washington, all independent except Kansas City) and Metromedia Producers Corp.	×	×	
Westinghouse Broadcasting Co., Inc. (Baltimore, Boston, Philadelphia, Pittsburgh, San Francisco).	×	×	
Other TV licensees:			
Boston Broadcasters, Inc. (Boston)		×	
Broadcast-Plaza, Inc. (Hartford)			
Corinthian Broadcasting Corp. (Fort Wayne, Houston, Indianapolis, Sacramento, Tulsa).			
Fisher's Blend Station, Inc. (Seattle)			×
General Electric Broadcasting Co., Inc. (Denver, Nashville, Schenectady-Albany-Troy).	×		
Gross Telecasting, Inc. (Lansing, Mich., La Crosse, Wis.)			
KOOL Radio-TV, Inc. (Phoenix)			
Newhouse Broadcasting Corp. (Birmingham, Harrisburg, St. Louis, Syracuse plus satellite, 50 percent of Portland, Oreg.).			
Palmer Broadcasting Co. (Des Moines and Davenport, Iowa)			
Peninsula Broadcasting Corp. (Hampton-Norfolk, Va.)			×
Southern Minnesota Broadcasting Co. (Rochester, Minn.)			
Time-Life Broadcast, Inc. (Grand Rapids)			
Turner Communications Corp. (Atlanta independent)			
WBRE-TV, Inc. (Wilkes-Barre/Scranton)		×	
WHTN-TV, Inc. (Huntington-Charleston, W. Va.)			
Seven licensees joining in "summary comments" [3]			

[46] Chairman Burch issuing a separate statement, filed as part of the original document; Commissioners Reid and Wiley concurring and issuing statements, filed as part of the original document.

[1] The later written material covered herein does not include various pleadings directed to the July 1973 oral argument, material submitted during oral argument by some of the participating parties, nor material filed later by the 3 networks concerning their own production activities and use of their production facilities.

[2] Parent and subsidiary companies are counted as 1 "licensee." The listing of cities where these parties have stations includes only those stations and cities mentioned in the comments.

[3] Chronicle Broadcasting Co., Clay Broadcasting Corp., Griffin Television, Inc., Leake TV, Inc., Rust Craft Broadcasting of New York, Inc., Screen Gems Stations, Inc. and WBEN, Inc., with stations in San Francisco, Wilmington (N.C.), Wichita Falls (Tex.), Oklahoma City, Little Rock, Tulsa, Rochester (N.Y.), New Orleans, Salt Lake City, and Buffalo.

I. Parties filing formal initial comments through about Jan. 15, 1973—Continued

Name	Later participation		
	Reply comments, March 1973	Oral argument, July 1973	Written material, after March 1973 [1]
Major film producers:			
MCA, Inc	×	×	×
Paramount Pictures Corp			×
Screen Gems Division of Columbia Pictures, Inc	×	×	×
Twentieth Century-Fox Television		×	×
Warner Bros., Inc	×	×	×
Other program producers and syndicators:			
Firestone Program Syndication Co			
The Fremantle Corp			
Goodson-Todman Productions		×	
QM Productions			
Samuel Goldwyn Productions [4]			
The Wolper Organization, Inc	×	×	
Wrather Corp			
Union, guild, and actor agency groups:			
Screen Actors Guild, Hollywood AFL Film Council, Writers Guild of America West and Composers and Lyricists Guild (joint comments).		×	
Independent Casting Television			
Other: American Civil Liberties Union		×	

[4] This party's comments related to its position as a lessor of production facilities.

II. Additional parties filing formal reply comments

Major Film Producers

Metro-Goldwyn-Mayer, Inc. and United Artists Corporation (joint comments) (also filed written material) (MGM).[5]

Other Program Producers

Daniel Wilson Productions.
Ronox Productions, Inc.

III. Additional parties participating in oral argument

Network

Hughes Sports Network, Inc.

Association

National Committee of Independent Television Producers and member producers Bud Yorkin and Lee Rich (also filed written material).

TV Licensees

Post-Newsweek Stations, Inc. (Washington, Miami, Jacksonville).
The Outlet Company (Orlando-Daytona Beach, Providence, San Antonio, Syracuse).
Wometco Enterprises, Inc. (Miami).

Program Producers and Syndicators

Phillips Productions, Inc. (Joseph Cates, NAITP member).
Youngstreet Productions (Nick Vanoff, NAITP member).
Tomorrow Entertainment, Inc.
Viacom International, Inc. (also filed written material).
Worldvision Enterprises, Inc. (also filed written material).

[5] MGM did not actually participate in the oral argument because of illness, but a statement by its executive vice-president was read into the transcript.

Union and guild groups [6]

Film and Television Coordinating Committee.
National Conference of Motion Picture and Television Unions.

Other Parties

Action for Children's Television.
Adam Young, Inc.
Dr. Bernard Gifford (of New York City—Rand Institute, but appearing for himself).
Clarence Jones, Amsterdam Evening News.
Cleveland Amory.
National Citizens Committee for Broadcasting.
Paul Kline, Computer Television, Inc.
Robert R. Nathan Associates, Inc.

APPENDIX C

MATERIAL IN THE COMMENTS AND ORAL ARGUMENT CONCERNING ACCESS-PERIOD PROGRAMMING

This Appendix contains data from the comments and other filings in Docket 19622 concerning access period, and to some extent other prime-time programing, as well as some Commission staff analyses on various subjects.

Pages 1 and 2 are taken from the "Further Supplemental Joint Appendix" filed by the major film producers in September 1973, which contains new data for 1973–74 in addition to material from their earlier "Joint Appendix" for prior years. These filings have not been questioned as to their accuracy, although some of the proponents of the rule strongly objected to some of the assumptions and methods used, such as emphasizing time devoted to various programs rather than the programs as such, including the 7–7:30 period as well as the later half-hour which is the actual network cutback, and allegedly misleading use of percentages of "access entertainment programing" rather than of total access time (the latter would be about a third lower). The Commission staff has checked the data and finds that it is at least reasonably accurate, and it is much the most complete of any of the showings submitted.[1]

The two tables are presented for the figures contained, not for the material at the top, particularly on Table II, which is the "majors" own comment on the figures, with which we do not necessarily agree.

This table analyzes, by broad type, those programs scheduled in the 3rd year—'73–'74—of the prime time access rule. Prior to the rule, network entertainment programming occupied 1137 half-hours, or 54.1 percent, of "access time."

For '73–'74, syndicated entertainment programming occupies 1382 half-hours or 66.8 percent of the total. News, local-interest programs, and movies are scheduled in the balance of "access time."

TABLE 1.—*Total access programing by type,*[1] *1973–74*

	Number of half hours	Percent
1970–71 season before rule (network programing)	(1,137)	(54.1)
1973–74 season:		
Entertainment	1,382	66.8
(Top 23 entertainment programs)	(1,132)	(54.7)
News (local and network)	475	23.0
Local interest (nonnews)	145	7.0
Movies	66	3.2
Total access programing	2,068	100.0

[1] For 1970–71 (before the rule) and 1972–73, the corresponding data in the majors' "joint appendix" is as follows (half hours): 1970–71: Entertainment 1,537 (network 1,137, off-network 268, made for syndication 132), news (local and network) 457, local sports and other 44, movies 62. 1972–73: Entertainment (syndicated) 1,383, total news 488, total local interest 135 (including 5 "black interest"), movies 94.

This table analyzes program *types*, before and since the rule. For '73–'74, the third year since the rule began, the average viewer will again have a very narrow choice of entertainment programming. About *55 percent* of all entertainment half-hours are *game* shows, a fivefold increase from *11 percent* in the year before the rule. Meanwhile, those entertainment programs with the highest degree of social relevance—comedies (like "Sanford & Son," etc.) have declined from almost *22 percent* to under *7 percent;* and *dramas* ("The Waltons," etc.) have declined from over *46 percent* to under *12 percent*. In addition, as prior filings indicated, the majority of even that small amount of drama in access is produced abroad, with minimal social content relevant to American life.

[6] The four spokesmen for the Film and Television Coordinating Committee also represented union groups which had filed comments earlier. The National Conference of Motion Picture and Television Unions, which includes five unions and is concerned with national rather than local Hollywood-area matters, was represented by four spokesmen, its coordinator and officials of three of the component unions, IATSE, IBEW and NABET.

[1] If there are errors, they are not necessarily in favor of the majors' position. For example, while the majors argue that local programing has increased little under the rule, their figure of 135 haf-hours in 1972–73 is among the highest of the commenting parties.

TABLE II.—*4-year comparison of entertainment programs, by type*

	1973–74		1972–73		1971–72		1970–71	
	Number of half hours	Percent	Number of half hours	Percent	Number of half hours	Percent	Number of half hours	Percent
Game	758	54.8	672	48.6	294	22.8	170	11.1
Drama	160	11.6	228	16.5	357	27.7	712	46.3
Variety	194	14.0	255	18.4	225	17.5	265	17.2
Nature/travel	146	10.6	98	7.1	81	6.3	36	2.3
Cartoon	25	1.8	59	4.3	2	.2		
Comedy	91	6.6	24	1.7	242	18.8	334	21.7
Miscellaneous	8	.6	47	3.4	86	6.7	20	1.3

USE OF FOREIGN-PRODUCED MATERIAL

The "majors", and other opponents of the rule, emphasize the extent to which foreign-produced material is used in access time under the rule. This rose from practically none in 1970–71 (before the rule) to 281 half-hours in 1972–73 entirely foreign-produced (20.3 percent of access-period entertainment program time), of which 244 half-hours were "off-foreign network". The increase was particularly notable in dramatic programing, 74.2 percent of which in 1972–73 (in terms of time devoted to it) was of foreign origin (*Police Surgeon, The Protectors, Evil Touch*, etc.). This percentage is probably even higher in 1973–74, with the demise of the *Young Dr. Kildare* program.

However, overall, it appears that foreign-produced material has declined somewhat in 1973–74, with only 197 of station half-hours devoted to "off-foreign network" programs, compared to 244 half-hours in 1972–73. Also, the networks have used foreign material in prime time in the past (Metromedia refers to 16 examples) and still do; there was mention in the oral argument of 7 such situations (although most of these were specials rather than regular weekly series).

USE OF "NETWORK RE-TREADS"

The majors et al. also refer to the great bulk of syndicated access-period programing as "network retreads". While this term is used too broadly to be truly meaningful as such (since practically all entertainment programing is to some degree "derived" from something earlier), nonetheless a great deal of material is revivals or continuations of foreign network series, or, in the case of some successful game shows such as *Let's Make a Deal, The Price is Right* and *Hollywood Squares*, "sixth episodes" of programs currently stripped on the networks on weekdays. Of the top 25 access-period programs in 1972–73 in terms of station time devoted to them, 6 were foreign-produced, three were "sixth episodes" of daytime network game shows, and 12 were continuations or revivals of former network series (*Kildare, Lassie, Wild Kingdom, Lawrence Welk, Hee Haw, Merv Griffin*, and six game shows, 4 of them generally stripped). The other four—*George Kirby, Mouse Factory, Parent Game*, and *Wait Till Your Father Gets Home*—have less specific origins in former network shows. The top 23 programs in 1973–74 include 13 of the above and 10 new ones; of the 10 new entries, 3 are foreign, 3 are present or recent daytime network game shows, and four have less specific antecedents (the latter are *Dusty's Trail, Ozzie's Girls, Bowling for Dollars* and *Wild, Wild World of Animals*.[3]

[3] In setting forth these figures, we recognize of course the argument of the proponents that the public interest is served by the operation of the rule in permitting the continuation of programs, such as *Lawrence Welk*, which are quite popular even though their demography no longer fits the network's ideas at a particular time and therefore the network cancels the program.

LOCAL PROGRAMING

As to the amount of local programing on top-50-market affiliated stations during the one-hour access period, the majors' Joint Appendix showed, for a week in the fall of 1972, a total of 130 half-hours of local material of a general nature other than news and movies (sports, etc.), plus 5 half-hours of "Black interest" material, programs identifiable as such by their title (this is probably an understatement). The first figure is a considerable increase from 44 half-hours in a similar week in 1970, but a decrease from 164 half-hours in a week in the fall of 1971. The "Black interest" figure is an increase from nothing in 1970 and three half-hours in 1971. The 1973 figure is 145 half-hours total (no breakdown as to "Black interest").

ABC and CBS also gave overall figures for a week in the fall of 1972, though not for earlier years. ABC gave figures for the *total amount of local news and public affairs programs* on the top-50-market affiliated stations during the 7:30–8 p.m. (e.t.) time period except Sunday 10:30–11 p.m., e.t., for CBS and NBC affiliates—118 half-hours.

The figures showed considerable variation among markets. Boston and Houston showed 11, Dallas-Ft. Worth 9, Chicago, Miami, Sacramento and San Antonio 6, and Milwaukee and Oklahoma City 5. All of these except Boston represent largely the fact that one or more stations in the market have lengthened their local newscasts to an hour; in Boston, the programing is of a more variegated nature, with WCVB in 1972 presenting a different local program each day at 7:30 p.m.

At the other end of the scale, ABC's figures showed no local news or public affairs programs on affiliated stations (during this half-hour) in 11 markets, and only one half-hour in 15 markets, the latter including New York and Los Angeles.

The CBS showing was based on the same 7:30–8 p.m. (e.t.) period, plus a half-hour additional on Sundays, for a week in the fall of 1972. It showed that of 1,190 station half-hours, 149 (12.5 percent) were devoted to local programs other than public affairs (sports, entertainment, discussion and movies), and 111 to news and public affairs (9.3 percent of the total hours).

A few other licensee parties made showings as to the access-period programing in their markets, local and otherwise. Westinghouse, for example, showed that in roughly the same time period analyzed by CBS (above), in the 5 markets where it has stations there was a total of 32 local programs on affiliated stations during a week in October 1972 (including 4 regular newscasts but not including movies). These included 13 in Boston, 6 in San Francisco, 5 in Baltimore and 4 in Philadelphia and Pittsburgh. Thirteen of the 32 programs were on Westinghouse stations.

At the oral argument, an official of Viacom International, Inc., one of the proponents of the rule, stated and presented an exhibit showing that as of fall 1973, local programming would be presented during the access period in 44 of the top-50-markets, on 78 stations subject to the rule.

USE OF "STRIPPED" MATERIAL AND OTHER "BLOCK" PROGRAMING ON WEEKDAYS IN 46 OF THE TOP 50 MARKETS, 1970, 1972, 1973 [3]

The following are the figures as to use of "stripped" game shows and other material during the first and second half-hours of prime time, Mondays through Fridays, for weeks in November 1970, November 1972, and October 1973. The news "blocks" mentioned were presented on all five nights; the movie program on ABC stations in Los Angeles and San Francisco ran on four nights (Monday in these weeks was ABC's Monday night NFL game). The other "stripped" material ran usually on five nights, although in up to about a dozen cases per year the station presented a different program on one night, and in one 1973 case two nights.

7–7:30 P.M., E.T. AND P.T., 6–6:30 P.M. C.T.

1970: 20 game shows, 33 off-network programs (mostly comedy such as *Petticoat Junction, I Love Lucy* or *Dick van Dyke* show strips, and some drama such as *Dragnet*), 47 local news, 26 network news, 3 local movie blocks, 1 syndicated (*Death Valley Days*). Total: 130. Nine stations presented "variegated" programing, basically a different program every night.

1972: 51 game shows, 43 local news, 22 network news, 4 other,[4] 3 movie blocks. Total: 123. 16 stations presented "variegated" programing.

1973: 56 game shows, 45 local news, 21 network news, 2 other, 3 local movie blocks. Total: 127. 12 stations presented "variegated" material.

7:30–8 P.M., E.T. AND P.T., 6:30–7 P.M., C.T.

1970: All network (except for a few isolated preemptions) and thus "variegated" programing.

1972: 33 game shows, 7 local news, 3 other, 3 local movie blocks. Total 46

1973: 34 game shows, 11 local news, 2 other, 3 local movie blocks. Total 50

In 1973, in four markets all three affiliated stations were stripping game shows opposite the others in one of the half-hours; in two other markets, there were two stripped game

[3] The 46 markets include all of the 1973–74 top 50 markets except Denver, Phoenix, Greensboro-Winston-Salem-High Point and Wilkes-Barre-Scranton. The first two are excluded because of their Mountain time zone location, where schedules in 1970 before the rule, and to some extent later, are more irregular than elsewhere, so that analyzing a particular half-hour is less meaningful. The last two are excluded because they were not in the top 50 in 1972–73, so there is no basis for comparison. The UHF station in the Grand Rapids-Kalamzoo-Battle Creek market, not yet on the air in 1970, is not included in any of the years. Included are four stations in the Hartford-New Haven market, where two UHF stations are affiliated with NBC. *Source:* ARB audience survey listings for November 1970 and November 1972 (particularly the second week of each year); and for 1973, *TV Guide* for the week of October 6–12.

[4] "Other" programing is in most cases the *Merv Griffin* 90-minute talk show, shown in three markets in 1972 and two in 1973, but which at the oral argument was described by an official of Metromedia (which handles it) as not basically an access-period program. The remainder of this category consisted in 1972 of a 7 p.m. block on a San Francisco station listed as "Wide Wonderful World," which may actually be variegated "outdoor" material rather than a strip; and in 1972 and 1973, half-hour "film" programing at 7:30 on one of the two NBC affiliates in the Hartford-New Haven market.

shows opposite each other on affiliated stations in both half-hours; and in 17 other markets there were two game shows on affiliated stations at the same time (*Source:* Further Supplemental Joint Appendix of the major film producers).

USE OF "FEATURE FILM" DURING THE ACCESS PERIOD

In 1973, three top-50-market affiliated stations present local movies on five weeknights, from 6:30 to 8. These are ABC's owned stations in Los Angeles and San Francisco, and a station in Hampton-Norfolk, Va. The latter also presents a movie during the access period on Sunday. In 1970, the ABC-owned stations also presented movies on weeknights, but from 6 to 7:30; the Virginia station has programed in this fashion only since the rule.

Another 15 top-50-market affiliated stations present local movies one night a week (or in one case two) during "access-period" hours (including a few late Sunday night). This does not include two which present them ending at 7:30.

USE OF SYNDICATED MATERIAL BY "O & O" GROUPS

One of the arguments urged by opponents of the rule is that it has not diminished network control and dominance, for one reason because of the vital role the three 5-station groups of network-owned stations play in the success or failure of a syndicated program. It is appropriate to inquire into the extent the stations, in these three groups, actually program their access periods with the same material as other stations in the same group. Set forth below is data for 1972–73 and 1973–74, using ARB rating survey program listings (for the second week in November 1972) for the first, and *TV Guide*, week of October 6–12, 1973, for the second. As can be seen, the stations in each group do use the same material to a considerable extent, though never entirely so and somewhat less in 1973 than in 1972.

ABC–1972: the five ABC-owned stations in the 1972 week presented a total of 24 access-period programs on the 5 stations, representing 12 different programs (one, shown on two stations, was one hour; the rest were half-hour).[5]

Two programs were shown on all 5 stations, one on four, one on two, and 8 on one station only. Thus, of the 24 station program units, 42 percent were devoted to programs shown on all stations, 67 percent devoted to programs shown on two or more stations, and 33 percent to single-station programs. In terms of separate programs, 8 of 12 were used on one station and 4 on more than one.

1973: The 5 stations in the 1973 week showed a total of 23 access-period syndicated programs, including 14 separate programs. One was shown on all 5 stations, one on three, three on two and 9 on one station only. Of the 23 station program units, 61 percent were programs shown on multiple stations, 39 percent were shown on one station only. Of the 14 separate programs, only 5 were used on multiple stations, and 9 on one only.

CBS—1972: The 5 CBS stations showed a total of 35 syndicated programs in the access period, including 10 separate programs (one one-hour, the rest half-hour). Five programs were shown on all 5 stations, two on three stations, one on two, and two on one only. Thus, 71 percent of the 35 station program units were material shown on all stations, 94 percent of it was material shown on two or more stations, and only about 6 percent was material shown on only one station. Of the 10 programs, 8 were shown on two or more stations.

1973: The 5 stations presented, in the 1973 week, a total of 30 syndicated access-period programs, including 13 separate programs. None were shown on all 5 stations, 3 appeared on 4 stations, 3 on three stations, 2 on two stations, and 5 on only one station. Thus, 83 percent of the station program units were material shown on multiple stations, and 17 percent was material shown on one station only; of the different programs, 8 were used on multiple stations and 5 on one only.

NBC—1972: NBC has been the most nearly monolithic of the owned-station groups in this respect. In 1972, of a total of 38 syndicated programs presented during the week on the 5 owned stations, 35 represented 7 programs which were on all 5 stations, or over 90 percent; one program was on two stations and one on one station.

1973: There was a somewhat greater difference among these stations in 1973. The 29 syndicated access-period programs presented during the week on the 5 stations included 8 programs, five on all 5 stations, one on two and two on one only.[6] Thus, some 86 percent of the station program units were material shown on all 5 stations, and only about 7 percent was material shown on only one station. Six of the 8 programs were shown on more than one station.

APPENDIX D

SUMMARY OF CERTAIN FACTURAL DATA AND SPECIFIC ARGUMENTS

This Appendix summarizes factual data and specific arguments relating to two subjects. Most of it concerns material submitted in comments; paragraphs 11 and 33–37 relate to material presented at the oral argument, which differs in some respects from that in the comments.

A. Effect on U.S. program production and employment in it

1. One of the arguments vigorously urged against the rule, and for its repeal, is the asserted serious adverse impact on U.S. program production and employment in it, which is generally put in terms of impact on "Hollywood". The chief parties advancing this argument are the "majors" and the Screen Actors Guild and other labor-guild organizations filing jointly ("SAG et al."); other parties urging the point are Samuel Goldwyn Productions and Independent Casting.

2. These parties assert that the network cutback resulting from the rule has meant a loss in Hollywood production activity of neary $60 million annually, computed on the basis of slightly over $100,000 production cost per half-hour episode, times 24 episodes per series per year on the average, times 24 half-hours of network programs lost (4 hours per week per network).[1] SAG et al., using a similar but slightly different basis of computation, put the annual figure at $63 million with $53,550,000 of it being payroll ($106,250 average payroll per episode), representing 16,128 production jobs or 3,570 full time jobs. Either explicitly urged or implicit in these arguments is the position that this loss is not made up to any significant extent by the access-period programing which has resulted under the rule. It is said that this is because this material is very largely either "game shows", involving little production activity and often made on an assembly line basis (and not employing actors in any event), or material produced abroad and thus not helping those actually working in U.S. production (although some American producers are involved and may benefit).

3. SAG et al advance statistics from labor sources as to the assertedly very bad unemployment situation in Hollywood resulting from the rule, the "rerun" situation and other industry problems, both TV and motion picture. As of November 1972, this includes figures for some 20 unions and guilds (including SAG but not AFTRA, which represents actors in tape productions), totalling more than 58,000 employees. The unemployment rates range from 7.4 percent (film editors, 1,739 total members) to 85 percent (actors, much the largest of these groups with over 25,000 total members). Other groups of over 1,000 members, and the unemployment rate, included property men (1,884, 23 percent), studio teamsters (1,087, 39.2 percent) screen extras (2,645, 75 percent), and writers (3,000 members, 73 percent). Percentages for two other groups over 1,000 (musicians 16,000 and directors 1,100) were not known. SAG et al claim that considering that November is the height of the production season, these figures are shocking, and they are even worse during the rerun season.

4. Other parties mention additional data. According to Screen Gems, the decline in production activity represents a loss of 3,800,000 hours of craft-union, "below the line" employment (statistics from the Motion Picture Health and Welfare Fund, showing 31,851,033 such employment hours in 1969–70 compared to 28,021,721 in 1971–72, the earlier figure representing a decline of some 5,000,000 hours compared to the mid-1960's). The "majors" also give figures as to the decline in production of filmed entertainment TV programs over the last decade—755 hours and 1,471 half-hours in 1971 compared to 1,530 hours and 3,060 half-hours in 1962), and a reduction in such material during the access period from 898 hours in 1970–71 to 81 hours in 1971–72. However, as ABC points out in supplemental comments (mentioned below), this excludes the large and increasing amount of videotape programming, both network and non-network, including such successful network programs as *All in the Family, Maude* and *Sanford and Son*. Samuel Goldwyn Productions, which is a production company and also a supplier of studio facilities to independent producers (mostly for network programs) claims a 25 percent decline in filmed production activities at its facilities—said to result from the preponderance of inexpensive programs using tape, or foreign material. It is claimed that this has hurt it and similar companies, and employment.

5. The proponents of the rule—particularly NAITP, ABC and Metromedia—urge a number of contentions in rebuttal to such arguments: (1) this is really not an appropriate

[5] In the case of ABC's Los Angeles and San Francisco stations, there is included here the non-network material they present on Mondays following the ABC NFL football game which preempts the usual access-period time. In both cities for both years, this was the *Department S* syndicated program.

[6] These 29 program units occupied 39 half-hours of time, including the one-hour *Starlost* program and two half-hours of *Hollywood Squares*, both in all 5 markets.

[1] The actual amount of the network "cutback" per week resulting from the rule is either 22 or 24 half-hours a week, depending on what period is chosen as a basis for comparison. In November 1970—a period chosen by most commenting parties for comparibility with fall 1972 data—all three networks programmed beginning at 7:30 e.t. 6 nights a week and at 7 p.m. on Sunday, and ran until 11 p.m., 24 half-hours more than they made under the rule. However, early in 1971 ABC cut its Sunday programing back to 8 p.m. so that, immediately prior to the rule, the three networks presented 22 half-hours more than permitted under the rule.

concern in this proceeding; television is not chargeable with the health of Hollywood, the Commission was not concerned about this when it gave "off-network" waivers particularly for the foreign *Six Wives of Henry VIII* program, and in its comments in Docket 19554, the Justice Department expressed the view that the Commission's authority to consider unemployment or under-employment in Hollywood is "not clear"; (2) this whole argument about "impact on Hollywood" is a myth; there is bound to be more employment with nearly 70 syndicated access-period programs now compared to 21 network programs during these earlier hours as well as increased local programming activity (NAITP uses the figures 4,620 episode-jobs compared to 1,386, on the basis of SAG's formula of 66 persons per episode, assuming the same new-repeat ratios); (3) these syndicated programs have a higher new-repeat ratio than network shows, particularly game shows (1153 of 1560 episodes of 10 game shows are new), so that using the same formula, game shows represent 76,098 episode-jobs compared to 792 for Wild Kingdom's 12 new episodes (or 24,864 if it presented the same number of programs); (4) production everywhere in the U.S. must be taken into account, including both syndicated shows made outside Hollywood, and local productions, and the Commission should also look at the quality of employment—youth, minorities, women, etc.—in which the independent producers are better; (5) Hollywood's "crisis" has been overstated, since conditions have improved since about mid-1971, with movie box-office receipts up in 1972 compared to 1971 (20 percent in gross receipts, 16 percent in number of admissions), more of the "majors" showing profits and their overall income picture improved by more than $100 million in 1971 over 1970, feature film "starts" up 32 percent and U.S. "starts" on foreign locations down 17 percent and unemployment down in the fall of 1972 compared to a year earlier; [2] (6) to the extent there still is "depression" in Hollywood from this cause, it represents basically the decisions of the "majors" not to come into access-period production on a non-network basis, which they are free to do and doubtless will soon do if the rule is affirmed; (7) the whole matter is a highly complex one, involving this factor to some extent but also re-runs, increased use of movies (Metromedia claims that in a February 1973 week, 16 prime network hours were devoted to made-for-theatre movies reflecting no TV production activity); "runaway production," declining box-office receipts, and obsolete production and business practices—many of which factors reflect the basic problem which is high and increasing production costs, which have just about doubled in the last 10 years and are in part a union-caused problem; (8) the practice of foreign importation is by no means confined to access-period material, since the networks have done it on a number of occasions (Metromedia lists 16 in the last several seasons) and about 10 percent of prime time network schedules is devoted to foreign-produced movies; and, of course, the "majors", with 95 percent of their production away from Hollywood, are poor parties to urge this point.

6. *Material in NAITP and ABC Supplemental Comments* (July 1973). As permitted under the Notice of Oral Argument herein, NAITP and ABC filed supplemental comments discussing this subject at some length. NAITP's additional material is largely in the nature of legal argument disputing the relevance of this whole subject; it is asserted that it would be permissible for consideration only if it were shown that program output had declined under the rule, which obviously it has not. Absent that consideration, the matter is not appropriate for Commission evaluation. NAITP claims that since prime-time program output has increased under the rule, what those who raise this issue are really urging is that Hollywood employment be increased at the expense of an increased supply of programs—clearly inadmissible from the Commission's standpoint.

7. ABC likewise raises the relevancy question, but goes into more detail factually. It is claimed that basically, any assumption that unemployment in Hollywood is caused by the rule, and should be grounds for repealing it, is much too simplistic, in ignoring: (1) Effect on employment elsewhere in the U.S., concentrating only on Hollywood, which means generally the "majors" who have not chosen so far to be active under the rule; (2) it ignores other developments in the industry, such as those relating to feature film and the substantial income from TV commercials. ABC claims that while the rule has led to different types of programs, and thus employment shifts as compared to the standard dramatic fare which makes up the bulk of network prime-time material, this does not necessarily mean fewer people. Thus, a game show typically means less employment than a dramatic show, but a variety show such as *Lawrence Welk* probably means more, with the large number of musicians, even though, like the game show, it does not represent much income to Screen Actors Guild or Writers Guild members. Also, it is claimed that those advancing this issue tend to ignore completely the increase in employment resulting from more *local* access-period programming, for example the 14 people added to the staff of ABC's Chicago station to handle its additional five weekly half-hours of news and public affairs material. In short, ABC believes that overall, U.S. employment under the rule has increased. ABC claims that any analysis of this situation must take into account three factors: (1) Extensive union "featherbedding" in the industry, which has increased production costs greatly; (2) the increased use of videotape rather than film, which renders some statistics such as those mentioned above of no value; and (3) the rising income from TV commercials (see the discussion of OTP Report material, below).[3] In sum, ABC urges that, as happens from time to time in many industries, the source of the programs (majors v. independents) and the location of production have changed somewhat, but overall employment has increased rather than lessened, and the Commission should not act simply to preserve for the "majors" a position which they can no longer justify, just as Southern California's other major industry, aerospace, is going to have to adjust with the times.

8. ABC claims also that relief is not necessary because the majors—having cut their payrolls and film budget, and otherwise reformed their inefficient practices—are now doing rather well (citing a *Business Week* article of June 1973 and other material). The number of planned motion picture "starts" in January and February 1973 was 32, nearly double the 1972 figure, with 12 to be produced in Hollywood. MCA-Universal will have 13½ hours a week of network prime time this year. "Runaway production" is down, with 91 produced-in-U.S. movies in 1972 and 130 or so planned for 1973, compared to fewer than 75 in the 1969–71 period (resulting partially from devaluation). ABC also refers to a trade press article concerning the highly regarded *Black Beauty* series, in which the producer ascribes his success to the absence of American padded costs. It is claimed that the rise of independent production may have spurred the "majors" to more efficient and more effective efforts.

9. *Material in the OTP Report (March 1973)*. In March 1973 the Office of Telecommunications Policy published its "Analysis of the Causes and Effects of Increases in Same-Year Reruns Programming and Related Issues in Prime Time Network Television". This report related primarily to the "re-run" question, but contained some analysis relating to the prime time access rule. It was concluded that the rule was one factor leading to increased unemployment in the program production industry, along with re-runs, increased network use of movies, declining theatre admissions and "runaway production". However, it should also be noted that this study covered only the period ending with the 1971–72 year, the first under the rule, when use of "off-network" material during the access period (as well as unrestricted use of movies) was permitted. The study stated that "* * * the time in question was devoted almost entirely to non-original programming, replacing original and network re-run programming", and that while it was not clear that this would continue for the future, "it does seem likely that access time will probably be devoted to programs of lower cost and lower employment than network programming." (P. 30). The study analyzed CBS network prime-time programming for the 1962–63 and 1971–72 years, and noted a decline of 389 hours in made-for-TV material (regular TV programs and made-for-TV movies). It attributed this decline in roughly equal parts to the increase in made-for-theatre movies (none in 1962–63), 137.9 hours or 35.4 percent, the prime time access rule (129.9 hours or 33.4 percent) and increased use of re-runs (121.3 hours or 31.1 percent). The report also contains a number of other statistics, including the income to entities within SAG's jurisdiction for television programs, movies and television commercials. In 1971, this was $34.0 million for TV (down from previous years), $20.6 million for movies (up from 1970 but down from earlier years) and $59.2 million for commercials (down from 1970), a total of $114.4 million. Thus, more than half of the income to SAG entities is from TV commercials. The income from television programs is less than that shown for AFTRA (which represents, inter alia, actors in taped shows);

[2] ABC presents figures based on California State unemployment insurance records, showing unemployment declines for all craft and guild categories shown except directors. The figures given are numerically considerably smaller than those shown by SAG et al., for example including only 721 unemployed actors in October 1972, whereas SAG's 85 percent of 25,000 woud be over 20,000. Some of the opponents claim in reply that this is factually ridiculous, based only on claims during a two-week period, and ignores those whose benefits had expired by late 1972, or who, unable to get work, left the industry. NAITP also urges generally that the rule serves as a "shot in the arm" to independent production activity, and will benefit employment by forcing abandonment of archaic practices.

[3] ABC asserts that many of the actors used in commercials are not really professionals depending on acting for their livelihood, but nonetheless they must join SAG, whose unemployment figures therefore include them when they are not working at this activity. It is claimed that these figures are to this extent an overstatement of the actual unemployment situation. ABC also suggests that another contributing factor to current Hollywood unemployment may be the economies put into effect by the majors in the last two years or so, both in their film budgets and elsewhere, for example MGM's cutting its payroll by 5,000 people.

but the latter, $69.3 million, includes local stations as well as programming personnel.

10. *Data advanced by the "majors" in support of their claims of injury.* While not directly related to the impact of the network cutback on U.S. program production activity, it is appropriate to note certain data advanced by the "majors" as to their assertedly poor situation generally. It is noted that theatre box-office admissions have declined, between 1946 and 1971, from about 78 million to 16 million a week or $1.692 billion to $1.214 billion annually, which in terms of constant dollars represents in the latter year only $653 million—a 61 percent decline. Sales to television of feature (theatrical) films and short subjects declined between 1970 and 1971 from $94.6 million to $49.3 million; sales of feature films to the networks declined between 1967 and 1970 from $249 million to $47 million. These figures of course do not include sales by these companies to the networks of films "made for television", which rose from 1 percent of network movies in 1965–66 to 49 percent in 1971–72 (in the latter year, 13 of the top 15 movies in audience ratings on the networks were made for television). As mentioned in the taxt of the Report and Order, the "majors" argue vigorously as to the multiple impact on them from various aspects of the rule—the cutback in network prime-time programing (of which they do a substantial amount), the constriction of the "after-market" resulting from the off-network restriction, and the limitation on the use of feature films in the access period—all in addition to restrictions against "siphoning" contained in the pay-TV and cable rules, and the problem of diminished theatre receipts.

11. *Oral argument material concerning impact on employment.* A number of guild and union representatives participated in the oral argument on July 31, making generally the same arguments and factual assertions mentioned above. The annual loss in payroll resulting from the cut in network prime-time production was estimated at $53,500,000, or 16,000 jobs (Chester Migden, SAG's Executive Secretary); others gave higher estimates. It was recognized that some of this is made up by employment in the production of the programs which have replaced network material in access time (first-run syndicated and local), but Mr. Migden stated that because of the nature of the programs involved (foreign product, U.S. game shows, and inexpensive local material in many cases) these gains did not approach the loss figure mentioned, leaving a "net loss" estimated at $25 to 30 million. SAG's unemployment figure was said still to be in the order of 85 percent, with earnings declining in recent years; up-dated figures for the same guild and union groups mentioned above, as of July 1973, were presented, showing higher unemployment in most cases (lower in a few). It was said that, while there are certainly other factors in the situation, the rule might be the last, back-breaking straw; and that talented creative persons and technicians were continually leaving the industry, resulting in the wasting of a national asset. The cutback in network prime-time programing was said to have particularly affected minority groups, forcing the shelving of network program projects which would have been of particular value to these groups and would have employed members of them (both talent and technicians) in large numbers. The same was said to be true with respect to women, through the cutback in new network situation comedy efforts (a form of programing with which women relate particularly, and which employs them in substantial numbers). Other union officials, concerned with the national scene rather than with "Hollywood" in particular, said that the rule had not helped their situations, and in some ways had hurt, for example a decline in network documentaries hurts cameramen engaged largely in news and documentary work, and employment in Miami TV production is down. It was also said that the networks are better employers to deal with because they are more responsible.

B. Arguments concerning the economic feasibility of presenting "Quality" prime time material via syndication.

12. *Arguments and data of opponents.* One of the arguments vigorously urged against the rule, by opponents such as the "majors" and NBC, is the asserted impossibility of developing and distributing, via syndication, programing of "network quality". This is said to be true because of the extremely high production costs and risks involved, the "fractionated" market as opposed to total network coverage, and the inherently greater efficiency of the network process, with one sale and one copy of the material compared to "selling" each individual station and having to furnish a large number of prints of each program.

13. As to costs of production, NBC, while admitting it has little experience in producing itself, estimates that currently production costs for network-type programs are at least $100,000 per half-hour episode or $200,000 per hour program, and the Warner Brothers' estimate is about the same. Game shows, they say, can be produced much more cheaply, for $5,000–10,000 per program. NBC states that syndicated programs of the same general type as network—generally dramatic shows—can be produced for less, such as $40,000–60,000 for drama, but the lower figures represent not greater "efficiency" as urged by NAITP, but "a much lower input of production and creative values", or matters such as less money for talent, writers, etc., and differences in production techniques and editing processes. Also, NBC points out that there is very little U.S. dramatic production for the access period, 75 percent of that kind of material being foreign, with the much cheaper game shows representing a less risky venture for producers and tending to dominate the access-period offerings Some of the parties stress the risk element involved, with "pilots" costing on the order of $360,000 a half-hour or $600,000 an hour to make, and the majority of them not developing into successful programs.

14. Screen Gems states that its current production costs for network material are about $127,000 per half hour, and to produce the same show for syndication would mean about $140,000, with additional prints, advertising, etc. but not including any administrative or general expense items. It is stated that this kind of money simply is not available in syndication.

15. MCA submitted some cost and revenue figures for individual network programs, including five hour shows sold to the networks for 1970–71, twelve hour shows similarly sold for 1971–72, and three half-hour shows for 1971–72. The figures given include average cost of production per episode, average "distribution expenses" per episode (not identified), gross network revenue per episode, and per-episode deficit as far as the network sale is concerned.

These figures range as follows:

	1970–71, 5 1-hour shows	1971–72, 12 1-hour shows	1971–72, 3 half-hour shows
Production cost:			
Minimum	$227,387	$192,459	$110,127
Maximum	278,389	256,667	135,632
Distribution expense:			
Minimum	20,188	18,534	10,733
Maximum	31,166	29,818	13,088
Gross network revenue:			
Minimum	195,335	196,538	102,725
Maximum	[1] 235,167	226,727	108,000
Deficit:			
Minimum	21,877	15,297	20,490
Maximum	74,388	76,008	38,654

[1] 3 of the 5 programs were priced at the $235,167 figure

Thus, there was always a deficit in producing for networks if distribution expenses are included, and in all but three cases (all one-hour) the network revenue did not cover the computed cost of production. The total deficit involved in network sales in these two seasons was $21,797,000, which must be recouped from later syndication sales.

16. MCA also submitted figures as to the syndication of its off-network programs, including the 5 program series put into syndication during the period from January 1968 through March 1971, and including sales through September 1972. These showed per-episode revenues of $35,797 to $114,092, per-episode syndication expenses from $30,739 to $71,062, and syndication per-episode profits of $5,058 to $43,030. These programs are not identified as to length. These amounts are usually less than the amount of deficit from network production referred to in the previous paragraph; but they apparently do not relate to the same programs but to programs which were produced for the networks in earlier years, when costs were lower.

17. MCA asserts that this shows that production of quality material is a risky business even when it is supported by an initial network market, and is impossible without that assistance. It is stated that non-network revenues presently available would have to be multiplied three or four times before such activity would be feasible, to meet the above production costs and also the cost of, or fee for, distribution, which MCA estimates at 35 to 40 percent of gross for domestic syndication and 40–60 percent for foreign (which would likely be higher for selling efforts involving unknown, not off-network, material). It claims it would have to multiply its sales force by 10 to engage in such efforts (a statement which Metromedia in reply claims is simply ridiculous). Such money is not forthcoming now, and there is no reason to believe it will be in the future. NBC calls attention to its losses of $250,000 to $350,000 in one unsuccessful access-period show in the 1971–72 year on its owned stations, for which it advanced the financing but which lasted only 14 episodes.

18. NBC mentions the same distribution cost or fee as typical, and one of the items making network distribution inherently much less costly and more efficient. Its analysis of the economics involved is generally as follows: Out of each dollar of non-network advertising revenue it receives, the station typically spends about 27 percent in direct selling expenses and commissions, leaving at most 73¢ for programming costs (not allowing for overhead, technical expenses or profit). Of this, 26 to 29¢ would go for the distribution of the program after it is produced (the 35–40 percent mentioned above), leaving 44 to 47¢ for program production

costs and the producer's profit, if any. However, it is asserted, actually the amount would be less because of a sum such as 10 percent of gross revenues which distributors incur and charge for expenses—prints, shipping, etc.—so that actually only 37–40¢ would be available for actual program production costs. By contrast, claims NBC, the networks can spend about 64 percent of their advertising dollars received for program costs; network costs of selling and commissions typically run about 17 percent of gross revenues, transmission costs on the order of some $60 million annually represent about 4 percent, and station compensation from the networks is about another 15 percent, a total of 36 percent.

19. Some of the opponents of the rule call attention to one of the quotations contained in the comments of one of the proponents (INTV the independent station association), in which one producer states that the average network hour show costs some $250,000 to produce and "There is absolutely no way to recoup that amount of money in syndication." However, the thrust of the entire quotation is the other way; the quotation is as follows:

It is the barter arrangement that makes the hour shows possible in syndication. We can't sell "Hee Haw" or "Hollywood Palace" to stations on a per program basis and come out with a reasonable profit. What makes it happen is the sale of four minutes to national advertisers. This means that we don't have the usual distribution cost. The average hour network show costs $250,000 to produce. There is absolutely no way to recoup that amount of money in syndication. But we can do a $100,000 show in syndication and come out ahead. On a barter basis we'll come out all right. We can get about $30,000 a minute and guarantee them a minimum of 11,000,000 homes each week and make the profits we need to continue.

20. *Arguments and data of proponents.* Some of the proponents of the rule—notably NAITP, INTV, ABC, Westinghouse and Metromedia—vigorously dispute these contentions. It is asserted that production costs can be and are much lower than those mentioned above; NAITP estimates $61,000 per half hour for drama ($27,000 "above the line" for creative elements such as talent and writers, $34,000 "below the line" for facilities, technical personnel, etc.), $43,000 for a variety show and $21,000 for a documentary ($8,000 and $13,000 above and below the line). Westinghouse gives production cost figures (per episode) for the six programs it produced and distributed for use in access time: between $40,000 and $50,000 for *Norman Corwin Presents* (a dramatic series), between $50,000 and $60,000 for the two *David Frost Revue* series, and three others under $40,000 (none of these programs is still in production). ABC notes in reply comments that not all of MCA's "network quality" production involves costs of the magnitude mentioned above; it has recently sold to ABC new 90-minute dramatic, anthropology-type movies in the $100–110,000 range (for three plays), less than one-third the price of a prime-time 90-minute movie for two plays. Metromedia in reply comments refers to two of its programs, one new syndication this coming season (*Dusty's Trail*) with a cost in the order of $80,000, and another on ABC costing slightly over $100,000 per episode; it is stated that the programs are essentially of the same cost level but the second is higher because it is for a network. It is asserted that the tremendously successful CBS *All in the Family* program started in the $55,000 range.

21. NAITP asserts that independent producers can produce a given type of program for 50-60% of the cost which the same material would involve if produced for a network. It is claimed that independent producers are much more flexible, and can produce without having to contribute to the support of a vast network and its people, or subsidize elaborate and somewhat outmoded facilities, which producers working closely with the networks or the "majors" are required to use, often at inflated prices so that the owners can make a profit from such use. In general, it is claimed that independent producers can operate free of the archaic and expensive practices which have grown up in the industry. They are particularly able to save in "below the line" costs, but also in "above the line" costs for talent, etc., because the latter will often work more cheaply for independent producers than for a producer working for a network (to some extent this is because more of the talent are newcomers without the high prices of established stars, but also because they get a 26-week rather than a 13-week commitment, they sometimes get or have the possibility of getting a share in the profits of the program if it is successful, and in a general way they are aware of the differing nature of the syndication production business). ABC also asserts that "Hollywood production" in the traditional sense is expensive, with "featherbedding" as well as other burdensome practices, so that an independent producer can operate more cheaply. ABC's reference to the Black Beauty program in this connection has already been mentioned.

22. These parties also dispute the contentions as to the cost of distribution. Metromedia claims that while it would, as a syndication distributor, charge someone else about 35 percent for distributing his program, this is definitely not true of Metromedia's own programs such as *Dusty's Trail*. (See the discussion of the Josephs statement below). It is also claimed that MCA's argument about having to expand its sales force 10 times is ridiculous; Metromedia sold its *Primus* access program in 1971, and will sell *Dusty's Trail* (plus other material) with only 5 or 6 people. It is also claimed that the selling job may actually be easier with syndicated material than for a network program; there are many more buyers, the producer gets a commitment for 26 weeks instead of 13, and he has more creative freedom. NAITP claims (without specific detail) that the distribution and production costs come from an entirely different "pool" of money, so that more for distribution does not necessarily mean less for production.

23. *Some other points are urged.* It is claimed by ABC that the syndication market can produce considerably more revenue than it has so far, and that stations will pay higher prices as first-run syndicated programing becomes established. ABC Films experience is to this effect. NAITP claims that by no means all of the top 50 markets have to be sold in order for a profit to be realized, even for a dramatic show; 8 of the top 10 is enough. In overall terms, it is asserted that a dramatic show requires 60 of the top 100 markets, compared to 35 for a documentary and 40 for a variety show. ABC urges that the selling effort and economic base for an access-period program need not necessarily be limited to prime time; of the 58 access-period syndicated programs included in its listing, it shows that 32 were also used by some stations in non-prime time, including 7 with more such stations than prime-time users, and three others with more than 10 non-prime presentations. Metromedia, discussing the value of first-run syndicated material, asserts that in earlier years, before total network dominance, three of the most successful re-run series were never on a network (*Seahunt, Highway Patrol, I Led Three Lives*).

24. One of the reply comments, that of INTV, the independent station association, was devoted almost entirely to this subject, including a long transcript of an interview with Mr. Kenneth Josephs, vice president of Metromedia Producers Corp. The comments themselves (aside from the transcript) urge the following points: (1) a substantial number of producers and distributors do not agree with the dim view expressed by MCA et al., and are "prepared to stake their financial and creative futures accordingly." (2) the "access period" represents a new departure in programing and its economics, using first-run syndicated product where there was virtually none immediately before, and "prime time" was filled with network or off-network product. As stations adjust to the rule, they will be willing to pay the higher prices which can be supported by the larger prime-time audiences and higher advertising rates—"national volume moving toward levels sufficient to justify expensive first-run production." Examples are cited of four unidentified programs, one selling for $500 in one market before the rule, $750 in the first year, $1,000 in 1972–73 and $1500 for the 1973–74 year; two others jumping from $250 the first year to $650 and $750 the second (and the latter to $1,000 for the coming year); and a fourth going from $600 at 7 p.m. just before the rule, to $1,000 at 7:30 the first year and $1,400 the second year.

25. Also set forth are earning projections for the future by two unidentified producers with respect to specific but unidentified programs. One is a program which is expected to earn $50,000 a week domestically in about 70 markets (45 of the top 50), or $100,000 per original episode (assuming 26–26). In the second year, if successful, it can be expected to reach 105 markets, $80–90,000 per week, or $160–180,000 per original episode. The figures for the third year, again assuming success, should be 130 markets and $100,000 per week ($200,000 per original). If the original-repeat ratio is less, say 39–13, the income would be a third less per original. A strip program should generate three times these amounts. Distribution costs vary from 15 to 35 percent, averaging about 25 percent. Another producer estimated that (on a 26–26 basis), assuming sales the first year in 100 markets including the top 50, the domestic income from a film program would be $67,000 per original, rising to $76,900 the second year and $86,500 the third year. Another program, non-film, would bring in $57,000 the first year, $67,000 the second. A third projection is more general. According to TVB figures, an average half-hour of "spot" time in the top 50 markets is worth $120,000 if it contains 5 commercial minutes, or $72,000 if it contains three, or, assuming a 26–26 new-repeat ratio, $240,000 or $120,000 per original. It is stated that station payment practices now are on the order of the price of one 30-second spot, but they may be expected to rise with time.

26. The comments also make the same point mentioned above concerning greater independent-producer flexibility in use of studio facilities, and the high overhead figures charged to "major" productions, which really distort the actual cost picture by charging to the production various services at inflated prices so as to make a profit on them while building up the "loss" figure. The same is true of distribution costs. One producer is quoted as saying that "the cost depends on how you structure the deal; on whether you are paying the talent a percentage, a fee; how you buy your facilities; how much overhead you're putting into the budget," so that a cost difference of 30 percent is quite possible, with tape shows costing less. It is asserted that *All in the Family*, on tape, started with a price in the $45–65,000 range. The comments also advance the point—elaborated in the Josephs interview discussed below—that syndication and network sale

and distribution are basically not much different (for network-type "drama" programs), with the first sale in each case generally no more than breaking even or showing a slight loss, the real profit to be realized later from sale for "stripping" and overseas use—so that independent producers have a real incentive even if their first-run costs of distribution, etc., are relatively high. Attention is called to Viacom's plans early this year to produce its "Addams Family Fun House" series, with cooperative backing by various multiple owner groups and other interested stations; we note, however, that apparently this program project has not come to fruition. The comments also mention barter as a useful financing arrangement stimulating syndication production.

27. A long attachment to the INTV reply comments is a report of an interview with Mr. Ken Josephs, vice president of Metromedia Producers Corp. Much of this concerns the *Primus* series which Metromedia produced and sold for access-period use during the first rule of the year (but which was not continued), and the *Dusty's Trail* series which this company is presenting for the coming season. As to *Primus*, Mr. Josephs stated that its cost was $74,000 per episode, and was sold by five or six people (including himself), in 92 U.S. markets and over 30 foreign countries. Unfortunately, it was not a success, largely because of the late date (spring 1971) at which time the prime time access rule and the "access period" became established. Thus, in order to meet the production schedule no pilot was produced, and certain otherwise avoidable errors were made—but then this is a very risky business. Mr. Josephs also stressed the point mentioned above, that production for syndication and for networks are basically the same in that the real profit comes relatively late in the game, with quite likely a small loss the first year even for a successful show, and only slight profits the next three years. Another point is that "overhead" may vary tremendously, depending on what a company wants to do, for example, to cover initially as a cost item the cost of studios, executive salaries, etc. Thus the overhead figure can vary from 10 to 40 percent—meaning a program with an actual shooting cost of $70,000 per episode may "cost" $77,000 to $98,000. For *Primus*, the budget figure of $74,000 included 10 percent overhead. The same was said to be true of distribution costs or fees; 35 percent should represent a handsome profit, and the costs for *Primus* were between 9 and 10 percent.

28. Mr. Josephs also mentioned some of the economies possible with syndicated production, for example use of 16 mm film, which the networks resist for regular programs (though they accept it in *Cousteau* and similar material) but which is good enough under today's conditions, and the point concerning talent, mentioned above. He stated as follows with respect to higher production costs of programs made for networks:

> We have produced for networks, there is no question that when the network has control over a series, and they want you to do and redo certain things, reshoot, that the production can become more expensive than when you are your own master in syndication. Whether or not these decisions to add expenses are going to improve the quality of the show is a subjective judgment.

As to the new Dusty's Trail program, this is budgeted at $75,000–$80,000 per episode, including about $8,000 overhead (but no amortization of the $190,000 pilot cost); it was stated that this would cost over $100,000 if it were for a network.[4] It is estimated that the show will gross about $100,000 per episode (domestic and foreign) the first year, which would mean about $20,000 per episode above production costs; but allowing for 9–10% out-of-pocket distribution costs, plus advertising prints, etc., the result on that basis would be about a break-even or small loss. (He will be satisfied with $75,000 domestic and $25,000 net foreign). If the show is successful, there will be slight increases in the next three years, but still nothing, at that point, to justify the total investment. But then the company will have 104 episodes, which it can sell as a "strip" vehicle—for something like $50,000–$60,000 per negative, or more than $6 million total, representing a profit of $3 million. With respect to material like this, which has a long-range re-run potential (unlike material such as *All in the Family*), no one expects to make a killing either during the network run, for a network program, or during the first few years of syndication sales for a syndicated program; it is the "strip" potential which is important.

29. Mr. Josephs stated that Metromedia sets up its rate car, for this and other programs, to show a substantial profit if every market were sold at the card rate; but this doesn't happen. Markets outside of the top 50 are often entirely off-network re-run users; in the top 50 markets some affiliated stations may be showing a stripped game show or movies so that they are not potential customers, leaving only one potential buyer who will not be willing to pay the card rate. The program is not designed for independent stations, though Metromedia will sell to them rather than let the program go begging in the market (*Primus* was not sold to any). These stations are more interested in strip material.

30. With respect to its other new access-period show, *Elephant Boy*, Metromedia acts as U.S. distributor for this program, made in Ceylon by a combination of the German network and Global, a British company, which is part of ITV. Metromedia's fee is higher than 30%. The producing companies can get more money out of European sale than could an American company for an American program; so they regard the U.S. as just one market, not a critical one. Metromedia prices this program lower than "Dusty's Trail".

31. With respect to price received generally, Mr. Josephs emphasized that it varies considerably with the time of day when the program will be used by the station—early daytime, 4:30 to 6 (Class B or C time, when off-network re-runs prevail) or prime time—and, of course, varying with the success of the show. As to syndicated access-period programs compared to off-network re-runs, he estimated that, overall, the price for six runs of an off-network show such as "That Girl", used largely in "fringe" time, would be about the same as that for two uses of an access-period program in prime time. Overall, he believed that the potential for access-period first run programming is one and a half times the negative cost, though not necessarily in the first year. In other words, if *Dusty's Trail* is a hit, it will gross over $100,000 per episode domestically, but probably will only gross about $75,000 the first year.

32. Mr. Josephs was also asked about the international and balance-of-payment situation. On the basis of considerable experience in both domestic and international dealings, he stated that far more money comes to the U.S. through television than goes out, a much more favorable balance of payments situation than for the economy generally.

33. *Material in the oral argument.* A number of officials of the major film production studios, and two successful producers working usually with the networks (Bud Yorkin and Lee Rich, both members of the National Committee of Independent Television Producers, which opposed the rule), appeared at the oral argument on July 30 and 31, along with Paul Klein, an economic analyst of the industry, all opposing the rule and urging that programing like that on the networks simply cannot be developed in syndication. Those participating on the proponent side include A. Frank Reel of Metromedia Producers Corp., Nick Vanoff, producer of the *He Haw* syndicated program, and other NAITP members and that organization's counsel. In general, the facts and arguments were the same as or similar to those mentioned above.

34. As to costs, the opponents emphasized the high cost of creating network programs; for example, Mr. Yorkin stated that the cost of writing alone for *All in the Family* was $12,500 per program (more than the entire cost of producing a game show), with the Writers Guild minimum being $4,100 per week after two scripts, and few shows being able to make do with one writer. It was said that syndication could not possibly support *The Waltons*, with its cast of 11, or a program such as *Pomeroy's People*, of significance to Black groups, which the networks would have presented were it not for the restriction of the rule. A 20th Century Fox official stated that while that company has been active and reasonably successful in production for first-run syndication under the rule, it has always required two conditions: (1) a deal with a network owned-station group; and (2) lower-cost foreign production (*Circus, Family Classics, Starlost*). With respect to the *Dr. Kildare* program, the statement by an MGM official (who was not actually at the argument) was to the effect that because of its more limited economic base this program was not as good as the earlier network program of the same name, or current network programs, but had to use old scripts and lesser-known actors and otherwise skimp on production values (another participant said that the average income for the series was between $50,000 and $55,000 per episode, which did not cover direct costs).[5] An MCA official, Mr. Friedland, stated that any cut in costs—for example, as between $100,000 and $75,000 per episode—will come from "above the line" costs for talent, writers, directors, etc., and not "below the line" (technicians, facilities, etc.); and that while there is not a one-one relationship between cost and quality, the two do go together; you have to pay more for the best talent and other people.

[4] The creative people involved in this program are at least reasonably well established, including the producer of *Brady Bunch* and *Gilligan's Island*, and two stars from former successful network series, as well as two featured actresses from "Petticoat Junction". It is stated that their contracts call for one price for network use and a lower one if the program is sold in syndication. The pilot cost of $190,000 included about $145,000 in shooting cost and $45,000 for acquisition of the concept and development money. If the overhead cost were a third instead, or $24,000, the per-episode cost would be shown as $96,000; and if a 35 percent distribution fee were added, this would be $35,000 of the anticipated $100,000 gross. On these assumptions, the program would show a loss of $31,000 per episode.

[5] The Kildare program was described as having audience ratings "among the best", but this was not true in all markets (e.g. Washington, D.C.).

Mr. Friedland said that the MCA had not been able to make an acceptable syndicated series for $30,000 per episode plus free use of facilities, crews, and performers worth $50,000 per episode.

35. On the other side, it was stated by counsel for NAITP that a first-run syndicated show can be produced for 30 percent less than a similar network show; Nick Vanoff stated on the basis of his experience that the *Hee Haw* talent work for less now than they did when the show was on CBS, and Mr. Reel's statement was the same as to *Dusty's Trail* (Hee Haw has 36 performers and 11 musicians, and is said to give employment altogether to 150 persons). Other savings mentioned by Messrs. Vanoff and Reel included the independent producer's being able to shop around for economical facilities rather than having to use those of the networks or the "majors", and being able to use 16 mm rather than 35 mm film (the networks require the latter in regular series, although they will take 16 mm "outdoor" material such as *National Geographic*). According to Mr. Reel, *Dusty's Trail* costs about $80,000 per episode, and the earlier Metromedia *Primus* program cost about $75,000, both grossing in revenue about $62,000 domestic and $20,000 foreign.

36. As to potential revenues, Mr. Klein, the economic analyst testifying for the opponents, estimated that maximum first-run syndicated revenue from U.S. sales is about $58,000 gross per episode ($35,000 first-run, $23,000 repeat). This was figured on average audience of about 7,700,000 homes for such prime-time material, station 30-second spot rates based on $1.50 per thousand homes, station willingness to pay roughly the price of 3 30-second spots for a program episode. From this would have to come the considerable costs of sales and distribution in syndication, multiple prints, etc., which would cut the net figure to about $45,000. Using the same type of formula (assuming average network audience of 12,500,000 homes, average network charge to advertisers of $2 per thousand), Mr. Klein figured a first-run network per-episode income of $150,000 gross, which would be reduced by advertising commissions and station compensation to $96,000; the second-run income would be $67,000, for a total of $163,000. Mr. Friedland stated that in the heyday of syndication 15 to 20 years ago. $40,000 was about the top income that could be expected, and it was now only about $45,000, and one would be lucky to get that—$30,000 from an owned station group, and $15,000 from the rest of the country.

37. Mr. Reel, on behalf of Metromedia, went through a somewhat similar analysis to that of Mr. Klein, and came up with $144,000 income per half hour, assuming $3 per thousand for one minute as the general basis of station rates, 12 million homes, and 4 minutes per half-hour. It was stated by another participant in the argument that *Let's Make a Deal*, one of the successful game shows, grosses $80,000 per episode, which is a great deal more than it takes to produce this program, the money thus earned has helped to support production of the new *It Pays to be Ignorant* comedy series.

[FR Doc.74-3132 Filed 2-13-74;8:45 am]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Commerce

Section 213.3114 is amended to show that not to exceed 30 positions in grades GS-12 through GS-15 previously exempted by this section and now located in the Office of the Assistant Secretary for Domestic and International Business and the subordinate components of his organization which are involved in Domestic Business matters are excepted under Schedule A.

Effective on February 14, 1974, § 213.3114(i)(3) is amended as set out below.

§ 213.3114 Department of Commerce.

* * * * *

(i) *Office of the Assistant Secretary for Domestic and International Business.* * * *

(3) Not to exceed 30 positions in grades GS-12 through GS-15, to be filled by persons qualified as industrial or marketing specialists, who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit practices applicable to one or more of the current segments of U.S. industry served by the Assistant Secretary for Domestic and International Business, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed two years and may, with prior approval of the Commission, be extended for an additional period of two years.

* * * * *

(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.74-3697 Filed 2-13-74;8:45 am]

PART 213—EXCEPTED SERVICE

National Foundation on the Arts and the Humanities

Section 213.3182 is amended to reflect the following title changes in the National Endowment for the Humanities from one Special Assistant to the Deputy Chairman to one Special Assistant to the Chairman for the Bicentennial; from one Bicentennial Coordinator, Division of Public Programs to one Bicentennial Coordinator, Office of the Chairman; and from one Program Officer, Division of Public Programs to one Assistant Director for Media Programs, Division of Public Programs.

Effective on February 14, 1974, §§ 213.3182(b)(12), (19), and (22) are amended as set out below.

§ 213.3182 National Foundation on the Arts and the Humanities.

* * * * *

(b) *National Endowment for the Humanities.* * * *

(12) Until June 30, 1976, one Assistant Director for Media Programs, Division of Public Programs.

* * * * *

(19) Until June 30, 1976, one Special Assistant to the Chairman for the Bicentennial.

* * * * *

(22) Until June 30, 1976, one Bicentennial Coordinator, Office of the Chairman.

* * * * *

(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.74-3698 Filed 2-13-74;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Justice

Section 213.3310 is amended to show that one additional position of Secretary to the Attorney General is excepted under Schedule C.

Effective on February 14, 1974, § 213.3310(a)(5) is amended as set out below.

§ 213.3310 Department of Justice.

(a) *Office of the Attorney General.* * * *

(5) Three Secretaries for the Attorney General.

* * * * *

(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.74-3695 Filed 2-13-74;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Justice

Section 213.3310 is amended to show that one position of Secretary to the Associate Attorney General is excepted under Schedule C.

Effective on February 14, 1974, § 213.3310(a)(9) is added as set out below.

§ 213.3310 Department of Justice.

(a) *Office of the Attorney General.* * * *

(9) One Secretary to the Associate Attorney General.

* * * * *

(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.74-3694 Filed 2-13-74;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Transportation

Section 213.3394 is amended to show that one position of Deputy Director, Congressional Relations, Office of Con-

gressional Relations, and one position of Administrative Assistant to a Member of the National Transportation Safety Board are excepted under Schedule C.

Effective on February 14, 1974, § 213.3394(a)(19) is added and § 213.3394(b)(1) is amended as set out below.

§ 213.3394 Department of Transportation.

(a) *Office of the Secretary.* * * *

(19) One Deputy Director, Office of Congressional Relations.

* * * * *

(b) *National Transportation Safety Board.* * * *

(1) One Administrative Assistant to each of two Board Members.

* * * * *

(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. 74-3696 Filed 2-13-74;8:45 am]

Title 9—Animals and Animal Products

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

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS; EXTRAORDINARY EMERGENCY REGULATION OF INTERSTATE ACTIVITIES

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Hog Cholera Eradication and Free States

Correction

In FR Doc. 74-3286, appearing at page 5186 of the issue of Monday, February 11, 1974, the first line of the first column on page 5187 should be deleted.

Title 10—Atomic Energy

CHAPTER I—ATOMIC ENERGY COMMISSION

PART 11—ENVIRONMENTAL STATEMENTS—OPERATIONS

Revision

Notice is hereby given that the General Manager of the U.S. Atomic Energy Commission (AEC) has adopted the following revised policies and procedures in implementation of section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91-190). These revised policies and procedures are effective February 14, 1974. Proposed procedures were published in the FEDERAL REGISTER November 1, 1973 (38 FR 30208) for a 45-day comment period. Comments received have been considered in the preparation of these revised policies and procedures.

The National Environmental Policy Act of 1969 (NEPA), implemented by Executive Order 11514 (E.O. 11514) dated March 5, 1970 (35 FR 4247), and the Guidelines of the Council on Environmental Quality (CEQ) of August 1, 1973 (Guidelines) (38 FR 20550) requires that all agencies of the Federal Government prepare detailed environmental statements on proposals for legislation and all other major Federal actions significantly affecting the quality of the human environment. In addition, section 309 of the Clean Air Act (CAA), as amended, provides that the Administrator of the Environmental Protection Agency (EPA) shall review and comment on any matter relating to EPA's authority contained in such proposed legislation or such other major Federal action. The Office of Management and Budget (OMB) Bulletin No. 72-6 of September 14, 1971, and OMB Circular No. A-95 (Revised) of February 9, 1971, provide guidance in connection with the evaluation, review, and coordination of Federal projects and activities.

The revised policies and procedures involve the discharge of AEC operational responsibilities with respect to NEPA, E.O. 11514, section 309 of the CAA, as amended, OMB Bulletin No. 72-6, Part II.2.a.(3) of OMB Circular No. A-95, and the CEQ Guidelines. These policies and procedures are applicable to all units and organizations reporting to or through the General Manager. They replace the policies and procedures which were published in the FEDERAL REGISTER on July 4, 1972 (37 FR 13160).

All comments received by January 18, 1974 were considered during preparation of the revised policies and procedures. Substantive comments were generally directed at providing more meaningful public participation in the Commission's decision-making process. Many of these comments were adopted. Those that were not adopted include (1) mandatory public notice of, and participation in, the preparation of environmental assessments; (2) specific guidance on procedures for public hearings; (3) more definitive guidance on the preparation of environmental impact statements for research and development programs; and (4) mandatory review of the extraterritorial environmental effects of proposed Commission actions.

With respect to the comment on environmental assessments, the Commission plans to invite public participation in the preparation of environmental assessments whenever appropriate. However, since many assessments involve proposed budget items, information about which the Federal Government is required not to disclose until the President's budget is submitted to Congress, the Commission would be unable to provide for mandatory public notice of, and participation in, the environmental assessment process. In connection with comments directed to more specific guidance on public hearing procedures, the Commission believes that the type of public hearing and the procedures to be followed therein should be dictated by the complexity and range of the issues raised by the draft environmental impact statement which will vary from statement to statement. As for more definitive guidance for research and development program statements, it is believed that guidance presently set forth in the revised procedures is sufficiently definitive. Finally, the revised procedures permit, but do not require, the evaluation of the extraterritorial effects of proposed Commission actions. In the Commission's judgment there should be flexibility in this area in order to minimize the possibility of interfering in the domestic policies of other nations.

Subpart A—General

Sec.
11.1 Purpose and policy.
11.3 Applicability.
11.5 Criteria for determining whether a "major Federal action will have a potential significant effect on the quality of the human environment."
11.7 Definitions.

Subpart B—Procedures

11.21 Preparation of environmental assessments.
11.23 Submission of environmental assessments.
11.25 Review of environmental assessments and preparation of negative declaration.
11.26 Notice of intent.
11.27 Preparation of draft environmental statements.
11.28 Required lists.
11.29 Internal review of draft environmental statements.
11.31 External review of draft environmental statements.
11.33 Public hearings.
11.35 Preparation of final environmental statements.
11.37 Internal review of final environmental statements.
11.39 Availability of final environmental statements.
11.40 Amendments or supplements to environmental statements.
11.41 Timing for proposed AEC actions.

Subpart C—General Guidance for Content of Environmental Statements

11.51 Cover Sheet.
11.53 Summary Sheet.
11.55 Body of Statement.

AUTHORITY: Sec. 161, 68 Stat. 919 (42 U.S.C.A. 2201) sec. 102, 83 Stat. 853 (33 U.S.C.A. 4332).

Subpart A—General

§ 11.1 Purpose and policy.

(a) The National Environmental Policy Act of 1969 (NEPA), implemented by Executive Order 11514 (E.O. 11514) dated March 5, 1970 (35 FR 4247), and the Guidelines of the Council on Environmental Quality (CEQ) of August 1, 1973 (Guidelines) (38 FR 20550) require that all agencies of the Federal Government prepare detailed environmental statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The objective of NEPA is to build into the Federal agency decision-making process, beginning at the earliest possible point, an appropriate and careful consideration of environmental aspects of proposed actions in order that adverse environmental effects may be avoided or minimized. In addition, section 309 of the Clean Air Act (CAA), as amended, provides that the Administrator of the Environmental Protection Agency (EPA) shall review and comment on any matter relating to EPA's authority contained in such proposed legisla-

tion or such other major Federal action. OMB Bulletin No. 72–6 of September 14, 1971, and OMB Circular No. A–95 (Revised) of February 9, 1971, provide guidance in connection with the evaluation, review and coordination of Federal projects and activities.

(b) This Part establishes policy and procedure for discharging Atomic Energy Commission operational responsibilities with respect to NEPA, E.O. 11514, section 309 of the CAA, OMB Bulletin No. 72–6, OMB Circular No. A–95 (Revised) and the CEQ Guidelines, as they may be amended from time to time. This Part is intended to provide guidance for:

(1) Identifying the agency environmental appraisal process, those AEC actions requiring environmental assessments and statements, and the appropriate time prior to agency decision for requisite Federal, State, local, and public consultation and review;

(2) Obtaining information to allow the potential environmental impact of budget decisions and proposed policy determinations, procedures, regulations and legislation to receive full consideration in the agency decision-making process;

(3) Obtaining information and internal AEC review required for the preparation of environmental assessments and statements;

(4) Designating the officials who are to be responsible for preparation, review and approval of environmental assessments and statements.

§ 11.3 Applicability.

(a) This Part applies to all units and organizations of the AEC reporting to or through the General Manager (GM) of the AEC.

(b) This Part applies to AEC operational actions and legislative proposals sponsored by the General Manager including those actions and proposals sponsored jointly with another agency. In this latter connection, if an environmental statement is to be prepared, it is anticipated that the agencies involved would determine as early as possible their respective responsibilities in statement preparation and processing, including designation of a single agency to assume leadership responsibilities where appropriate. Where a lead agency prepares the statement, the other agencies involved are expected to provide assistance with respect to their areas of jurisdiction and expertise. Factors relevant in determining an appropriate lead agency include the sequence in which the agencies become involved, the magnitude of their respective involvement, and their relative expertise with respect to the anticipated environmental effects of the proposed action. Whether a statement is prepared by a lead agency or is prepared jointly by several agencies, the statement should contain an environmental assessment of the full range of Federal actions involved, should reflect the views of all participating agencies, and should be prepared before major or irreversible actions have been taken by any of the participating agencies.

(c) This Part applies to proposed actions having a significant environmental effect even though they arise from projects or programs initiated prior to enactment of NEPA on January 1, 1970.

(d) The following actions are not subject to the requirements of this Part:

(1) Administrative procurements (e.g., general supplies)

(2) Contracts for personal services

(3) Personnel actions

(4) Legislative proposals originating in another agency

(5) Legislative proposals not relating to or affecting matters within AEC's primary areas of responsibility

§ 11.5 Criteria for determining whether a "major federal action will have a potential significant effect on the quality of the human environment."

(a) *General criteria.* (1) The CEQ Guidelines provide that the statutory clause " 'major Federal actions significantly affecting the quality of the human environment' is to be construed * * * with a view to the overall, cumulative impact of the action proposed (and of further actions contemplated). Such actions may be localized in their impact, but if there is potential that the environment may be significantly affected, the statement is to be prepared. Proposed actions, the environmental impact of which is likely to be highly controversial, should be covered in all cases."

(2) The CEQ Guidelines also provide that:

(i) "Significant adverse effects include those that degrade the quality of the environment, curtail the range of beneficial uses of the environment, and serve short-term to the disadvantage of long-term, environmental goals.

(ii) "Significant effects can * * * include actions which may have both beneficial and adverse effects, even if, on balance, the agency believes that the effect will be beneficial.

(iii) "The words 'major' and 'significantly' are intended to imply thresholds of importance and impact that must be met before a statement is required. The action causing the impact must also be one where there is sufficient Federal control and responsibility to constitute 'Federal action' in contrast to cases where such Federal control and responsibility are not present as, for example, when Federal funds are distributed in the form of general revenue sharing to be used by State and local governments.

(iv) "The significance of a proposed action may also vary with the setting, with the result that an action that would have little impact in an urban area may be significant in a rural setting or vice versa. While a precise definition of environmental 'significance' valid in all contexts, is not possible, effects to be considered in assessing significance include but are not limited to * * * air quality and air pollution control; weather modification; energy development, conservation, generation, and transmission; toxic materials; pesticides; herbicides; transportation and handling of hazardous materials; esthetics; coastal areas; historic and archeological sites; flood plains and watersheds; mineral land reclamation; parks, forests, and outdoor recreation; soil and plant life, sedimentation, erosion, and hydrologic conditions; noise control and abatement; chemical contamination of food products; food additives and food sanitation; microbiological contamination; radiation and radiological health; sanitation and waste systems; shellfish sanitation; urban planning and congestion; rodent control; water quality and water pollution control; marine pollution; river and canal regulation and stream channelization; and wildlife preservation.

(v) "The action must be one that significantly affects the quality of the human environment either by directly affecting human beings or by indirectly affecting human beings through adverse effects on the environment."

(3) "Major federal actions" with respect to AEC operational activities are categorized into two groups:

(i) *Proposals for legislation.* This involves recommendations or favorable reports relating to AEC's own legislative proposals, such as the annual omnibus legislative proposal and annual budget requests, (proposed line items, major general plant projects, major equipment items) and reports on legislation initiated in Congress where AEC would have primary responsibility for the subject matter of the legislation.

(ii) *Other major Federal actions.* These are also described as "administrative actions" or "operational actions." Included in this category are new and continuing projects and program activities (A) directly undertaken by AEC; or (B) supported by AEC through contracts, grants, loans, or other forms of assistance not covered in paragraph (a) (3) (i) of this section; or (C) involving a Federal lease, permit, license, certificate, or other entitlement for use. Also included in this category are the development, establishment or modification of the General Manager's regulations, rules, procedures and policies.

(4) Environmental statements covering programs and sites.

(i) An environmental statement should be written if there is major AEC involvement (through funding, personnel, or facilities) in the program which has or is likely to have a significant environmental impact. In the case of research and development programs, an environmental statement must be written late enough in the development process to contain meaningful information, but early enough so that whatever information is contained can be factored into the decision-making process before the development process has reached a stage of investment or commitment to implementation likely to determine subsequent development or to foreclose or restrict later alternatives. Therefore, the following factors should be assessed and periodically reassessed (particularly when significant new information becomes available concerning the potential environmental impact of the program) to determine the appropriate

point for preparation of the program statement:

(A) The magnitude of Federal investment in the program.

(B) The likelihood of widespread application of the technology.

(C) The degree of environmental impact which would occur in the event the technology were widely applied.

(D) The extent to which continued investment in the new technology is likely to foreclose or restrict future alternatives.

(ii) Where there are a number of proposed individual actions at a given site under AEC jurisdiction and either where one or more actions would have a potential significant environmental impact or where none viewed individually would have such an impact but where all viewed together would have such an impact, consideration should be given to the preparation of an environmental statement for that site.

(iii) Wherever incremental actions have potential significant environmental impacts that were not fully evaluated in the program or site statement, consideration should be given to preparation of a supplemental environmental statement for that incremental action.

(b) *Specific actions.* For AEC actions which involve the following, an environmental statement normally shall be prepared and made available as a matter of agency policy:

(1) New AEC-owned[1] Power and Production reactors.

(2) New AEC-owned[1] facilities for high-level nuclear waste storage.

(3) New AEC-owned[1] facilities for the reprocessing of spent nuclear fuel elements.

(4) Nuclear explosion tests of over one megaton conducted by AEC at the Nevada Test Site.

(5) Nuclear explosion tests conducted by AEC off the Nevada Test Site. One statement may cover experiments or demonstration tests involving several nuclear explosions in the same general area and time frame.

§ 11.7 Definitions.

(a) "Environmental assessment" is a written report based upon an evaluation process to assure that environmental values are considered as early as possible in the decision-making process and to determine whether a proposed AEC action is expected to have a significant impact on the environment and therefore requires the preparation of an environmental statement. The environmental assessment should (1) describe the proposed AEC action, the environment affected, and the anticipated benefits; (2) evaluate the potential environmental impact, including those adverse impacts which cannot be avoided should the proposal be implemented and the cumulative and long-term environmental effects; and (3) identify any known or potential conflicts with State, regional, or local plans and programs.

[1] Owned by the United States with custody in the U.S. Atomic Energy Commission.

(b) "Draft environmental statement" is a detailed preliminary statement on the anticipated environmental impact of a proposed action which is circulated for review within and outside AEC.

(c) "Environmental statement" or "final environmental statement" is a detailed statement which pursuant to section 102(2)(C) of NEPA, identifies and analyzes the anticipated environmental impact of a proposed AEC action. It is prepared following receipt of comments on the "draft environmental statement."

(d) "Negative declaration" is a document prepared subsequent to a determination that an environmental statement is not necessary for a proposed action where the action is one which: (1) Has been identified in § 11.5(b) as normally requiring preparation of a statement; (2) is similar to actions for which the agency has prepared a significant number of statements; (3) has previously been announced as being the subject of a statement; or (4) had a negative determination made in response to a request from the Council on Environmental Quality for the preparation of a statement. The document shall set forth the decision and the reasons therefor.

(e) "Notice of intent" is a written announcement to appropriate Federal, State, and local agencies, and to the public, that a draft environmental statement will be prepared.

(f) "Summary sheet" is a brief summary of the most significant aspects of an environmental statement. It is prepared in accordance with Appendix I of the Guidelines hereto and accompanies each draft and final environmental statement.

Subpart B—Procedures

§ 11.21 Preparation of environmental assessments.

(a) Field Office Managers and Headquarters Division Directors are responsible for the preparation of an environmental assessment of all proposed line items, major General Plant Projects (GPP), major equipment items and other proposed major activities in connection with their budget submission and of new programs, and other proposed new projects or activities under their respective jurisdictions.

(b) Headquarters Division Directors are responsible for the review of their respective programs and for the preparation of an environmental assessment of proposed major incremental changes in continuing programs, projects or activities and of proposed major policy determinations, procedures, regulations, or legislation related thereto.

(c) The appropriate Field Office Manager or Headquarters Division Director is responsible for assuring that all those assisting in the preparation of the environmental assessment, including contractors and laboratories, as applicable, are fully cognizant of their respective functions.

(d) The Assistant General Manager for Biomedical and Environmental Research and Safety Programs (AGM BERSP) may request the appropriate Field Office Manager or Headquarters Division Director to prepare an environmental assessment for any proposed AEC action.

§ 11.23 Submission of environmental assessments.

(a) Each environmental assessment for which Field Office Managers are responsible shall be submitted to the appropriate Headquarters Division Director having program or budgetary responsibility.

(b) A copy of each environmental assessment, including those prepared by Headquarters Division Directors, shall be transmitted by the appropriate Headquarters Division Director to the AGM BERSP and shall include in the transmittal a recommendation as to whether an environmental statement should be prepared.

§ 11.25 Review of environmental assessments and preparation of negative declarations.

(a) With respect to a proposed program, item, project, or activity which the appropriate Headquarters Division Director decides to support for inclusion in the AEC budget and with respect to any other proposed action for which an environmental assessment has been prepared, the Headquarters Division Director, in consultation with the Office of the AGMBERSP and the Office of the General Counsel (OGC), shall review the environmental assessment and recommend to the AGMBERSP whether any such proposed action has a potential significant effect on the quality of the human environment in accordance with § 11.5.

(b) If the AGMBERSP determines that a potential significant effect on the quality of the human environment is presented by a proposed action:

(1) For each proposed action involved in the budget process, the AGMBERSP shall forward immediately the environmental assessment to the Budget Review Committee (BRC), which shall transmit the environmental assessment to the GM along with its recommendation on whether the proposed action should be included in the AEC budget. With regard to proposed actions so recommended for inclusion and for such other proposed actions as the GM may direct, the AGMBERSP shall consolidate assessments for inclusion in the budget to the Commission. If the Commission approves the proposed action for inclusion in the budget, the AGMBERSP is responsible for transcribing the appropriate data from the environmental assessment onto a special summary statement for submission to OMB in accordance with OMB Bulletin 72-6. The appropriate Headquarters Division Director is responsible for the preparation of a draft environmental statement and a summary sheet

[2] The AGMBERSP is authorized to delegate to or obtain assistance from any AEC unit or organization reporting to or through the General Manager (GM) in carrying out the AGMBERSP's responsibilities under this Part.

for the proposed action in accordance with § 11.27.

(2) For proposed actions not involved in the budget process, the appropriate Headquarters Division Director is responsible for the preparation of a draft environmental statement and a summary sheet for the proposed action in accordance with § 11.27.

(c) If the AGMBERSP determines that the proposed action presents no potential significant effect on the quality of the environment and meets the criteria noted in § 11.7(d), he shall cause a negative declaration to be prepared. A copy of the negative declaration and appropriate supporting documentation shall remain on file with the AGMBERSP and copies shall be made available for public inspection at appropriate AEC Public Document Room(s). The negative declaration shall be announced in the FEDERAL REGISTER. Lists of such negative declarations shall be provided to CEQ at least quarterly in accordance with § 11.28.

(d) A copy of all unclassified environmental assessments covering proposed actions submitted in the President's budget to Congress and covering other legislative proposals and administrative actions shall remain on file with the AGMBERSP and copies shall be made available as soon as practicable for public inspection at appropriate AEC Public Document Room(s).

§ 11.26 Notice of intent.

In order to assure that environmental values will be identified and weighed from the outset and to assure the involvement of other agencies and the public as early as possible in the environmental appraisal process, the AGMBERSP shall transmit to appropriate Federal, State and local agencies and to persons or groups known to be interested in Commission actions, and shall cause to be published in the FEDERAL REGISTER a notice of intent to prepare an environmental statement as soon as is practicable after the determination is made to prepare such statement. This notice of intent will invite suggestions for consideration in the preparation of the environmental statement and will indicate the location(s) of documentation to be utilized in the statement preparation.

§ 11.27 Preparation of draft environmental statements.

(a) When a draft environmental statement and summary sheet are to be prepared, the appropriate Headquarters Division Director shall promptly initiate their preparation and develop a schedule to assure submission of the draft statement and summary sheet to the AGMBERSP as expeditiously as possible. When the proposed action is involved in the budget process, the draft environmental statement and summary sheet shall be submitted to the AGMBERSP not later than October 1. The appropriate Headquarters Division Director is responsible for assuring that all those assisting in the preparation of the statement including Field Offices, contractors, and laboratories, as applicable, are fully cognizant of their respective functions.

(b) Draft environmental statements and summary sheets shall be prepared in accordance with the guidance of the AGMBERSP and OGC, and in consonance with the CEQ guidelines. In particular, draft environmental statements should:

(1) Indicate the underlying studies, reports, and other information obtained and considered and how such documents may be obtained.

(2) Identify and discuss all responsible points of view.

(3) Indicate either compliance or noncompliance with applicable Federal or federally-approved State standards of environmental quality, and in the case of noncompliance, explain why compliance cannot be achieved.

(4) Fulfill and satisfy to the fullest extent possible the requirements for final environmental statements.

§ 11.28 Required lists.

The AGMBERSP shall be responsible for the preparation and maintenance of lists of administrative actions for which environmental statements are being prepared, actions for which negative declarations have been prepared, and lists of persons or groups known to be interested in Commission actions. Notices of intent to prepare environmental statements and draft environmental statements will be sent to those on the latter list. The former two lists shall be revised at least quarterly and a copy of each list and subsequent revisions shall be transmitted to CEQ.

§ 11.29 Internal review of draft environmental statements.

(a) As soon as practicable after the AGMBERSP receives the draft statement and summary sheet, he shall transmit a copy to OGC for review. The AGMBERSP and OGC shall be assisted in their review by an interdisciplinary committee, chaired by a representative of the AGM BERSP and composed of such representatives of Headquarters divisions and offices as the AGMBERSP deems appropriate.

(b) Upon completion of this review, the AGMBERSP shall prepare a report for review by the General Manager which shall:

(1) Set forth the basis on which it was determined that a potential significant environmental effect exists.

(2) Attach the draft environmental statement and summary sheet.

(3) Identify the Federal, State, and local agencies from which comments on the draft environmental statement are proposed to be solicited.

(c) The General Manager's approval shall be required prior to the issuance of the draft environmental statement and summary sheet.

§ 11.31 External review of draft environmental statements.

(a) The AGMBERSP shall (1) make ten (10) copies of the draft environmental statement and summary sheet available to the CEQ, (2) inform the public of the availability of the draft environmental statement, and (3) solicit comments from appropriate Federal, State, and local agencies and the public in accordance with paragraph (b) of this section.

(b) Procedure for soliciting comments:

(1) Comments of Federal agencies shall be solicited by mailing the draft environmental statement to Federal agencies with special expertise or jurisdiction by law relevant to the statement.

(2) Comments of State and local agencies shall be solicited by mailing the draft environmental statement directly to State and local agencies with known responsibilities in environmental matters, and to the appropriate State, regional and metropolitan clearinghouses unless the Governor of the appropriate State has designated some other point for obtaining this review.

(3) Information on the public availability of draft environmental statements shall be provided (i) through notice in the FEDERAL REGISTER and (ii) by arranging for the availability of the statement at appropriate AEC offices and at appropriate State, regional and metropolitan clearinghouses. The FEDERAL REGISTER notice shall specify the appropriate comment period in accordance with paragraph (c) of this section.

(4) Copies of the draft environmental statements will also be made available for comment to organizations and individuals that have expressed an interest in the action or requested an opportunity to comment.

(c) Comment period (except as may be modified in accordance with CEQ guidelines):

(1) Comments on the draft environmental statement from Federal, State, and local agencies shall be considered in the final environmental statement if received by the AGMBERSP within forty-five (45) calendar days from the date the statement is received by CEQ. Comments from members of the public shall be considered if received by the AGMBERSP within forty-five (45) calendar days from the date of publication of the notice of the availability of the draft statement in the FEDERAL REGISTER. The forty-five (45) calendar day comment period will be used unless a longer period is specified in the notices of intent or availability of the draft statement covering the proposed action. The AGMBERSP upon request may grant extensions for comment for a period not to exceed fifteen (15) calendar days. In determining the appropriate period for comment or in acting upon an extension request, consideration will be given to the magnitude and complexity of the statement and the extent of public interest in the proposed action. Where no time extension has been requested and granted and comments are not received within the designated comment period, it shall be conclusively presumed that no comment is to be made.

§ 11.33 Public hearings.

(a) A public hearing on a proposed action covered by a draft environmental statement shall be held when the Com-

mission determines that a public hearing would be appropriate and in the public interest. In deciding whether a public hearing would be appropriate and in the public interest, the Commission shall consider, among other things: (1) The magnitude of the proposed action in terms of economic costs, the geographic area involved, and the uniqueness or size of the commitment of the resources involved; (2) the degree of interest in the proposed action, as evidenced by requests from the public and from Federal, State, and local authorities that a hearing be held; (3) the complexity of the issue and the likelihood that information will be presented at the hearing which will be of assistance to the agency in fulfilling its responsibilities under NEPA; and (4) the extent to which public involvement already has been achieved through other means, such as earlier public hearings, meetings with citizen representatives, and/or written comments on the proposed action.

(b) If it is determined as set forth in paragraph (a) of this section that a public hearing is to be held, the General Manager will cause to be issued a notice in the FEDERAL REGISTER at least fifteen (15) calendar days prior to the time of such hearing (1) identifying the subject matter of the hearing; (2) announcing the date, time and place of such hearing and the procedures to be followed; and (3) indicating the availability of the draft environmental statement and other data, as he determines appropriate, for public inspection. The hearing will also be announced through local news media when practicable.

§ 11.35 Preparation of final environmental statements.

(a) As soon as practicable after the expiration of the period for comments, the appropriate Headquarters Division Director shall prepare a final environmental statement and summary sheet taking into account all comments received during the comment period. All substantive comments received shall be appended to the final statement.

(b) The final environmental statement and summary sheet shall be submitted by the appropriate Headquarters Division Director to the AGMBERSP.

§ 11.37 Internal review of final environmental statements.

(a) The AGMBERSP shall transmit a copy of the final environmental statement and summary sheet to OGC for review. The AGMBERSP and OGC should be assisted in their review by an interdisciplinary committee, chaired by a representative of the AGMBERSP and composed of such representatives of Headquarters divisions and offices as the AGMBERSP deems appropriate.

(b) Upon completion of this review, the AGMBERSP shall transmit the final environmental statement and summary sheet through the General Manager to the Commission for approval.

(c) Upon Commission approval, the General Manager shall sign the final environmental statement as the responsible agency official.

§ 11.39 Availability of final environmental statements.

(a) The AGMBERSP shall distribute the final environmental statement, summary sheet and all substantive comments received to CEQ, EPA and all Federal, State and local agencies and others who submitted timely substantive comments on the draft environmental statement.

(b) The AGMBERSP shall provide notice in the FEDERAL REGISTER of the availability in appropriate AEC Public Document Room(s) of copies of the final environmental statement, summary sheet and substantive comments received.

§ 11.40 Amendments or supplements to environmental statements.

(a) Where it is determined by the appropriate Headquarters Division Director after consultation with the AGMBERSP and OGC, that as a result of substantial changes in the proposed action, availability of additional information or any other reason, it may be appropriate to amend or supplement either a draft or final environmental statement, he shall assume responsibility for its preparation in accordance with the guidance of the AGMBERSP and OGC.

(b) The AGMBERSP shall determine, after consultation with OGC and CEQ, whether the statement should be recirculated for comment.

§ 11.41 Timing for proposed AEC actions.

Unless approval is given by the General Manager after consultation with OGC and CEQ, no AEC action subject to this Part and covered by an environmental statement shall be taken sooner than (a) ninety (90) calendar days after a draft environmental statement has been circulated for comment, furnished to CEQ, and made public, and (b) thirty (30) calendar days after the final environmental statement has been made available to CEQ, commenting agencies, and the public. If the final environmental statement is filed within ninety (90) calendar days after the draft environmental statement has been circulated and made public, the thirty (30) day period and ninety (90) day period may run concurrently to the extent that they overlap.

Subpart C—General Guidance for Content of Environmental Statements

§ 11.51 Cover Sheet.

The cover sheet shall indicate the type of statement (draft or final), the official project title and location, the date of statement availability, the agency and the signature of the responsible official (final).

§ 11.53 Summary sheet.

The summary sheet shall conform to the format prescribed in Appendix I of the CEQ Guidelines.

§ 11.55 Body of statement.

(a) Each environmental statement should be prepared in accordance with the precept in section 102(2)(C) of the National Environmental Policy Act of 1969 that all agencies of the Federal Government "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decision-making which may have an impact on man's environment." The statement should be an objective and meaningful evaluation of actions and their reasonable alternatives in light of all environmental considerations. The presentation should be concise, including or referencing relevant data, information, and analyses necessary to permit evaluation and appraisal of the anticipated benefits and the environmental effects of the proposed AEC action and its reasonable alternatives. Statements should not be drafted in a style which requires extensive scientific or technical expertise to comprehend. Underlying studies, reports and other information obtained and considered in preparing the statement should be identified at appropriate points in the text. Highly technical and specialized analyses and data should be avoided in the text but should be attached as appendices or footnoted with adequate references. Where there are references to documents not likely to be easily accessible, such as internal studies or reports, the statement should indicate how such information may be obtained. Many evaluations of environmental impact will involve measurements, analyses, calculations, and design drawings much too voluminous to be included in an environmental statement of workable length. In these cases, it will not be possible for the reader to make a completely independent evaluation of environmental impact from the statement itself. However, it should be possible for the reader to understand, from the text combined with the references, the types of impact which have been considered, the general methods of evaluation used and the types of data behind them, and the conclusions reached.

(b) Each statement shall discuss or refer to responsible opposing views. Substantive suggestions and comments made by other Federal State, and local agencies and by private organizations and individuals prior to preparation of the draft statement shall be considered in the appropriate sections in the preparation of the draft environmental statement. Similarly, substantive comments received as a result of review of the draft statement shall be considered in the preparation of the final statement.

(c) Each statement ordinarily shall contain the following sections:

(1) *Summary.* This section should briefly and concisely summarize the information set forth in each of the other sections of the environmental statement.

(2) *Background.*—(i) *Detailed description.* This subsection should fully describe the proposed action. Figures, maps, tables, and pictures should be included, as appropriate. Among those factors to be considered in preparing this subsection are location and duration of proposed action; major objective(s) sought; background information necessary to place

the proposed action in proper perspective; its relationship to other projects and proposals, including those of other government and private organizations; and overall physical description, emphasizing features with environmental significance and controls taken to assure adequate design and function and minimum adverse environmental impact.

(ii) *Anticipated benefits.* This subsection should fully describe and analyze the need for the proposed action. In so doing, it should document the full range of benefits—technological, economic, political, environmental, social, etc.—expected to be derived from the proposed action.

(iii) *Characterization of the existing environment.* This subsection should fully describe the environmental features of the area in which the proposed action will be involved with emphasis on those features, beneficial as well as adverse, that specifically relate to the proposed action. The amount of detail provided should be commensurate with the extent of the expected impact of the action, and with the amount of information required at the particular level of decision-making (planning, feasibility, design, etc.). In order to insure accurate descriptions and environmental appraisals, site visits should be made where feasible. Wherever appropriate, an identification should be made of population and growth characteristics of the affected area, and of the population and growth assumptions involved in the proposed action or utilized to determine secondary population and growth impacts resulting from the proposed action and its alternatives. Consideration should be given to using the rates of growth in the region of the proposed action contained in the projection compiled for the Water Resources Council by the Office of Business Economics of the Department of Commerce and the Economic Research Service of the Department of Agriculture (the OBERS projection). Sources of all data used should be identified.

(3) *Environmental impact.* This section should fully assess the probable environmental impact of the proposed action on those environmental features characterized in subparagraph (2)(iii) of this paragraph. In so doing, it should describe those effects on the environment, beneficial as well as adverse, which could be caused by the proposed action, evaluate the magnitude and importance of each such effect, and identify the time frames in which these effects are anticipated. It should also describe the measures which will be taken to prevent, eliminate, reduce, or compensate for any environmentally detrimental aspects of the proposed action. This section should assess the probable primary (direct) as well as secondary (indirect) environmental consequences of the proposed action. In this context, "secondary" consequences refer to associated investments and changed patterns of social and economic activities likely to be stimulated or induced by the proposed action. Such secondary effects, through their impacts on existing community facilities and activities and through inducing new facilities and activities, or through changes in natural conditions, may often be more substantial than the primary effects of the proposed action. For example, the effects of the proposed action on population and growth may be among the more significant secondary effects. Such population and growth impacts should be estimated if expected to be significant (using data identified as indicated in subparagraph (2)(iii) of the paragraph, and an assessment made of the effect of any possible change in population patterns or growth upon the resource base, including land use, water, and public services, of the area in question.

(4) *Unavoidable adverse environmental effects.* This section should summarize these adverse effects on the environment discussed in subparagraph (3) of this paragraph, which probably would be caused by the proposed action and which probably cannot be avoided if the action is implemented. It should indicate the magnitude and importance of each such effect. Included should be a clear statement of how other adverse effects discussed in section (3) will be mitigated to prevent apparent unavoidable consequences.

(5) *Alternatives.* This section should present a rigorous exploration and objective evaluation of the environmental impacts of the full range of reasonable alternatives to the proposed action particularly those that might enhance environmental quality or avoid some of the adverse environmental effects. In particular, alternatives specifically formulated with environmental quality objectives in mind should be discussed, e.g., pollution control equipment on a nuclear facility. The specific alternative of taking no action should always be evaluated. Examples of other alternatives include: the alternative of postponing action pending further study; alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts; alternatives related to different designs or details of the proposed action which would present different environmental impacts, and alternatives to provide for compensation of fish and wildlife loss, including the acquisition of land, waters, and interests therein. In each case, the analysis should be sufficiently detailed to permit comparative evaluation of the environmental benefits, costs and risks of the proposed action and each reasonable alternative. Such evaluation should be made in subparagraph (9) of this paragraph. Where an existing impact statement already contains such an analysis, its treatment of alternatives may be incorporated provided that such treatment is current and relevant to the precise purpose of the proposed action. The assessment of alternatives should not be limited to measures which the agency has authority to adopt but should include a meaningful discussion of all reasonable alternatives to the proposed action. A more detailed analysis should be made of the environmental impact of alternatives within the same time frame of the proposed action than for those alternatives within different time frames.

(6) *Relationship between short-term uses and long-term productivity.* This section should fully assess the cumulative and long-term environmental effects of the proposed action from the perspective that each generation is trustee of the environment for succeeding generations. This invloves consideration of the present condition and use of the site of the proposed action, its use if the proposed action is implemented, and the longer-term prospects for other uses. A brief assessment should be made of the extent to which the proposed action involves tradeoffs between short-term environmental gains at the expense of long-term losses, or vice versa, and a discussion of the extent to which the proposed action forecloses future options. In this context short-term and long-term do not refer to any fixed periods but should be viewed in terms of the environmentally significant consequences of the proposed action.

(7) *Relationship of proposed action to land use plans, policies and controls.* This section should fully discuss how the proposed action may conform or conflict with the objectives and specific terms of approved or proposed Federal, state, and local land use plans, policies, and controls, if any, for the affected area. Where a conflict exists this section should describe the extent to which the proposed action has been reconciled in the plan, policy, or control and the reasons why the proposed action should be implemented notwithstanding the absence of full reconciliation.

(8) *Irreversible and irretrievable commitments of resources.* This section should identify from the survey of unavoidable impacts in subparagraph (4) of this paragraph the extent to which the proposed action would irreversibly curtail the diversity and range of potential uses of the environment. In this context "resources" means labor and materials devoted to the proposed action as well as natural and cultural resources committed to loss or destruction by the action.

(9) *Cost-benefit analysis.* This section should present an analysis which considers and balances the environmental and other costs of the proposed action and the alternatives reasonably available for reducing or avoiding adverse environmental effects (even at the expense of reduced project objectives) as well as the environmental, economic, technical, and other benefits of the proposed action. In this connection, the analysis should indicate the extent these benefits could be realized by following reasonable alternatives that would avoid some or all of the adverse environmental effects of the proposed action. The analysis should, to the fullest extent practicable, quantify the various factors considered. To the extent that such factors cannot be quantified, they should be discussed in qualitative terms. In any event, the analysis should be sufficiently detailed and rigorous to permit independent evaluation of the benefits and environmental

risks of both the proposed action and each alternative, so that an informed judgment may be made about the wisdom of undertaking the proposed action rather than one of the alternatives (including the alternative of no action). On the basis of the foregoing, the statement should contain a conclusion as to whether, after weighing the environmental, economic, technical, and other benefits against the environmental, economic, technical, and other costs and after considering the reasonably available alternatives and their benefits and costs, the proposed action should be taken.

Dated this 11th day of February 1974.

JOHN A. ERLEWINE,
Acting General Manager.

[FR Doc.74-3757 Filed 2-13-74;8:45 am]

Title 12—Banks and Banking

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

[No. 74-73]

PART 522—ORGANIZATION OF THE BANKS

Office of Finance

FEBRUARY 6, 1974.

The Federal Home Loan Bank Board considers it desirable to amend §§ 522.80, 522.81 and 522.82 of Part 522 of the regulations for the Federal Home Loan Bank System (12 CFR Part 522) in order to authorize the Board to appoint and fix the compensation of the Director of the Office of Finance, as well as any Deputy or Assistant Directors of that Office. In addition, the Board would be authorized by these amendments to have sole authority to approve the budget for the Office of Finance.

Under the present regulations, the Director of the Office of Finance and any Deputy and Assistant Directors of that Office, have been required, pursuant to 12 CFR 522.80, to be appointed and have their compensation fixed by the Presidents of the Federal Home Loan Banks subject to the approval of the Board. Also, the budget for that Office has been required, pursuant to 12 CFR 522.82, to be approved by at least two members of a budget committee consisting of three Bank Presidents and by a majority of the Bank Presidents and then submitted to the Board for approval. At a meeting of the Bank Presidents on January 15, 1974, it was unanimously agreed that the foregoing procedures were unwieldly and unnecessarily protracted, and that in the interest of efficient administration, the current authority of the budget committee and the Bank Presidents as to such appointments, compensation and budget should be delegated to the Board.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 522 by revising § 522.82 thereof, by revising paragraph (b) of § 522.80 thereof, and by revising paragraph (b) of § 522.81 thereof, to read as set forth below, effective February 13, 1974.

Since affording notice and public procedure on the above amendments would delay such amendments from becoming effective for a period of time and since it is in the public interest that such amendments become effective without such delay, and since such amendments relate to the Board's organization or procedures, the Board hereby finds that notice and public procedure as to such amendments are contrary to the public interest and unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b); and since publication of such amendments for the period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date of such amendments would in the opinion of the Board likewise be unnecessary for the same reasons, the Board hereby provides that such amendments shall become effective as hereinbefore set forth.

§ 522.80 General.

* * * * *

(b) The Office of Finance shall be headed by a Director, who shall have responsibility for the performance of the functions of such Office. The Director shall be appointed, and his compensation shall be fixed, by the Board. There may also be one or more Deputy Directors and one or more Assistant Directors, who shall be appointed and whose compensation shall be fixed in the same manner.

* * * * *

§ 522.81 Functions of Office of Finance.

* * * * *

(b) The Office of Finance shall maintain in a checking account in a commercial bank approved by the Board an "imprest fund" in such maximum amount as may be approved by the Board. Such bank account shall be subject to withdrawal by check or draft signed by either the Director, or by another person or persons designated by him with the approval of the Board. Each Bank shall from time to time forward to the Office of Finance its check for the amount representing its prorata share of the expenditures made by such Office during a designated period from the funds received from the Banks, promptly upon receipt of statements from such Office of such amounts. All of the foregoing receipts from the Banks are to be deposited by the Office of Finance in the bank account referred to in this section and are to be disbursed as provided in § 522.82.

§ 522.82 Budget and expenses.

The Office of Finance shall annually submit a budget for the following calendar year containing proposed allotments for the expenses of maintaining and operating such Office to the Board so as to reach it on or before the first day of December. After such budget has been approved by the Board, the Director may make disbursements thereunder from the funds provided for in § 522.81(b). Following approval by the Board, the Director shall transmit a copy of the budget to each of the Bank Presidents. The Director may, without further authority, make a transfer from an excess allotment, in the budget referred to, to an insufficient allotment. However, transfers to allotments for compensation or rent of office quarters, as well as any proposed changes which would increase the total of the approved budget, shall be submitted for approval in the same manner as the original budget was submitted. In addition the Director shall, upon the direction of the Board, make disbursements from the funds provided for in § 522.81(b), in payment of such other expenses which will not be covered by the approved budget and which are deemed appropriate.

(Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended by Pub. L. 91-151, sec. 2(b), 83 Stat. 371; sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1425b, 1437. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary.

[FR Doc.74-3671 Filed 2-13-74;8:45 am]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Rev. 12, Amdt. 8]

PART 121—SMALL BUSINESS SIZE STANDARDS REGULATION

Definition of Small Business Special Trade Contractor (Construction)

On July 5, 1973, there was published in the FEDERAL REGISTER (33 FR 17850) a notice that the Small Business Administration proposed to establish separate definitions of small business for special trade contractors for the purpose of bidding on Government procurement and receiving financial assistance. In effect, the proposal would lower the size standards for these industries from average annual receipts not exceeding $7.5 million to average annual receipts not exceeding $1 million or $2 million, depending on the special trade industry involved. Interested parties originally were given until August 6, 1973, to submit written comments. However, the time for submitting comments was later extended until September 4, 1973.

The principal opposition to the proposal change was submitted by two trade associations—one primarily representing general contractors and the other primarily representing sheet metal and air conditioning contractors. Also, several water well drilling contractors opposed the proposed change. The thrust of the argument by those in opposition is that, due to inflation, the current size standard includes fewer concerns than when promulgated and the proposed size standard would eliminate many well-qualified bidders from participating in Government procurement set aside for small business.

We are not persuaded by such arguments. We find that only a few concerns primarily engaged as special trade contractors will be eliminated from competition by the proposed standards. Most of the concerns in these industries will fall within such standards. For example, in Standard Industrial Classification Industry No. 1751, "Carpentering and Flooring," over 95 percent of the con-

cerns in the industry have annual receipts of under $500,000 and less than 0.1 percent have annual receipts exceeding $5 million. Moreover, these concerns with over $5 million in receipts account for less than 2 percent of the industry's total sales. Further, recent Government procurement information obtained by SBA indicates that almost all water well drilling contracts are for amounts under $100,000, and the vast majority of bidders on them have average annual receipts not exceeding $1 million.

It is true that some of the larger of the small general contractors will be prevented from competing for Government small business set-aside procurements for special trade work. However, we feel this is desirable if we are to recognize the differing characteristics of such industries.

Under all of the circumstances, we have decided to adopt the standards as proposed. Accordingly, Part 121 of Chapter I of Title 13 of the Code of Federal Regulations is hereby amended by:

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

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

* * * * *

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

(1) Small if its average annual receipts for its preceding 3 fiscal years do not exceed $7.5 million: *Provided, however,* That, if the requirements of the contracts are classified in an industry set forth in Schedule H of this part, it is small if it does not exceed the size standard established therein for such industry.

* * * * *

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

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

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

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

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

* * * * *

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

* * * * *

4. Adding new Schedule I to read as follows:

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

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

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

Effective date: For financial assistance purposes, February 14, 1974. For procurement purposes, March 18, 1974, but shall apply only to procurements issued on or after such effective date.

Dated: February 1, 1974.

THOMAS S. KLEPPE,
Administrator.

(Catalog of Federal Domestic Assistance Program Nos. 59.001, Displaced Business Loans; 59.002, Economic Injury Disaster Loans; 59.003, Economic Opportunity Loans for Small Businesses; 59.004, Lease Guarantees for Small Business; 59.006, Minority Business Development—Procurement Assistance; 59.009, Procurement Assistance to Small Business; 59.010, Product Disaster Loans; 59.011, Small Business Investment Companies; 59.012, Small Business Loans; 59.013, State and Local Development Company Loans; 59.014, Coal Mine Health and Safety Loans; 59.017, Meat and Poultry Inspection Loans; 59.018, Occupational Safety and Health Loans)

[FR Doc.74–3667 Filed 2–13–74;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 73–NE–30]

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

Alteration of Transition Area

On page 32142 of the FEDERAL REGISTER dated November 21, 1973, the Federal Aviation Administration published a notice of proposed rulemaking which would alter the Keene, New Hampshire, 700-foot Transition Area.

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulations have been received.

In view of the foregoing, the proposed regulations are hereby adopted effective 0901 G.m.t., March 28, 1974.

(Sec. 307(a), Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348); sec. 6(c), Department of Transportation Act, (49 U.S.C. 1655(c))

Issued in Burlington, Mass., on January 16, 1974.

FERRIS J. HOWLAND,
Director, New England Region.

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Keene, New Hampshire, 700-foot Transition Area and insert the following in lieu thereof:

That airspace extending upward from 700 feet above the surface bounded by a line beginning at 43°01'00" N., 72°13'00" W. To 42°55'00" N., 72°00'00" W. To 42°51'30" N., 71°54'00" W. To 42°28'00" N., 71°54'00" W. To 42°28'00" N., 72°27'00" W. To 42°22'00" N., 72°27'00" W. To 42°22'00" N., 72°35'00" W. To 42°28'00" N., 72°35'00" W. To 42°28'00" N., 73°00'00" W. To 43°01'00" N., 73°00'00" W. To the point of beginning excluding that portion within the Boston, Mass., Pittsfield, Mass., and Chicopee Falls, Mass., Transition Areas.

[FR Doc.74–3594 Filed 2–13–74;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER A—GENERAL

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

Labeling of Chemical Preservatives in Food

In the FEDERAL REGISTER of August 2, 1973 (38 FR 20745), the Commissioner of Food and Drugs proposed that 21 CFR 1.12 be amended by adding thereto a new paragraph (j) prescribing the manner by which chemical preservatives are to be declared in the labeling of foods. The

proposal was intended to codify the statutory requirement that a preservative ingredient contained in a food be designated in the statement of ingredients by both the common or usual name of the ingredient, in accordance with the requirements of section 403(i) of the Federal Food, Drug, and Cosmetic Act, and a separate designation of the fact that the ingredient is a preservative, in accordance with the requirements of section 403(k) of the act. No comments were received in response to the proposal.

In the FEDERAL REGISTER of January 27, 1961 (26 FR 847), the Commissioner proposed to establish a definition and standard of identity for food fat preservatives (including fat antioxidants). Since the Commissioner is specifying in this order how a preservative ingredient contained in a food must be designated in the statement of ingredients on the label, the proposed standard for fat preservatives is no longer necessary and, accordingly, that proposal is being withdrawn and the rule making proceedings in that matter is being terminated elsewhere in this issue of the FEDERAL REGISTER.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 403, 701(a), 52 Stat. 1047–1048, 1055 (21 U.S.C. 343, 371(a))), and under authority delegated to the Commissioner (21 CFR 2.120), Part 1 is amended in § 1.12 by adding thereto a new paragraph (j) as follows:

§ 1.12 Food; labeling; spices, flavorings, colorings, and chemical preservatives.

* * * * *

(j) A food to which a chemical preservative(s) is added shall, except when exempt pursuant to § 1.10a, bear a label declaration stating both the common or usual name of the ingredient(s) and a separate description of its function, e.g., "preservative," "to retard spoilage," "a mold inhibitor," "to help protect flavor" or "to promote color retention."

Effective date. This order shall become effective March 18, 1974.

(Secs. 403, 701(a), 52 Stat. 1047–1048, 1055 (21 U.S.C. 343, 371(a)))

Dated: February 6, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74-3650 Filed 2-13-74;8:45 am]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

RESINOUS AND POLYMERIC COATINGS FOR POLYOLEFIN FILMS

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 2B2802) filed by Food and Drug Research Laboratories, Inc., Waverly Division, P.O. Box 107, Waverly, NY 14892, and other relevant material, concludes that the food additive regulations should be amended to provide for the safe use of additional substances, as set forth below, in the preparation of polyester resins used in the production of resinous and polymeric food-contact coatings for polyolefin films.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.2569(b)(3)(i) is amended by inserting in the list of substances a new polybasic acid and a new monobasic acid alphabetically under the item "Polyester resins formed by reaction of one or more of the following polybasic acids and monobasic acids with one or more of the following polyhydric alcohols:"

§ 121.2569 Resinous and polymeric coatings for polyolefin films.

(b) * * *

(3) * * *

List of substances	*Limitations*
(i) Resins and polymers:	
* * *	* * *
Polyester resins formed * * *; Polybasic acids:	
* * *	
Azelaic	For use in forming polyester resins intended for use in coatings that contact food only of the type identified in § 121.2526(c), table 1, under category VIII, and under conditions of use E, F, or G described in table 2 of § 121.2526(c).
* * *	* * *
Monobasic acids:	
Gum resin	As defined in § 121.2592. For use in forming polyester resins intended for use in coatings that contact food only of the type identified in § 121.2526(c), table 1, under category VIII, and under conditions of use E, F, or G described in table 2 of § 121.2526(c).
* * *	

* * * * *

Any person who will be adversely affected by the foregoing order may at any time on or before March 18, 1974 file with the Hearing Clerk, Food and Drug Administration, Rm. 6–86, 5600 Fishers Lane, Rockville, MD 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Objections may be accompanied by a memorandum or brief in support thereof. Six copies of all documents shall be filed. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective on February 14, 1974.

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

Dated: February 6, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74-3651 Filed 2-13-74;8:45 am]

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

PART 221—OPERATION AND MAINTENANCE CHARGES

Charges on Fort Hall Irrigation Project

These final regulations are issued under the authority delegated to the Commissioner of Indian Affairs by the Secretary of the Interior in section 15(a) of Secretarial Order 2508 (10 BIAM 2.1) and redelegated by the Commissioner to the Area Directors in 10 BIAM 3. The authority to issue regulations is vested in the Secretary of the Interior by sections 161, 463, and 465 of the Revised Statutes (5 U.S.C. 301; 25 U.S.C. 2 and 9).

Beginning on page 1276 of the FEDERAL REGISTER of January 7, 1974 (39 FR 4), there was published a notice of intention to modify 25 CFR 221.32 by changing the basic rates for annual operation and maintenance assessments on the Fort Hall Project for calendar year 1974 and subsequent years. This modification was proposed pursuant to the authority contained in the Acts of March 1, 1907 (34 Stat. 1024), and August 31, 1954 (68 Stat. 1026).

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

During this period no comments, suggestions, or objections were submitted. It has been determined that sufficient justification exists for modifying the rate for basic and other water charges on the

Fort Hall Irrigation Project as set forth below.

The modified § 221.32 and the cross reference following that section shall become effective March 18, 1974.

Section 221.32 and the cross reference following that section of Chapter I, Title 25 of the Code of Federal Regulations is revised to read as follows:

§ 221.32 Basic and other water charges.

(a) In compliance with the provisions of the Acts of March 1, 1907 (34 Stat. 1024), and August 31, 1954 (68 Stat. 1026), the annual basic water charges for the operation and maintenance of the lands in non-Indian ownership and Indian-owned lands leased to a non-Indian or a nonmember of the Shoshone-Bannock Tribe of the Fort Hall Indian Reservation, Idaho, to which water can be delivered for irrigation are hereby fixed for the calendar year 1974 and subsequent years until further notice as follows:

	Per acre
(1) Fort Hall project: Basic rate	$10.00
(2) Michaud Division, Fort Hall project: Basic rate	13.50
Additional rate for sprinkler irrigation when pressure is supplied by the project	3.00
(3) Minor Units, Fort Hall Reservation: Basic rate	8.00

(b) In addition to the foregoing charges, there shall be collected a minimum charge of $5 for the first acre or fraction thereof on each tract of land for which operation and maintenance bills are prepared. The minimum bill issued for any area will, therefore, be the basic rate per acre plus $5.

CROSS REFERENCE: For method of assessment of operation and maintenance charges, see § 197.17 of this chapter.

Dated: February 8, 1974.

RICHARD M. BALSIGER,
Acting Area Director.

[FR Doc.74-3620 Filed 2-13-74;8:45 am]

Title 29—Labor

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

PART 1953—CHANGES TO STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS

Delegation of Authority

Part 1953 of Title 29, Code of Federal Regulations (38 FR 24361, September 7, 1973), is amended pursuant to sections 8 (g)(2) and 18 of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 657(g)(2) and 667) by adding a new § 1953.4 in order to provide for a delegation of authority by the Assistant Secretary of Labor for Occupational Safety and Health. In accordance with this delegation of authority, the Assistant Regional Directors for Occupational Safety and Health will be responsible for review and approval of changes to occupational safety and health standards in approved State plans under all the applicable subparts of Part 1953, including developmental, evaluation, Federal program, and State-initiated changes.

The Assistant Regional Directors will review the standards supplements, cause the appropriate notices to be published in the FEDERAL REGISTER, analyze the public comments received, and make the final determination as to whether the standard should be approved or subject to rejection, as specified in the appropriate subpart of Part 1953 and 29 CFR Part 1902.

In order to assure that conflicting or inadequate interpretations of State standards are resolved, the Assistant Secretary of Labor for Occupational Safety and Health will be consulted whenever a question as to the interpretation of a standard is raised by the national or regional offices, the State, or other interested persons during the review process.

This delegation of authority, limited to review and approval of standards, will reduce duplication of review of detailed standards comparisons and implement coverage under approved State plans with a minimum of delay.

Part 1953 is also amended to incorporate the procedures set out in § 1902.12 of this chapter for modification of State supplements and additional opportunity for public comment during review of changes. This amendment is added to make the review procedures for changes consistent with that followed for plan approval. The amendment affects §§ 1953.11 (c) and (d)(1), 1953.31 (c) and (d)(1) and 1953.41 (c) and (d)(1).

Because these amendments to Part 1953 only involve agency organization and procedures for reviewing specified public comment is determined to be unchanges to State plans, provision for necessary as authorized by 5 U.S.C. 553 and these amendments shall be effective when published.

Part 1953 is amended as follows:

1. Subpart A of Part 1953 is amended by adding a new § 1953.4 which reads as follows:

§ 1953.4 Delegation of authority.

(a)(1) Under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health, the Assistant Regional Directors shall be responsible for review and approval of changes to occupational safety and health standards in approved State plans in accordance with the procedures specified in the applicable subparts of this part.

(2) In conjunction with this delegation of authority, the Assistant Secretary of Labor for Occupational Safety and Health, after consultation with the Office of the Solicitor, will be responsible for advising the Assistant Regional Directors as to interpretations of Federal and State standards so as to avoid inconsistent interpretations particularly in States adopting other than Federal standards. Any person may request such an interpretation from the Assistant Secretary.

(b) Assistant Regional Directors means the employee or officer regularly or temporarily in charge of a Regional Office of the Occupational Safety and Health Administration, U.S. Department of Labor, or any other person or persons who are specifically designated to act for such employee or officer in his absence. The term also includes any employee or officer in the Occupational Safety and Health Administration exercising supervisory responsibility over the Assistant Regional Director. Such supervisory employee or officer is considered to exercise concurrent authority with the Assistant Regional Director.

2. Paragraphs (c) and (d)(1) of § 1953.11 are amended to read as follows:

§ 1953.11 Submission and consideration.

* * * * *

(c) Upon receipt of the supplement, the Assistant Regional Director shall make a preliminary review of the changes. If his examination reveals any defect in the supplement, the Assistant Regional Director shall offer assistance to the State and shall provide the agency an opportunity, generally not to exceed 30 days, to cure such defect. After the preliminary review and after affording the State such opportunity to cure defects, the Assistant Regional Director, except as provided in § 1953.4 for review of standards supplements, shall promptly submit the supplement to the Assistant Secretary.

(d)(1) Upon receipt of the supplement from the Assistant Regional Director, the Assistant Secretary shall examine the change and supporting material. If examination discloses no cause for rejecting the change, the procedures provided in §§ 1902.11 and 1902.12 of this chapter for public comment and approval of State plans shall be followed.

* * * * *

3. Paragraphs (c) and (d)(1) of § 1953.31 are amended to read as follows:

§ 1953.31 Submission and consideration.

* * * * *

(c) Upon receipt of the supplement, the Assistant Regional Director shall make a preliminary review of the changes. If his examination reveals any defect in the supplement, the Assistant Regional Director shall offer assistance to the State and shall provide the agency an opportunity, generally not to exceed 30 days, to cure such defect. After the preliminary review and after affording the State such opportunity to cure defects, the Assistant Regional Director, except as provided in § 1953.4 for review of standards supplements, shall promptly submit the supplement to the Assistant Secretary.

(d)(1) Upon receipt of the supplement from the Assistant Regional Director, the Assistant Secretary shall examine the change and supporting material. If examination discloses no cause for

rejecting the change, the procedure provided in §§ 1902.11 and 1902.12 of this chapter for public comment and approval of State plans shall be followed.

* * * * *

4. Paragraphs (c) and (d)(1) of § 1953.41 are amended to read as follows:

§ 1953.41 Submission and consideration.

* * * * *

(c) Upon receipt of the supplement, the Assistant Regional Director shall make a preliminary review of the changes. If his examination reveals any defect in the supplement, the Assistant Regional Director shall offer assistance to the State and shall provide the agency an opportunity, generally not to exceed 30 days, to cure such defect. After the preliminary review and after affording the State such opportunity to cure defects, the Assistant Regional Director, except as provided in § 1953.4 for review of standards supplements, shall promptly submit the supplement to the Assistant Secretary.

(d)(1) Upon receipt of the supplement from the Assistant Regional Director, the Assistant Secretary shall examine the change and supporting material. If examination discloses no cause for rejecting the change, the procedures provided in §§ 1902.11 and 1902.12 of this chapter for public comment and approval of State plans shall be followed.

* * * * *

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

Signed at Washington, D.C. this 6th day of February 1974.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.74-3645 Filed 2-13-74;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR

PART 60-2—AFFIRMATIVE ACTION PLANS

Miscellaneous Amendments

The following amendments to Part 60-2 of Title 41, Code of Federal Regulations are made concurrently with the adoption of Part 60-60 of this title in order to conform Part 60-2 to the rules adopted in Part 60-60. These amendments become effective April 15, 1974.

1. Section 60-2.1 is amended by revising the first sentence in the second paragraph of the section to read as follows:

§ 60-2.1 Title, Purpose and Scope.

* * * * *

Relief for members of an affected class who, by virtue of past discrimination, continue to suffer the present effects of that discrimination shall be provided in the conciliation agreement entered into pursuant to § 60-60.6 of this title. * * *

2. Section 60-2.10 is amended by revising the fourth sentence of the section to read as follows:

§ 60-2.10 Purpose of affirmative action program.

* * * An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to achieve prompt and full utilization of minorities and women, at all levels and in all segments of his work force where deficiencies exist.

3. Section 60-2.11 is amended by redesignating the present paragraph (a) as paragraph (b) and by inserting before such paragraph a new paragraph (a). As amended, § 60.11 reads as follows:

§ 60-2.11 Required utilization analysis.

* * * * *

(a) Workforce analysis which is defined as a listing of each job classification as appears in applicable collective bargaining agreements or payroll records (not job group) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department a separate list must be provided for each such work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. For each job classification, the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate or salary range for each job classification should be given. All job classifications, including all managerial job classifications, must be listed.

(b) An analysis of all major job classifications at the facility, * * *

((5 U.S.C. 553(a)(3)(B)) 29 CFR 2.7 section 201, Executive Order 11246, 30 FR 12319, and Executive Order 11375, 32 FR 14303.)

Signed at Washington, D.C. on this 6th day of February 1974.

PETER J. BRENNAN,
Secretary of Labor.
BERNARD DELURY,
Assistant Secretary for Employment Standards.
PHILIP J. DAVIS,
Director, Office of Federal Contract Compliance.

[FR Doc.74-3643 Filed 2-13-74;8:45 am]

PART 60-60—CONTRACTOR EVALUATION PROCEDURES FOR CONTRACTORS FOR SUPPLIES AND SERVICES

This part, known as "Revised Order No. 14," establishes standardized contractor evaluation procedures for the use of compliance agencies in their conduct of compliance reviews of contractors for supplies and services subject to the equal employment opportunity requirements of 41 CFR 60-1.40 and 41 CFR Part 60-2 (Revised Order No. 4) for the development of written affirmative action programs. Revised Order No. 14 (41 CFR Part 60-60) was published as a final regulation on May 21, 1973, with opportunity for public comment. The amendments to Part 60-60 published today reflect comments received by the Department of Labor. Revised Order No. 14 establishes a three step process for the conduct of a compliance review, a desk audit, an on-site analysis and, where necessary, an off-site analysis. Other questions dealt with in Revised Order No. 14 such as relevancy and confidentiality of data obtained from contractors are keyed to particular steps in the compliance review process.

Part 60-60 of Title 41, Code of Federal Regulations is revised to read as follows:

Subpart A—General

Sec.
60-60.1 Purpose and scope.
60-60.2 Background.

Subpart B—Procedures for Contractor Evaluation

60-60.3 Agency actions.

Subpart C—Disclosure and Review of Contractor Data

60-60.4 Confidentiality and relevancy of information.
60-60.5 Employee interviews.
60-60.6 Exit conference.
60-60.7 Time schedule for completion.

AUTHORITY: 5 U.S.C. 553(a)(3)(B), 29 CFR 2.7; sec. 201, Executive Order 11246, 30 FR 12319, and Executive Order 11375, 32 FR 14303.

Subpart A—General

§ 60-60.1 Purpose and scope.

This part shall be known as "Revised Order No. 14" and is intended to establish standardized contractor evaluation procedures for compliance agencies, in their conduct of compliance reviews of contractors for supplies and services subject to the Equal Employment Opportunity Requirements of 41 CFR 60-1.40 and 41 CFR Part 60-2 (Revised Order No. 4) for the development of written affirmative action programs.

§ 60-60.2 Background.

(a) Each prime contractor or subcontractor with 50 or more employees and a contract of $50,000 or more is required to develop a written affirmative action program for each of its establishments (§ 60-1.40 of this chapter). If a contractor fails to submit an affirmative action program and supporting documents, including the workforce analysis within 30 days of a request therefor, the enforcement procedures specified in OFCC Order No. 4 (§ 60-2.2(c) of this chapter) shall be applicable.

(b) Required affirmative action programs must contain a utilization analysis and goals and timetables as required in § 60-2.11 and § 60-2.12 of this chapter.

Subpart B—Procedures for Contractor Evaluation

§ 60–60.3 Agency actions.

Basic steps. A contractor evaluation should proceed as follows: (1) A desk audit of the contractor's affirmative action program with special attention directed to the included workforce analysis, using the format set forth in the Standard Compliance Review Report, (2) an on-site review of those matters which still are not fully or satisfactorily addressed in the affirmative action program and workforce analysis, using the format set forth in the Standard Compliance Review Report and (3) where necessary, an off-site analysis of information supplied by the contractor during or pursuant to the on-site review. (The standard compliance review report will be published on or before the effective date of this part.) Contractors may reach agreement with their respective compliance agencies on nationwide AAP formats or on frequency of updating statistics with the approval of the Director of OFCC

(a) *Desk Audit.* Using OFCC approved methods of priority selection, compliance agencies shall routinely request from among the Federal contractors within their jurisdiction affirmative action programs and supporting documentation, including the workforce analysis and support data for audit. As used throughout this part, the term "Affirmative Action Program (AAP) and supporting documentation" means the Required Contents of Affirmative Action Programs, as set forth in Subpart B of 41 CFR Part 60–2 and Methods of Implementing the Requirements of Subpart B, set forth in Subpart C of 41 CFR Part 60–2. "Workforce analysis" is defined as a listing of each job classification as appears in applicable collective bargaining agreements or payroll records (not job group) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department a separate list must be provided for each such work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. For each job classification, the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish surnamed Americans, American Indians, and Orientals. The wage rate or salary range for each job classification should be given. All job classifications, including managerial job classifications, must be listed.

(1) *Exceptions to the desk audit requirements.* For pre-award reviews and for complaint investigations with the approval of the agency Contract Compliance Officer (as defined at § 60–1.6(b)), the desk audit need not be carried out or an abbreviated desk audit may be performed and an immediate on-site review performed. Special reports that meet the criteria in (b) (1) below may be requested from contractors, as required, for submission to the agency for complaint investigations and follow-up reviews performed within 1 year of a full compliance review. The Director may approve other special compliance reviews when the circumstances require an immediate on-site review.

(b) *On-site review.* If upon selection of an AAP and included workforce analysis for desk audit, the compliance agency finds that the material submitted does not demonstrate a reasonable effort by the contractor to meet all the requirements of subparts B and C of Order No. 4 (Part 60–2 of this chapter) the on-site review need not be carried out and the enforcement procedures specified in Order 4 shall be applicable. Otherwise following a desk audit of the affirmative action program and supporting documentation the agency will schedule an on-site review of the establishment, provided, that an on-site review need not be carried out when the agency can determine that the contractor's affirmative action program is acceptable. This determination must be based on the current desk audit and an on-site review conducted within the preceding 24 months and also must include an affirmative determination that the circumstances of the previous on-site review have not substantially changed.

(1) Each agency is to request from those contractors scheduled for on-site reviews that information necessary to perform the review be made available on-site. Specifically, this includes (i) information necessary to conduct an in-depth analysis of apparent deficiencies in the contractors utilization of women or minorities, (ii) information required for a complete and thorough understanding of data contained in or offered as support for the affirmative action program and (iii) information concerning matters relevant to a determination of compliance with the requirements of Executive Order 11246 (as amended), but not adequately addressed in the affirmative action program. However, the contractor should be requested to furnish only the specific items of information which the compliance officer determines are:

(*a*) Necessary for conducting the review and completing the standard compliance review report, and

(*b*) Not contained in or able to be derived from the material submitted by the contractor.

(2) In order to pursue certain issues uncovered in the compliance review, it may be necessary for the compliance officer to request certain additional information on-site even though such data have not been previously identified. Such additional information must also meet the above criteria.

(c) *Off-site analysis.* Where necessary, the compliance officer may take information made available during the on-site review off-site for further analysis. An off-site analysis should be conducted where issues have arisen concerning deficiencies or an apparent violation which, in the judgment of the compliance officer, should be more thoroughly analyzed off-site before a determination of compliance is made.

Subpart C—Disclosure and Review of Contractor Data

§ 60–60.4 Confidentiality and relevancy of information.

(a) *Desk audit data.* If the contractor is concerned with the confidentiality of such information as lists of employees, employee names, reasons for termination and pay data, then alphabetic or numeric coding or the use of an index of pay and pay ranges are acceptable for desk audit purposes.

(b) *On-site data.* The contractor must provide full access to all relevant data on-site as required by § 60–1.43 of this chapter.

(c) *Data required for off-site analysis.* The contractor must provide all data determined by the compliance officer to be necessary for off-site analysis pursuant to § 60–60.3(c) above. Such data may only be coded if the contractor makes the code available to the compliance agency. If the contractor believes that particular information which is to be taken off-site is not relevant to compliance with the Executive Order, the contractor may request a ruling by the agency Contract Compliance Officer. The contract compliance officer shall issue a ruling within 10 days. The contractor may appeal that ruling to the Director of OFCC within 10 days. The Director of OFCC shall issue a final ruling within 10 days. Pending a final ruling, the information in question must be made available to the compliance officer off-site, but shall be considered a part of the investigatory file and subject to the provisions of paragraph (d) below. The agency shall take all necessary precautions to safeguard the confidentiality of such information until a final determination is made. Such information may not be copied by the agency and access to the information shall be limited to the compliance officer and agency personnel involved in the determination of relevancy. Data determined to be not relevant to the investigation will be returned to the contractor immediately.

(d) *Public access to information.* Information obtained from a contractor under Subpart B will be subject to the public inspection and copying provisions of the Freedom of Information Act, 5 U.S.C. 552. Contractors should identify any information which they believe is not subject to disclosure under 5 U.S.C. 552, and should specify the reasons why such information is not disclosable. The Contract Compliance Officer will consider the contractors claim and make a determination, within 10 days, as to whether the material in question is exempt from disclosure. The contract compliance officer will inform the contractor of such a determination. The contractor may appeal that ruling to the Director of OFCC within 10 days. The Director of

OFCC shall make a final determination within 10 days of the filing of the appeal. However, during the conduct of a compliance review or while enforcement action against the contractor is in progress or contemplated within a reasonable time, all information obtained from a contractor under Subpart B except information disclosable under §§ 60–40.2 and 60–40.3 of this chapter is to be considered part of an investigatory file compiled for law enforcement purposes within the meaning of 5 U.S.C. 552(b)(7), and such information obtained from a contractor under Subpart B shall be treated as exempt from mandatory disclosure under the Freedom of Information Act during the compliance review.

(e) *Examination and copying of documents.* Nothing contained herein is intended to supersede or otherwise limit the provisions contained in Part 60–40 of this chapter for public access to information from records of the OFCC or its various compliance agencies.

§ 60–60.5 Employee interviews.

The compliance officer should contact, where appropriate, a reasonable number of employees for interviews as part of the on-site review of the contractors' employment practices. The number, scope and manner of conducting such interviews should be discussed in advance with the contractor.

§ 60–60.6 Exit conference.

(a) Upon completion of the on-site review (and off-site analysis, if one is undertaken) the compliance officer should schedule an exit conference with contractor officials to review the findings of the review. This exit conference should itemize the apparent violations that lend themselves to immediate correction, and solicit the contractor's agreement to take adequate corrective action by specified dates. The contractor's commitments should be contain in a written conciliation agreement signed at the exit conference. However, in cases where the apparent deficiencies require further analysis subsequent to the on-site review, the compliance officer will advise the contractor of the areas of concern, secure the data necessary to his ultimate compliance determination, complete the review later by notifying the contractor in writing of all apparent violations found, and obtain the contractor's commitments in a written conciliation agreement to correct such deficiencies.

(b) The contractor may at any time avail himself of the provisions of § 60–1.24(c)(4) of this chapter which provides as follows:

When a prime contractor or subcontractor, without a hearing, shall have complied with the recommendations or orders of an agency or the Director and believes such recommendations or orders to be erroneous, he shall, upon filing a request therefor within 10 days of such compliance, be afforded an opportunity for a hearing and review of the alleged erroneous action by the agency or the Director.

§ 60–60.7 Time schedule for completion.

(a) Within 60 days from the date the affirmative action program including the workforce analysis is received by the agency, the compliance agency must either have found the contractor in compliance and notified the contractor of that fact, or must have issued a 30-day show cause notice as required under the rules and regulations pursuant to the Executive Order.

(b) During this period the compliance agency shall:

(1) Complete the desk audit.
(2) Schedule the on-site review.
(3) Complete the on-site review.
(4) Complete the off-site analysis, if conducted.
(5) Give notice of compliance or issue show cause notice.
(6) Complete and forward the coding sheet to OFCC.

(c) A contractor's affirmative action plan may be accepted only after the coding sheet has been forwarded to OFCC. The coding sheet is the notification required by § 60–2.2(a)(2) of this chapter.

Effective Date. These regulations shall become effective April 15, 1974. The OFCC will consider any comments received in connection with future proposed amendments to this part.

Signed at Washington, D.C. on this 6th day of February, 1974.

PETER J. BRENNAN,
Secretary of Labor.
BERNARD DELURY,
Assistant Secretary for Employment Standards.
PHILIP J. DAVIS,
Director, Office of Federal Contract Compliance.

[FR Doc.74-3644 Filed 2-13-74;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5411]

ALASKA

Amendment of Public Land Orders No. 5174, No. 5179, No. 5180, and Any Order Amending the Foregoing Orders

By virtue of the authority vested in the Secretary of the Interior by sections 11(a)(3), 17(d)(1), and 17(d)(2)(E) of the Alaska Native Claims Settlement Act of December 18, 1971 (hereinafter referred to as the "Act") (43 U.S.C. 1610(a)(3), 1616(d)(1), and 1616(d)(2)(E)) and pursuant to Executive Order No. 10355 of May 26, 1952 (17 FR 4831), it is ordered as follows:

1. Public Land Order No. 5179 of March 9, 1972, as amended by Public Land Order No. 5192 of March 17, 1972, and Public Land Order No. 5250 of September 12, 1972, withdrawing lands in aid of legislation concerning addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems, and for classification, and Public Land Order No. 5174 of March 9, 1972, as amended by Public Land Order No. 5255 of September 12, 1972, withdrawing lands for selection under section 12 of the Act by the Village Corporations and the Regional Corporation for the approximate area covered by the operations of the Cook Inlet Association, are hereby amended to the extent necessary to accommodate the right of the Village Corporations to select, and the right of the Regional Corporation to identify the following described lands for selection pursuant to the terms of the Act, 43 U.S.C. section 1616(d)(2)(E) in the following manner:

a. For selection by the Village Corporations of Ninilchik, Salamatof, and Seldovia:

SEWARD MERIDIAN

PROTRACTED DESCRIPTIONS

T. 2 N., Rs. 18 thru 20 W. (Fractional).
T. 3 N., Rs. 17 and 18 W. (Fractional).
T. 3 N., Rs. 19 and 20 W.
T. 4 N., R. 18 W. (W½).
T. 4 N., Rs. 19 and 20 W.
T. 4 N., R. 21 W. (E½).
T. 5 N., Rs. 19 and 20 W.
T. 1 S., R. 20 W. (Fractional).
T. 1 S., R. 21 W.
T. 2 S., R. 20 W. (Fractional).
T. 2 S., R. 21 W.

b. For identification by the Regional Corporation for selection:

T. 4 N., Rs. 28 and 29 W.
T. 5 N., Rs. 28 and 29 W.
T. 6 N., Rs. 28 and 29 W.
T. 7 N., R. 28 W.
T. 8 N., R. 28 W.
T. 9 N., R. 27 W.
T. 10 N., Rs. 21 thru 24 W.
T. 11 N., Rs. 21 thru 24, and 27 W.
T. 12 N., Rs. 21 thru 24 W.
T. 13 N., Rs. 21 thru 26 W.
T. 14 N., Rs. 21 thru 24 W.
T. 15 N., Rs. 21 thru 23 W.
T. 16 N., Rs. 21 thru 23 W.

This order does not otherwise serve to change the provisions of Public Land Order No. 5179, as amended.

2. Public Land Order No. 5174, as amended by Public Land Order No. 5255, is further amended to delete the following described lands from paragraph 1 of Public Land Order No. 5255 and add them to a new subparagraph c of paragraph 1 of Public Land Order No. 5174, as amended, for selection by Village Corporations for the following Native villages:

c. Salamatof, Ninilchik, and Seldovia.

SEWARD MERIDIAN

PROTRACTED DESCRIPTIONS

T. 3 S., Rs 20 and 21 W. (Fractional).
T. 3 S., R. 23 W.
T. 3 S., R. 24 W. (E½).
T. 4 S., R. 22 W., that portion lying south of Chinitna Bay.
T. 4 S., R. 23 W. (Fractional).
T 4 S, R. 24 W.
T. 5 S., R. 22 W. (Fractional).
T. 5 S., R. 23 W.
T. 5 S., Rs. 24 and 25 W. (Fractional).
T. 7 S., Rs. 25 and 26 W. (Fractional).
T. 7 S., R. 27 W. (E½).
T. 8 S., R. 26 W. (Fractional).
T. 8 S., R. 27 W.
T. 8 S., R. 28 W. (E½).
T. 9 S., Rs. 27 and 28 W. (Fractional).
T. 9 S., R. 29 W. (E½).

3. Public Land Order No. 5174, as amended by Public Land Order No. 5255, is also hereby amended to add the following described lands for Village and Regional selection as set forth below:

a. To paragraph 1c of Public Land Order No. 5174, established by paragraph 2 of this order:

SEWARD MERIDIAN

PROTRACTED DESCRIPTIONS

T. 1 N., R. 20 W. (Fractional) outside Tuxedni National Wildlife Refuge.
T. 2 N., R. 21 W. (Fractional).
T. 1 S., R. 19 W. (Fractional) outside Tuxedni National Wildlife Refuge.
T. 2 S., R. 19 W. (Fractional).
T. 3 S., R. 24 W. (W½).
T. 4 S., Rs. 8 and 9 W., outside the Kenai National Moose Range.
T. 4 S., R. 25 W.
T. 5 S., Rs. 7 and 8 W., outside the Kenai National Moose Range.
T. 5 S., R. 26 W.
T. 6 S., Rs. 22 thru 26 W. (Fractional).
T. 7 S., R. 27 W. (W½).
T. 7 S., Rs. 28 and 29 W.
T. 8 S., R. 28 W. (W½).
T. 8 S., R. 29 W.
T. 9 S., R. 29 W. (W½).
T. 9 S., R. 30 W.
T. 10 S., Rs. 28 and 29 W. (Fractional).
T. 10 S., R. 30 W.
T. 11 S., R. 29 W. (Fractional).
T. 11 S., R. 30 W.

b. To paragraph 2 for Regional selection:

T. 1 N., Rs. 24 thru 29 W.
T. 2 N., Rs. 24 thru 35 W.
T. 3 N., Rs. 28 thru 35 W.
T. 4 N., Rs. 30 thru 35 W.
T. 22 N., R. 2 W.
T. 23 N., R. 2 W.
T. 24 N., Rs. 1 and 2 W.
T. 26 N., Rs. 1 and 2 W.
T. 27 N., R. 2 W.
T. 30 N., R. 2 W.
T. 1 S., Rs. 24 thru 29 W.
T. 2 S., Rs. 24 and 25 W.
T. 3 S., R. 25 W.
T. 29 N., Rs. 5 thru 10 E.

4. Subject to valid existing rights, all of the lands described in paragraph 3 of this order are hereby added to paragraphs 1 and 2 of Public Land Orders No. 1574, as amended, and immediately become subject to all of the terms and conditions of that order, including withdrawal from selection by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339, and from location and entry under the mining laws, 30 U.S.C. Ch. 2, and from leasing under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. sections 181–287 (1970). The lands are also withdrawn for classification or reclassification pursuant to section 17(d)(1) of the Act and are subject to administration by the Secretary of the Interior under applicable laws and regulations as provided for by paragraphs 3 and 4 of Public Land Order No. 5174. Any of the lands described in paragraph 3 of this order listed in Public Land Order No. 5179 of March 9, 1972, as amended by Public Land Order No. 5192 of March 17, 1972, and No. 5250 of September 12, 1972, and Public Land Order 5180 of March 9, 1972, as amended by Public Land Orders No. 5193 of March 17, 1972, and No. 5251 of September 12, 1972, are hereby deleted from those orders.

5. Public Land Order No. 5174, as amended, is further amended by deleting the following described lands from paragraph 1:

a. Tyonek.

SEWARD MERIDIAN

PROTRACTED DESCRIPTIONS

T. 15 N., Rs. 16 thru 18 W.
T. 16 N., Rs. 16 thru 18 W.
T. 17 N., Rs. 16 thru 18 W.
T. 18 N., Rs. 16 thru 18 W.
T. 19 N., Rs. 17 and 18 W.

b. Eklutna.

T. 21 N., Rs. 1 and 2 W.
T. 22 N., R. 1 W.
T. 12 N., Rs. 4 and 5 E.
T. 13 N., Rs. 4 thru 6 E.
T. 14 N., Rs. 4 thru 7 E.
T. 15 N., Rs. 5 thru 8 E.
T. 16 N., Rs. 5 thru 10 E.
T. 17 N., Rs. 5 thru 10 E.
T. 18 N., Rs. 4 thru 10 E.
T. 19 N., Rs. 6 and 7 E.
T. 20 N., R. 3 E.
T. 21 N., Rs. 1 thru 5 E.
T. 22 N., Rs. 1 thru 4 E.
T. 23 N., R. 1 E.

6. Public Land Order No. 5174, as amended, is further amended by deleting the following described lands which were added to that order by paragraph 1 of Public Land Order No. 5255 of September 12, 1972:

SEWARD MERIDIAN

PROTRACTED DESCRIPTIONS

T. 3 S., R. 22 W. (Fractional).
T. 4 S., R. 22 W. (Fractional) that portion lying north of Chinitna Bay.

7. Public Land Order No. 5174, as amended, is further amended to delete the following described lands from paragraph 1a and b, and add them to paragraph 3b of this order:

a. Tyonek.

SEWARD MERIDIAN

PROTRACTED DESCRIPTIONS

T. 10 N., R. 16 W. (W½).
T. 10 N., Rs. 17 thru 20 W.
T. 11 N., Rs. 17 thru 20 W.
T. 12 N., Rs. 16 thru 20 W.

b. Eklutna.

T. 22 N., R. 2 W.

8. Subject to valid existing rights, all the lands described in paragraphs 5 and 6 of this order are also deleted from Public Land Order No. 5184, and are hereby added to Public Land Order No. 5180 of March 9, 1972, as amended, and immediately become subject to all of the terms and conditions of that order, including withdrawal of the lands from selection by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339, and from location and entry under the mining laws (except for locations for metalliferous minerals), 30 U.S.C., Ch. 2, and from leasing under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. sections 181–287 (1970). So long as these lands remain so withdrawn, they shall be subject to administration by the Secretary of the Interior under the applicable laws and regulations as provided for by paragraph 2 of Public Land Order No. 5180.

9. The purpose of this order is to supplement Public Land Order No. 5174, as amended, by accommodating the right of the Village Corporations to select certain lands, and the Regional Corporation to identify certain lands for selection pursuant to section 17(d)(2)(E) of the Act, 43 U.S.C. section 1616(d)(2)(E), and by reserving additional lands for selection by the Village Corporations and the Regional Corporations pursuant to section 12 of the Act, to accommodate the right of selection by 3 villages not previously listed in the order, and to delete certain lands.

10. It has been determined that the promulgation of this public land order is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. section 4332(2)(C), is required.

Dated: February 7, 1974.

JOHN C. WHITAKER,
Acting Secretary of the Interior.

[FR Doc.74-3621 Filed 2-13-74;8:45 am]

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular No. 2359]

PART 1820—APPLICATION PROCEDURES

Subpart 1821—Execution and Filing of Forms

PLACE FOR FILING—ALASKA

On page 22967 of the FEDERAL REGISTER of August 28, 1973, there was published a notice and text of a proposed amendment to Subpart 1821 of Title 43, Code of Federal Regulations. The purpose of this amendment is to make the boundaries of the Bureau of Land Management land districts in Alaska correspond with the Bureau of Land Management's administrative districts. The administrative boundaries conform to natural topographic features which influence the travel and trade patterns of Alaskans. The Administrative boundary will facilitate filing of selection applications pursuant to the Alaska Native Claims Settlement Act. The change will therefore better serve the convenience of the Alaskan public as well as promote administrative efficiency.

Interested persons were given until September 25, 1973, in which to submit comments, suggestions, or objections to the proposed amendment. The only commentor suggested that the line be drawn along the south boundaries of the Doyon and Bering Straits Regional Corporations. This suggestion, if adopted, would

require residents of Alaska living reasonably close to Anchorage to travel to Fairbanks for lands and minerals services. The intent of this amendment is to correct a similar situation which now exists.

Two minor adjustments have been made in the proposed rulemaking of August 28, 1973. Rather than being identical to the existing administrative boundary, the lands and minerals boundary has been adjusted to include, in the Anchorage District, all of the village withdrawal for Unalakleet and Mentasta Lake. The existing administrative boundary divides those withdrawals and could create unnecessary confusion in the filing of selection applications for those two villages.

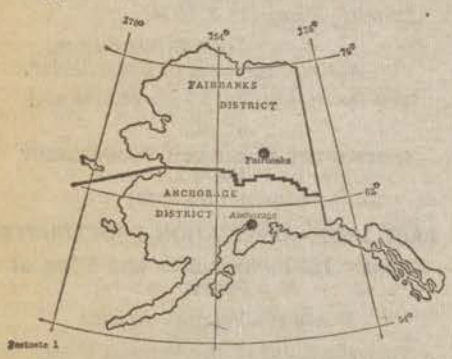
The proposed rulemaking as amended above is hereby adopted and shall become effective March 4, 1974.

Section 1821.2–1 is amended by inserting a revised map of the Alaska District boundaries in paragraph (d).

§ 1821.2–1 Office hours; place for filing.

* * * * * *

(d) * * *



JACK O. HORTON,
Assistant Secretary of the Interior.

FEBRUARY 8, 1974.

[FR Doc.74–3664 Filed 2–13–74;8:45 am]

Title 50—Wildlife and Fisheries

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

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Carlton Pond Waterfowl Production Area, Maine

The following special regulation is issued and is effective during the period February 15, 1974 through December 31, 1974.

§ 28.28 Special regulations, public access, use and recreation; for individual wildlife refuge areas.

MAINE

CARLTON POND WATERFOWL PRODUCTION AREA

Entry by foot is permitted for the purpose of sightseeing, nature observation, photography, and hiking during daylight hours.

The area, comprising approximately 1,068 acres, is delineated on maps available from the Refuge Manager, Moosehorn National Wildlife Refuge, Box X, Calais, Maine 04619, or from the Regional Director, Bureau of Sport Fisheries and Wildlife, John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1974.

Dated: February 5, 1974.

WILLARD M. SPAULDING, Jr.
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

[FR Doc.74–3612 Filed 2–13–74;8:45 am]

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Morton National Wildlife Refuge, N.Y.

The following special regulations are issued and are effective during the period February 15, 1974 through December 31, 1974.

§ 28.28 Special regulations, public access, use and recreation; for individual wildlife refuge areas.

NEW YORK

MORTON NATIONAL WILDLIFE REFUGE

Entry by foot is permitted daily, during daylight hours, for the purpose of photography, nature study, and hiking. The entire refuge beach has no lifeguards. Swimming will be at the visitor's own risk. Pets are not permitted on the refuge.

The refuge, comprising 187 acres, is delineated on a map available from the Refuge Manager, Rural Delivery Box 359, Noyac Road, Sag Harbor, Long Island, New York 11963, or from the Regional Director, Bureau of Sport Fisheries and Wildlife, John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1974.

Dated: February 5, 1974.

WILLARD M. SPAULDING, Jr.,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

[FR Doc.74–3611 Filed 2–13–74;8:45 am]

PART 28—PUBLIC ACCESS, USE AND RECREATION

Target Rock National Wildlife Refuge, N.Y.

The following special regulation is issued and is effective during the period February 15, 1974 through December 31, 1974.

§ 28.28 Special regulations, public access, use and recreation; for individual wildlife refuge areas.

NEW YORK

TARGET ROCK NATIONAL WILDLIFE REFUGE

Entry to the refuge is permitted by advanced reservation only, for the purpose of photography, nature study and hiking on roads, trails and the beach, from 9 a.m. to 5 p.m. daily. Entrance permits for specific dates are issued by mail upon request. Motor vehicles are limited to the designated parking area. Pets on a leash not exceeding 10 feet in length are permitted in the parking area only.

The refuge, comprising 80 acres, is delineated on a map available from the Refuge Manager, Target Rock Road, Lloyd Neck, Huntington, Long Island, New York 11743, or from the Regional Director, Bureau of Sport Fisheries and Wildlife, John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1974.

WILLARD M. SPAULDING,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

FEBRUARY 5, 1974.

[FR Doc.74–3610 Filed 2–13–74;8:45 am]

PART 33—SPORT FISHING

Tishomingo National Wildlife Refuge, Okla.

The following special regulation is issued and is effective February 14, 1974.

§ 33.5 Special regulation; sport fishing; for individual wildlife refuge areas.

OKLAHOMA

TISHOMINGO NATIONAL WILDLIFE REFUGE

Sport fishing on the Tishomingo National Wildlife Refuge, Tishomingo, Oklahoma, is permitted only on the area designated by signs as open to fishing. These open areas, comprising 10,000 acres, are delineated on maps available at refuge headquarters, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, P.O. Box 1306, Albuquerque, New Mexico 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following condition:

(1) The open seasons for sport fishing on the refuge extend from January 1 through December 31, 1974, inclusive, on the waters of Lake Texoma east of the north-south center line of Secs. 19, 30, and 31, T. 4 S., R. 7 E., and in Rock Creek, Polecat Creek, Bell Creek, Big Sandy Creek, Dick's Pond, and Goose Pen Pond; and from April 1 through September 30, 1974, inclusive, for waters of Lake

Texoma west of the north-south center line of secs. 19, 30, and 31, T. 4 S., R. 7 E.

(2) The open season for sport fishing on the Tishomingo Management Unit extends from March 1, 1974, through September 30, 1974, inclusive. Fishing with trotlines in Lost Lake, Bobcat Gulch, and McAdams Pond is prohibited during open season.

(3) Camping in association with fishing is limited to seven days unless otherwise posted and is permitted only at designated site.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1974.

Dated: February 5, 1974.

ERNEST S. JEMISON,
Refuge Manager, Tishomingo National Wildlife Refuge, Tishomingo, Oklahoma.

[FR Doc.74-3614 Filed 2-13-74;8:45 am]

PART 33—SPORT FISHING

Oyster Bay National Wildlife Refuge, N.Y.

The following special regulation is issued and is effective during the period March 1, 1974 through December 31, 1974.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NEW YORK

OYSTER BAY NATIONAL WILDLIFE REFUGE

Sport fishing from the shore of the Oyster Bay Mill Pond is permitted during daylight hours in accordance with applicable State regulations.

The refuge is delineated on a map available at the Target Rock National Wildlife Refuge headquarters, Target Rock Road, Lloyd Neck, Huntington, New York 11743, or the Regional Director, Bureau of Sport Fisheries and Wildlife, John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1974.

Dated: February 6, 1974.

RICHARD E. GRIFFITH,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[FR Doc.74-3609 Filed 2-13-74;8:45 am]

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

PART 216—MARINE MAMMALS

Incidental Taking in the Course of Tuna Purse-Seining Operations

Regulations entitled "Taking and related acts incidental to commercial fishing operations," § 216.24 of Part 216, Chapter II, Title 50 of the Code of Federal Regulations, were adopted by publication in the FEDERAL REGISTER (39 FR 2481) on Tuesday, January 22, 1974.

The regulations as published on January 22, 1974, contained four typographical errors. The purpose of the following amendments is to correct those errors.

The word "of" is deleted in the first line of § 216.24(b).

The reference to "§ 216.10(d)(1)" in § 216.24(d)(2) is changed to "§ 216.24(d)(1)".

The reference to "§ 216.10(a), (b), (c), (d), or (e)" in § 216.24(f) is changed to "§ 216.24(a), (b), (c), (d), or (e)".

The reference to "§ 216.10(b)" in § 216.24(f) is changed to "§ 216.24(b)".

Dated: February 11, 1974.

JACK W. GEHRINGER,
Acting Director, National Marine Fisheries Service.

[FR Doc.74-3670 Filed 2-13-74;8:45 am]

PART 240—REGULATED COMMERCIAL FISHERIES

Catch Quota

On January 25, 1974, final regulations were published in the FEDERAL REGISTER (39 FR 3272), implementing conservation measures adopted by the International Commission for the Northwest Atlantic Fisheries (ICNAF), which, among others, included a prohibition on possessing haddock caught in Subarea 4 or 5 in amounts exceeding 5,000 pounds or 10 percent by weight of all fish on board, whichever is greater, and a restriction on using fishing gear capable of catching demersal species in Division 4X of Subarea 4, during March through May 1974.

However, because of a reservation made by the Canadian Government concerning the prohibition in Subarea 4, regarding haddock fishing, implementation of these restrictions in Subarea 4 has been delayed for persons under the jurisdiction of the United States, until further notice.

Therefore, it is our intent to amend §§ 240.11 and 240.13 as follows:

1. Section 240.11(a) is amended by deleting the reference to Subarea 4 as follows:

§ 240.11 Catch Quota.

(a) It shall be unlawful for any person or fishing vessel under the jurisdiction of the United States to possess on board haddock caught in Subarea 5, in amounts exceeding 5,000 pounds or 10 percent by weight of all fish on board caught in Subarea 5, whichever is greater.

* * * * *

§ 240.13 [Amended]

2. Paragraph (c)(1) of § 240.13 concerning the area to use fishing gear to catch demersal species is deleted in its entirety.

This amendment is in accord with the International Convention for the Northwest Atlantic Fisheries, and is effective on February 14, 1974.

Issued at Washington, D.C., and dated February 11, 1974.

JACK W. GEHRINGER,
Acting Director, National Marine Fisheries Service.

[FR Doc.74-3608 Filed 2-13-74;8:45 am]

Proposed Rules

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

DEPARTMENT OF JUSTICE

[28 CFR Part 20]

[Order No. 561–74]

CRIMINAL JUSTICE INFORMATION SYSTEMS

Notice of Proposed Rulemaking

The Department of Justice proposes to issue regulations governing the dissemination of criminal record information and criminal history information, as set forth below. The purpose of these regulations is to afford greater protection of the privacy of individuals who may be included in the records of the Federal Bureau of Investigation, criminal justice agencies receiving funds directly or indirectly from the Law Enforcement Assistance Administration, and interstate, state or local criminal justice agencies exchanging records with the FBI or these federally-funded systems. At the same time, it is the purpose of these regulations to preserve legitimate law enforcement need for access to record and criminal history information.

The initial hearings on these proposed regulations will be held on Friday, March 1, 1974 and Monday, March 4, 1974 at 10:00 a.m. in Room 532 of the Federal Trade Commission Building, 7th and Pennsylvania Avenue, NW., Washington, D.C. The date, time and place of any additional hearings will be published hereafter in the FEDERAL REGISTER. Interested persons who wish to testify should notify Thomas Madden, General Counsel, Law Enforcement Assistance Administration, 633 Indiana Avenue, NW., Washington, D.C. 20530 no later than February 22, 1974.

Written views on the proposed regulations may be submitted to Thomas Madden, General Counsel, Law Enforcement Assistance Administration, 633 Indiana Avenue, NW., Washington, D.C. 20530, no later than March 29, 1974.

Pursuant to the authority vested in the Attorney General by (28 U.S.C. 509, 510 and 5 U.S.C. 301), and the authority vested in the Law Enforcement Assistance Administration by sections 501 and 524 of the Omnibus Crime Control and Safe Streets Act, (42 U.S.C. 3701 et seq.), as amended by Pub. L. 93–83, 87 Stat. 197, it is proposed that a new Part 20 be added immediately after Part 19 of Chapter I of Title 28, Code of Federal Regulations, to read as set forth below:

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

Sec.

Subpart A—General Provisions

20.1 Purpose.
20.2 Definitions.

Subpart B—State and Local Systems

20.20 Applicability.
20.21 Implementation of Criminal Offender Record Information Systems to provide complete, accurate, and current information.
20.22 Certification of compliance.
20.23 Documentation; approval of LEAA.
20.24 Penalties.

Subpart C—Federal System and Interstate Exchange of Criminal Justice Information

20.30 Applicability.
20.31 Responsibilities.
20.32 Includable offenses.
20.33 Dissemination of criminal offender record information.
20.34 Individual's right to access criminal offender record information for purposes of accuracy and completeness.
20.35 National Crime Information Center Advisory Policy Board.
20.36 Participation in the Computerized Criminal History Program.
20.37 Responsibility for maintenance of date in the Computerized Criminal History File, National Crime Information Center (NCIC).
20.38 State participation.

Subpart A—General Provisions

§ 20.1 Purpose.

It is the purpose of these regulations to assure that criminal justice information systems are operated in a manner to ensure that adequate provisions are made for: The completeness, integrity, accuracy, system security, and the protection of individual privacy.

§ 20.2 Definitions.

As used in these regulations:

(a) "Criminal justice information system" means a system, including the equipment, facilities, procedures, agreements and organizations thereof, for the collection, processing, preservation or dissemination of criminal justice information.

(b) "Criminal justice information" means criminal offender record information and criminal intelligence information.

(c) "Criminal offender record information" means information contained in a criminal justice information system, compiled by a criminal justice agency for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, rehabilitation, pardon and release.

(d) "Criminal justice agency" means a public agency or component thereof which performs as its principal function a criminal justice activity.

(e) "Criminal justice" means any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities.

(f) To "seal" records means to retain those files, records, tapes, photographs or other recording of information but to limit their dissemination to the following purposes:

(1) Where the information will be used by criminal justice agencies solely for criminal justice purposes.

(2) Where the information is to be used for statistical compilations or research studies as specifically provided for in § 20.22(e).

(3) Where the individual to whom the information relates seeks to exercise rights of access and review under applicable regulations.

(4) Where necessary to permit the adjudication under these regulations of any claim by the individual to whom the information relates that it is misleading, inaccurate or incomplete.

(g) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(h) "Attorney General" means the Attorney General of the United States.

(i) "Act" means the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3701 et seq., as amended.

Subpart B—State and Local Systems

§ 20.20 Applicability.

(a) The regulations in this subpart apply to all components of any criminal justice information system if any part or component of such system is funded in whole or in part either directly or indirectly with funds made available by the Law Enforcement Assistance Administration, pursuant to Title I of the Act; or state and local systems which exchange information with any information system operated by the Department of Justice to the extent of its participation in any such system. These regulations apply to both manual and automated systems.

(b) The provisions of these regulations do not apply to lists or systems for identifying or apprehending fugitives or wanted persons.

§ 20.21 Implementation of Criminal Offender Record Information System.

(a) A detailed and specific plan shall be prepared by each state to which these regulations are applicable to establish a method of developing and maintaining criminal offender record information for serious offenders and for keeping all such

information complete, accurate and current. Such a plan shall be submitted for approval to LEAA by July 1, 1974. The plan must provide for the procedures or systems to be implemented and totally operational by July 1, 1976. This section shall not be construed in any way as a substitute for affirmative action required by paragraph (b) of this section.

(1) For a criminal offender record to be considered complete for the purposes of this section, a record must contain information on all transactions, that is: The fact, date and charge of each arrest which occurs after the date upon which the system becomes operational, along with the fact, date and result of any pretrial proceedings, any trial proceeding including any sentence or penalty, any direct or collateral review of that trial or proceedings, the period or place of any confinement, any release proceedings, any act of pardon or clemency and any formal termination of the criminal justice process.

(2) For a criminal offender record to be current, all transactions must appear on the state record within 30 days of the date of the transaction.

(3) The plan must clearly indicate the agencies or persons responsible for the implementation of the system and the agency or person responsible for these regulations.

(4) For the purpose of this part a serious offender is one who has been arrested for an offense which qualifies for inclusion in an interstate system according to § 20.32.

(b) In the interim, each state shall take the following affirmative actions:

(1) Institute procedures, and provide to LEAA within 30 working days from the promulgation of these regulations, certification that procedures have been placed in effect to provide that all criminal offender record information, collected, stored or disseminated shall contain to the maximum extent feasible, dispositions as well as arrest data where arrest data are included therein. The certification shall include a description of any legislation or executive order, or attempts to obtain such authority, that have been taken to assure participation by all criminal justice agencies within the state. The documentation should also include a description of the steps which have been taken to overcome any fiscal and administrative barriers to the development of complete, accurate, and current criminal offender record information.

(2) Institute procedures, and provide to LEAA within 30 working days of the promulgation of these regulations, certification that procedures have been placed in effect to provide that the collection, storage and dissemination of criminal offender record information shall take place under procedures reasonably designed to insure that all information is kept complete, accurate, and current therein. This certification shall include a description of any legislation or executive order or attempts to obtain such authority that have been taken to assure the timely participation by all criminal justice agencies within the state. The certification should also include a description of the steps which have been taken to overcome the fiscal and administrative barriers to the development of current criminal offender record information.

(3) The plan must clearly indicate the procedures which will be implemented to insure the accuracy of the data. Complete description of provisions for audit and audit trials must also be included.

§ 20.22 Certification of compliance.

Each state to which these regulations are applicable shall within 30 working days after the promulgation of these regulations provide the following:

(a) Dissemination of criminal offender record information

(1) Certification that procedures have been placed in effect to limit the dissemination of criminal offender record information, whether directly or through any intermediary, only to (i) criminal justice agencies, for criminal justice purposes or other purposes expressly and specifically required by state statute, federal statute or federal executive order;

(ii) such other individuals and agencies as are expressly and specifically required by state statute, federal statute or federal executive order, to have access to criminal offender information.

(2) Certification that dissemination of criminal offender record information to individuals or agencies other than criminal justice agencies is limited to serious offenders.

(3) A listing setting forth all noncriminal justice dissemination being allowed within the state pursuant to paragraph (a)(1)(i) of this section, showing the specific identity of the non-criminal justice individuals or agencies, the specific purpose or use, and the statutory citation requiring dissemination.

(b) Sealing of criminal offender record information when arrest does not result in a conviction.

Certification that procedures have been instituted to provide for the sealing of any arrest record maintained in any criminal offender record information system when the arrest does not result in a termination adverse to the individual, or no disposition is provided within five years of arrest; or upon formal notice from the agency that made the arrest. This provision shall not be construed to affect the retention of the identification record in the state or federal identification file; except that any such identification record shall be sealed when the corollary arrest record is sealed pursuant to the foregoing provisions. Any such sealed identification record shall only be opened pursuant to the submission of a subsequent identification record for an arrest, or other purpose specifically authorized by state or federal statute or federal executive order. Any identification record so opened shall be re-sealed if the arrest results in the sealing as provided for in this subsection.

(c) Physical security of criminal justice information.

(1) Certification that the security of information in a criminal justice information system subject to these regulations shall be assured by dedication to criminal justice purposes or by management control by a criminal justice agency; and that procedures have been instituted to make each and every criminal justice agency in the state, and any other individual or agency authorized access, responsible for: (i) The physical security of criminal offender record information or criminal intelligence information under its control or in its custody; and (ii) The protection of such information from unauthorized access, disclosure, or dissemination.

(2) Certification that procedures have been instituted to reasonably protect any central repository from theft, sabotage, fire, flood, wind or other natural or man-made disasters.

(d) Individual's right to access criminal history information for purposes of accuracy and completeness.

Certification that procedures have been instituted to provide that any individual shall, upon satisfactory verification of his identity by fingerprint comparison, be entitled to review any criminal offender record information maintained about him and to obtain a copy of it for the purpose of challenge or correction. Such procedures must contain provisions for administrative review and correction for any claim by the individual to whom the information relates that it is misleading, inaccurate or incomplete. For the purposes of this subsection, a record shall be considered incomplete if it does not contain disposition information when a disposition has occurred.

(e) Use of criminal offender record information for statistical compilations or research studies.

(1) Certification that procedures have been placed in effect to insure that criminal offender record information that is identifiable to an individual is not disseminated for any statistical compilation or research study except as authorized by state or federal statute or federal executive order; and then only if disseminated pursuant to an agreement that prohibits any such information from being revealed to any person or agency, or used in any way, for any purpose other than that for which it was obtained; and that such information may not be used for any purpose in any action, suit, or other judicial or administrative proceedings.

(2) Certification that procedures have been placed in effect to insure adequate protection for security and privacy of criminal offender record information for research purposes. The procedures, among others, must insure that:

(i) Authorization to use criminal offender record information is only given when the benefits reasonably anticipated from the project outweigh the potential harm to security and privacy; and

(ii) research will not be used to the detriment of persons to whom the information relates nor for any purpose other than those specified in the research project.

§ 20.23 Documentation; approval by LEAA.

In addition to the certification required by §§ 20.21(b) and 20.22, each state shall provide full documentation of such procedures as have been instituted to meet the requirements of these regulations.

The certification and documentation described shall be presented to the Law Enforcement Assistance Administration within 30 working days of the promulgation of these regulations. The LEAA shall, within 30 working days after receipt, rule on and approve or disapprove of the adequacy of the provisions. If disapproved the state must resubmit the documentation within 15 working days. If LEAA does not act within the 30-day period such submission shall be considered approved until a specific disapproval is received from LEAA.

In determining the adequacy of the state's procedures, LEAA will consider the following documents: National Advisory Commission on Criminal Justice Standards and Goals, Report on the Criminal Justice System; Project SEARCH: Security and Privacy Considerations in Criminal History Information Systems, Technical Report #2; Project SEARCH: A Model State Act for Criminal Offender Record Information, Technical Memorandum #3; and Project SEARCH: Model Administrative Regulations for Criminal Offender Record Information, Technical Memorandum #4.

§ 20.24 Penalties.

Violation of procedures approved by the Law Enforcement Assistance Administration pursuant to these regulations shall be punishable in accordance with the provisions of the Act.

Subpart C—Federal System and Interstate Exchange of Criminal Justice Information

§ 20.30 Applicability.

The provisions of this subpart of the regulations apply to any Department of Justice criminal justice information system that serves criminal justice agencies in two or more states and to state and local criminal justice agencies to the extent that they utilize the services of Department of Justice criminal justice information systems. These regulations are applicable to both manual and automated systems.

§ 20.31 Responsibilities.

The Federal Bureau of Investigation (FBI) shall have the sole responsibility for the collection, processing, preservation and dissemination of criminal offender record information relating to Federal offenders. The FBI shall operate the following criminal justice information systems to facilitate the interstate exchange of criminal justice information:

(a) *National Crime Information Center (NCIC).* The FBI shall operate the National Crime Information Center (NCIC), the computerized information system and associated telecommunications lines and switching facilities linking local, state and federal criminal justice agencies for the purpose of exchanging information on:

(1) Wanted persons and stolen property and,

(2) The Computerized Criminal History (CCH) File, a cooperative federal-state program for the interstate exchange of criminal offender record information. CCH shall provide a central repository and index of criminal offender record information for the purpose of facilitating the interstate exchange of such information among criminal justice agencies.

(b) *Fingerprint Identification Services.* The FBI shall operate the Identification Division to provide the following services:

(1) Perform criminal identification functions on all federal offenders.

(2) Perform criminal identification functions for state and local criminal justice agencies to the extent that such services are not made available, and only until such time as they are made available, by the state criminal offender record information system that provides centralized identification and criminal record information services within the state.

(3) Perform criminal identification functions in support of criminal offender record information systems at the state and local levels. This includes the maintenance of master fingerprint files on all offenders included in NCIC/CCH for the purposes of determining first offender status and to identify those offenders known in one state but unknown in another where they have become criminally active.

(4) Perform criminal offender record information dissemination functions for state and local criminal justice agencies to the extent that such services are not made available, and only until such time as they are made available, by the state criminal offender record information system that provides centralized identification and criminal offender record information services within the state.

(5) Perform identification and criminal offender record information dissemination functions for noncriminal justice agencies and authorities where authorized by federal statute, Presidential Executive Order or Attorney General regulations.

§ 20.32 Includable Offenses.

Offenses includable in federal criminal offender record information systems shall be restricted to serious and/or significant violations. Excluded from such systems are juvenile offenders as defined by law, unless the juvenile is tried in court as an adult; charges of drunkenness and/or vagrancy; certain public order offense, i.e., disturbing the peace, curfew violations, loitering, false fire alarm, traffic violations (except data will be included on arrests for manslaughter, driving under the influence of drugs or liquor, and hit and run); and nonspecific charges of suspicion or investigation.

§ 20.33 Dissemination of criminal offender record information.

Criminal offender record information contained in any Department of Justice criminal justice information system will be made available:

(a) To criminal justice agencies for criminal justice purposes; and

(b) To federal agencies authorized under Executive Order or federal statute.

Dissemination of such data for use in connection with licensing or local/state employment or for other uses is prohibited unless such dissemination is pursuant to state or federal statutes.

§ 20.34 Individual's right to access criminal offender record information for purposes of accuracy or completeness.

Any individual, upon satisfactory verification of his identity by fingerprint comparison, may review criminal offender record information maintained about him in a federal criminal offender system in accordance with the procedures established in Subpart C of Part 16 of Chapter I of Title 28, Code of Federal Regulations.

§ 20.35 National Crime Information Center Advisory Policy Board.

There is established an NCIC Advisory Policy Board whose purpose is to recommend to the Director, Federal Bureau of Investigation, general policies with respect to the philosophy, concept, and operational principles, particularly the NCIC's relationships with local and state systems relating to the collection, processing, storage, dissemination and use of criminal offender record information contained in the Computerized Criminal History File.

(a) The selection and tenure of the Board shall be at the discretion of the Director of the Federal Bureau of Investigation after appropriate consultation with criminal justice agencies who are participants in the National Crime Information Center system. The Board shall be representative of criminal justice agencies at state and local levels and include representation of the police, courts, and corrections segments of the criminal justice community.

(b) The Board shall review and consider rules, regulations and procedures for the operation of the National Crime Information Center.

(c) The Board shall consider the National Crime Information Center operational needs of law enforcement agencies in light of public policies, and local, state and federal statutes and these regulations.

(d) The Board shall review and consider security and privacy aspects of the National Crime Information Center system and shall have a standing Security and Confidentiality Committee to provide input and recommendations to the

Board concerning security and privacy of the National Crime Information Center system on a continuing basis.

(e) The Board shall recommend standards for participation by law enforcement agencies in the National Crime Information Center system.

(f) The Board shall report directly to the Director of the Federal Bureau of Investigation or his designated appointee.

(g) The Board shall operate within the purview of the Federal Advisory Committee Act, 86 Stat. 770 (1972).

(h) The Director, FBI, shall not adopt recommendations of the Board which are inconsistent with these regulations.

§ 20.36 Participation in the Computerized Criminal History Program.

(a) Entry of criminal offender record information into the Computerized Criminal History File will be accepted only from an authorized state or federal criminal justice control terminal. Terminal devices in other authorized criminal justice agencies will be limited to inquiries.

(b) Each criminal justice agency having direct access to the Computerized Criminal History File shall execute a signed agreement with the Director, FBI, to abide by all present rules, policies and procedures of the NCIC, as well as any rules, policies, and procedures hereinafter approved by the NCIC Advisory Policy Board and adopted by the NCIC.

§ 20.37 Responsibility for maintenance of data in the Computerized Criminal History File, NCIC.

It shall be the responsibility of each criminal justice agency contributing data to the Computerized Criminal History File to assure that information on individuals in the Computerized Criminal History File is kept complete, accurate and current in accordance with § 20.21 so that all such records shall contain to the maximum extent feasible dispositions, as well as arrest data.

§ 20.38 State participation.

No state which has not complied with Subpart B of this part may participate in or receive services from a Federal criminal offender information system.

Dated: February 8, 1974.

WILLIAM B. SAXBE,
Attorney General.

Dated: February 8, 1974.

DONALD E. SANTARELLI,
Administrator, Law Enforcement Assistance Administation.

[FR Doc.74-3602 Filed 2-13-74;8:45 am]

DEPARTMENT OF THE INTERIOR

Office of Oil and Gas

[32A CFR Ch. X]

[Oil Import Reg. 1 (Rev. 5)]

IMPORTS OF CRUDE, FINISHED, AND UNFINISHED OILS

Proposed Allocations

Correction

In FR Doc. 74-3380 appearing at page 5193 in the issue of Monday, February 11, 1974, immediately before the first line in the third column on page 5195, insert the following:

"(e) An eligible applicant may count".

[32A CFR Ch. X]

[Oil Import Reg. 1 (Rev. 5)]

IMPORTS OF CRUDE, FINISHED, AND UNFINISHED OILS

Proposed Allocations; Correction

FEBRUARY 12, 1974.

Section 35 was inadvertently omitted from the proposed rulemaking to Oil Import Regulation 1 (Revision 5) that was published in the FEDERAL REGISTER on February 11, 1974 (39 FR 5195), and should be published as a correction to the proposed rulemaking.

DELL V. PERRY,
Assistant Director, Oil Imports.

Section 35 is amended in its entirety to read as follows:

Section 35. Imports of Canadian natural gas products—Districts I–IV.

(a) For each twelve month allocation period beginning May 1, of each year the Director shall in accordance with paragraph (c) of this section make allocations for the importation into Districts I–IV of natural gas products derived from Canadian natural gas.

(b) To be eligible for an allocation of imports under paragraph (c) of this section, a person must have imported Canadian natural gas products into Districts I–IV during the calendar year 1973.

(c) For the allocation period May 1, 1974, through April 30, 1975, the Director shall make allocations not subject to license fees to eligible applicants in accordance with the following formula:

$$\frac{\text{Eligible applicant's imports of Canadian natural gas products imported in 1973}}{\text{Total of Canadian natural gas products imported by all eligible applicants in 1973}} \times \text{------B/D}$$

(d) Applications for an allocation under this section must be filed in accordance with section 5.

[FR Doc.74-3738 Filed 2-13-74;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 74-SO-14]

SLICK MAGNETOS

Proposed Airworthiness Directives

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Slick Models 447, 662, 664, 667, 668, 676, and 680 magnetos. There have been failures of the impulse coupling pawls on Slick magnetos which have resulted in fracture of the magneto frame and separation of the magneto from the engine. Since this condition is likely to exist or develop in other magnetos of the same design, the proposed airworthiness directive would require that the magneto pawl rivets be inspected for looseness at the next annual inspection or within the next 100 hours time in service whichever occurs first and if found loose, replace with an improved coupling listed in Slick magneto service letter 1–73. The proposed airworthiness directive would further require that impulse couplings, not replaced with improved couplings be reinspected at each 100 hours or annual inspection whichever comes first, until replaced.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket, P.O. Box 20636, Atlanta, Georgia 30320. All communications received on or before March 18, 1974, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments in the rules docket for examination by interested persons.

This amendment is proposed under the authority of secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423) and of Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

SLICK ELECTRO, INC. Applies to Slick magneto Models 447, 662, 664, 667, 668, 676, and 680 manufactured prior to August 1973 with Serial Numbers 3080608 and below.

Compliance required within the next 100 hours time in service or at the next annual inspection whichever occurs first after the effective date of this AD unless already accomplished, and thereafter at intervals not to exceed 100 hours time in service from the last inspection.

To prevent failure of the magneto impulse coupling due to loose pawls, accomplish the following:

(1) Remove the impulse coupling hub from the shaft and inspect the pawl rivets for looseness. Use a pair of pliers on the head of the rivet; use caution with the pliers so as not to damage the head of the rivet. If the rivet turns in the plate, the hub assembly should be replaced. (See paragraph (3) for correct replacement assemblies.)

(2) For proper spring tension in reassembly, refer to instructions on page 25 of Slick green service manual (Form No. 1012), or page 27 in their yellow service manual (Form No. 1020).

NOTE: Reference Slick Service Bulletin No. 1-71.

(3) The repetitive inspections required in paragraphs (1) and (2) above are no longer required when the impulse coupling is replaced with the appropriate new impulse coupling assemblies listed below:

Model	Impulse Coupling Complete
662 and 680	M-2369
664	M-2370
667	M-2371
668	M-2372
676	M-2373
447	M-2374

NOTE: Reference Slick Service Letter I-73.

Issued in East Point, Georgia, on February 4, 1974.

PHILIP M. SWATEK,
Director, Southern Region.

[FR Doc.74-3597 Filed 2-13-74;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 74-SW-4]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to alter controlled airspace in the Wharton, Tex., terminal area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before March 18, 1974, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Texas. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In § 71.181 (39 FR 440), the Wharton, Tex., transition area is amended to read:

WHARTON, TEX.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Wharton Municipal Airport (latitude 29°15'15" N, longitude 96°09'15" W); within 2.5 miles each side of the Eagle Lake, Tex., VORTAC 162° radial extending from the 5-mile radius to 23.5 miles southeast of the Eagle Lake VORTAC and within 3.5 miles each side of the 153° bearing of the Wharton RBN (latitude 29°15'17" N, longitude 96°09'11" W) extending from the 5-mile radius to 11.5 miles southeast of the RBN and within 3.5 miles each side of the 324° bearing from the Wharton RBN extending from the 5-mile radius to 11.5 miles northwest of the RBN excluding the portion within the El Campo, Tex., transition area.

Amendments to controlled airspace will provide the necessary airspace for aircraft executing the proposed NDB RWY 32 and NDB RWY 14 original approach proceedings.

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

Issued in Fort Worth, TX., on February 4, 1974.

HENRY L. NEWMAN,
Director, Southwest Region.

[FR Doc.74-3596 Filed 2-13-74;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 74-SW-5]

CONTROL ZONE

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to alter the Oklahoma City, Okla. (Wiley Post Airport), control zone.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before March 18, 1974, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Texas. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In § 71.171 (39 FR 354), the Oklahoma City, Okla. (Wiley Post Airport), control zone is amended to read:

OKLAHOMA CITY, OKLA. (WILEY POST AIRPORT)

Within a 5-mile radius of Wiley Post Airport (latitude 35°32'05" N., longitude 97°38'40" W.) within 2 miles each side of the Wiley Post ILS localizer north course extending from the 5-mile radius zone to the OM (latitude 35°37'33" N., longitude 97°38'50" W.); within 2 miles each side of the Oklahoma City VORTAC 050°T (040°M) radial extending from the 5-mile radius zone to the VORTAC; and excluding the portion S of a line extending through latitude 35°26'33" N., longitude 97°46'21" W., and latitude 35°28'00" N., longitude 97°36'05" W.

Alteration of the Wiley Post Airport control zone is necessary to provide controlled airspace for aircraft executing instrument approaches to Wiley Post Airport utilizing the instrument landing system (ILS) presently being installed.

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

Issued in Fort Worth, TX., on February 5, 1974.

HENRY L. NEWMAN,
Director, Southwest Region.

[FR Doc.74-3595 Filed 2-13-74;8:45 am]

CIVIL SERVICE COMMISSION

[5 CFR Part 890]

FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Proposed Extension of Time for Proposal for Changes in Subscription Charges

Notice is hereby given that under authority of section 8913 of title 5, United States Code, it is proposed to amend Part 890 of Title 5 of the Code of Federal Regulations by revising § 890.203(b) to extend for one month the deadline date by which carriers must submit to the Commission proposals for changes in subscription charges for the ensuing contract period. Carriers and other interested persons may submit comments, objections, or suggestions to the Bureau of Retirement. Insurance and Occupational Health, U.S. Civil Service Commission, Washington, D.C. 20415, on or before March 18, 1974. The proposed amendment is set out below.

§ 890.203 Application for approval of, and proposal of amendments to health benefits plans.

* * * * *

(b) Any proposal for change in a health benefits plan should be in writing, specifically describe the change proposed and be signed by an authorized official of the carrier. The Commission will review a proposal for change and notify the carrier whether it accepts the change and may make a counter proposal or at any time propose changes on its own motion. The Commission will not consider until after the expiration of the then current contract period any proposal for a change which is received less than 8 months before the expiration of the then current contract period, except that changes in subscription charges for the ensuing contract period may be proposed not less than 5 months before the expiration of the then current contract period.

(5 U.S.C. 8913)

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

[FR Doc.74-3693 Filed 2-13-74;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

FM BROADCAST STATIONS IN WEATHERFORD, OKLA.

Proposed Table of Assignments

In the matter of amendment of § 73.202(b), *Table of assignments*, FM Broadcast Stations. (Weatherford, Oklahoma), Docket No. 19930, RM-2104.

1. On December 5, 1972, KWEY, Inc. (KWEY), licensee of daytime-only standard broadcast Station KWEY at Weatherford, Oklahoma, filed a petition with this Commission requesting that the FM Table of Assignments be amended by assigning Class C Channel 247 to Weatherford. This amendment may be made without making other changes in the Table and would meet the spacing requirements of the Commission's rules. No opposing or supporting statements were filed.

2. Weatherford, Oklahoma (population 7,959)[1] is located in Custer County (population 22,665). There is presently no FM assignment at Weatherford. Petitioner's daytime-only AM station, KWEY, is the only aural service licensed in the community.

3. Weatherford is somewhat isolated from metropolitan areas. It is located approximately 75 miles west of Oklahoma City. The community appears to be the fastest growing city in western Oklahoma—1950 population 2,700, 1960 population 4,499 and 1970 population 7,959 (76.9 percent increase). Petitioner states that for some time it has been serving Weatherford and the surrounding area with its daytime-only, directional antenna, AM station. It now is of the view that the services it provides (entertainment, information and news) on its standard station should be available to the entire area both in daytime and nighttime hours. Five letters from prominent Oklahoma citizens were attached to the petition. Each expressed a citizen's interest in a fulltime local radio service for Weatherford and the surrounding area. KWEY states that its AM station now provides some local programming to each of the following communities:

City	Distance from Weatherford	Population
Clinton	14 miles W	8,513
Cordell	22 miles SW	3,261
Carnegie	28 miles S	1,723
Hinton	20 miles SE	1,009
Hydro	7 miles E	805
Watonga	25 miles NE	3,696
Thomas	17 miles N	1,336
Arapaho	14 miles NW	531
Burns Flat	28 miles SW	988

Other than Clinton, where a Class C FM station is licensed, we are told that none of the above-cited communities has its own local aural broadcast service.

4. Petitioner advises us that it proposed a Class C FM station using 62 kilowatts and an antenna height above average terrain of, at minimum, 350 feet. It alleges that such a Weatherford station would provide an FM service to 76,236 persons residing in an area of 2,827 square miles. It further maintains that such a Class C operation would not only provide a dependable day and night service to Weatherford and the surrounding area but that it would provide a first FM signal to 11,530 persons and a second FM signal to 62,432 persons.[2] It is pointed out that the first and second FM service gain would not be possible with a Class A FM assignment at Weatherford since for example, the white area in question is approximately 23 to 31 miles distant.

5. The preclusion study filed in this proceeding indicates that the proposed assignment of Channel 247 to Weatherford would foreclose future assignments on Channels 244A, 247, 248 and 249A in an area around Weatherford which includes eight communities where FM channels could otherwise be assigned. The first four communities affected—Clinton (population 8,513), Frederick (population 6,132), Elk City (population 7,323) and Hobart (population 4,638), Oklahoma—each have an AM station and an FM channel which is unoccupied, except for Clinton which also has an operating FM station. These communities do not appear to warrant an additional assignment. The second four communities which would be affected by the assignment of Channel 247 to Weatherford are Fairview (population 2,894) and Sayre (population 2,712), Oklahoma, and Burkburnett (population 9,230) and Electra (population 3,895), Texas. These latter four communities have no local aural broadcast facilities of any kind and may have a need for a local aural service in the future. Accordingly, petitioner's comments should show whether there are other FM channels available for assignment to these communities.

6. We believe that the KWEY petition merits exploration in a rule making proceeding. In light, however, of the absence of any material concerning the economics, sociology and governmental activity at Weatherford, and between Weatherford and the area proposed to be served, as well as the preclusionary effect on the four latter communities named in the previous paragraph, we explicitly state that the issuance of the Notice of Proposed Rule Making is in no way a finding that it is in the public interest to assign Class C FM Channel 247 to Weatherford, Oklahoma.

7. Accordingly, we propose for consideration the following revision in our FM table of assignments (§ 73.202(b) of our rules) with respect to the city listed below:

City	Channel No.	
	Present	Proposed
Weatherford, Okla		247

8. Authority for the action proposed herein is contained in sections 4(i), 5(d)(1), 303, and 307(b) of the Communications Act of 1934, as amended, and § 0.-281(b)(6) of the Commission's rules and regulations.

9. *Showings required.* Comments are invited on the proposal discussed and set forth above. The proponent of the proposed assignment is expected to file comments which indicate, to some extent, the economic, sociological and governmental activity at Weatherford, Oklahoma and in the area proposed to be served. It also is expected to show a relationship between Weatherford and the area proposed to be served. It should also submit information as required by footnote 2, supra, concerning first and second FM service that a Class C station at Weatherford would provide. With regard to Fairview and Sayre, Oklahoma, and Burkburnett and Electra, Texas, a showing as to the availability of FM assignments for them, in the event of the adoption of the instant proposal, should be made. The proponent should also restate its present intention to apply for the channel if it is assigned and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

10. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered, if advanced in reply comments.

(b) With respect to petitions for rule-making which conflict with the proposal in this notice, they will be considered as comments in the proceeding, and public notice to this effect will be given, as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

11. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules and regulations, interested parties may file comments on or before March 15, 1974, and reply comments on or before March 25, 1974. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings.

12. In accordance with the provisions of § 1.419 of the Commission's rules and regulations, an original and fourteen copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

13. All filings made in this proceeding will be available for examination by interested parties during regular business

[1] All population figures cited are from the 1970 U.S. Census unless otherwise specified.

[2] Although it appears that a Class C station would bring service to white and gray areas, petitioner should resubmit information on this matter since the figures submitted appear to be in error.

hours in the Commission's Public Reference Room at its headquarters in Washington, D.C. (1919 M Street NW.).

Adopted: January 31, 1974.

Released: February 5, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.74-3660 Filed 2-13-74;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1001, 1002, 1004, 1015, 1033, 1036, 1040, 1049]

[Docket Nos. AO-14-A53, etc.]

MILK IN THE BOSTON REGIONAL AND CERTAIN OTHER MARKETING AREAS

Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

In the matter of:

7 CFR Part	Marketing Area	Docket No.
1001	Boston Regional	AO-14-A53.
1002	New York-New Jersey	AO-71-A68.
1004	Middle Atlantic	AO-160-A51.
1015	Connecticut	AO-305-A31.
1033	Ohio Valley	AO-166-A44.
1036	Eastern Ohio-Western Pennsylvania	AO-179-A39.
1040	Southern Michigan	AO-225-A28.
1049	Indiana	AO-319-A22.

Notice is hereby given of a public hearing to be held at the U.S. Department of Agriculture (South Building, Jefferson Auditorium) 14th and Independence Avenue, Washington, D.C., beginning at 9:30 a.m., local time, on February 20, 1974, with respect to proposed amendments to the tentative marketing agreements and to the orders, regulating the handling of milk in the aforesaid specified marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions in each of the aforesaid specified marketing areas which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to all proposals.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

PROPOSED BY NATIONAL FARMERS ORGANIZATION

PROPOSAL NO. 1—REGARDING 7 CFR PARTS 1001, 1002, 1004

In §§ 1001.61(b), 1002.50a(c), and 1004.50(b), delete the language preceding the table therein and replace with the following:

"Subject to the adjustment set forth below for the applicable month, the Class II price shall be the basic formula price for the month;"

PROPOSAL NO. 2—REGARDING 7 CFR PARTS 1033, 1036, 1040

In §§ 1033.51(c), 1036.50(c), and 1040.50(c), delete the language presently therein and replace with the following:

"(c) The Class III price shall be the basic formula price for the month."

PROPOSAL NO. 3—REGARDING 7 CFR PART 1049

Amend § 1049.50(b) by deleting the language presently therein and replacing with the following:

"(b) The Class II price shall be the basic formula price computed pursuant to § 1049.51."

PROPOSED BY PENNMARVA DAIRYMEN'S COOPERATIVE FEDERATION, INC.

PROPOSAL NO. 4—REGARDING 7 CFR PARTS 1001, 1002, 1004, 1015

Delete all of the words of §§ 1001.61(b), 1002.50a(c), 1004.50(b), and 1015.61(b), except the following:

"The Class II price shall be the basic formula price for the month."

PROPOSED BY EASTERN MILK PRODUCERS COOPERATIVE ASSOCIATION, INC.

PROPOSAL NO. 5—REGARDING 7 CFR PARTS 1001, 1002, 1004, 1015, 1036

Eliminate the alternative butter-powder formula provisions of §§ 1001.61(b), 1002.50a(c), 1004.50(b), 1015.61(b), and 1036.50(c) in all months except April, May, and June.

PROPOSED BY NEW YORK-NEW ENGLAND DAIRY COOPERATIVE COORDINATING COMMITTEE

PROPOSAL NO. 6—REGARDING 7 CFR PARTS 1001, 1002, 1004, 1015, 1036

Change the method of determining the Class II price (Class III price under Order 36) to a simple average of the Minnesota-Wisconsin and butter-powder values as now calculated under Orders 1, 2, 4, 15, and 36 (instead of the lower of the two prices or values) except that for milk going into butter or nonfat dry milk the butter-powder value shall be used if it is lower than the Minnesota-Wisconsin price.

PROPOSED BY MICHIGAN MILK PRODUCERS ASSOCIATION, MCDONALD COOPERATIVE DAIRY COMPANY, CONSTANTINE COOPERATIVE CREAMERY COMPANY, MICHIGAN PRODUCERS DAIRY COMPANY, AND INDEPENDENT COOPERATIVE MILK PRODUCERS ASSOCIATION

PROPOSAL NO. 7—REGARDING 7 CFR PART 1040

1. Divide the present Class III classification into two classes as follows:

Class III—All present Class III utilization except butter and nonfat dry milk solids.
Class IIIA—Milk used to produce butter and nonfat dry milk solids.

2. *Class prices.* Class III price to be the simple arithmetical average of the Minnesota-Wisconsin series price for the current month and the present butter-powder formula price for the current month, but no lower than the butter-powder formula price for the current month.

Class IIIA price shall be the present butter-powder formula price for the current month.

3. *Excess price.* The excess price will be the lowest class price.

PROPOSED BY CENTRAL VALLEY MILK, INC.

PROPOSAL NO. 8—REGARDING 7 CFR PART 1033.51(C)

Amend § 1033.51(c) to read as follows:

§ 1033.51 Class prices.

* * * * *

(c) *Class III price.* The Class III price shall be the basic formula price, except that the price of butterfat and skim milk used to produce butter and nonfat dry milk shall be an amount computed as follows:

(1) Multiply the Chicago butter price by 4.2;

(2) Multiply by 8.2 the weighted average of carlot prices per pound of spray process nonfat dry milk for human consumption f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2 of this paragraph, subtract 48 cents, and round to the nearest cent.

PROPOSAL NO. 9

Take evidence with respect to the need to issue a decision on the proposed amendments on an emergency basis.

PROPOSED BY ASSOCIATED MILK PRODUCERS, INC.

PROPOSAL NO. 10—REGARDING 7 CFR PART 1049

Amend § 1049.50(b) to read:

(b) *Class II milk price.* The Class II milk price shall be the basic formula price computed pursuant to § 1049.51.

PROPOSED BY IDLENOT FARM DAIRY, INC.

PROPOSAL NO. 11—REGARDING 7 CFR PART 1001

Remove the butter-powder formula price provisions of § 1001.61(b).

PROPOSED BY FIORLAT DAIRY PRODUCTS CORPORATION, POLLIO DAIRY PRODUCTS CORPORATION, FRIENDSHIP DAIRIES, INC.

PROPOSAL NO. 12—REGARDING 7 CFR PART 1002

Amend § 1002.50a(c)(3) by changing "48 cents" stated therein to "65 cents" or to any other figure not to exceed 65 cents.

PROPOSED BY H. P. HOOD, INC.

PROPOSAL NO. 13—REGARDING 7 CFR PARTS 1001, 1002, 1004, 1015

Amend §§ 1001.61(b)(3), 1002.50a(c)(3), 1004.50(b)(3), and 1015.61(b)(3) by substituting "72 cents" for "48 cents."

PROPOSAL NO. 14—REGARDING 7 CFR PARTS 1001, 1002, 1004, 1015

Should the Class II price formula be amended so as to treat the price of Class II milk for the manufacture of butter and nonfat dry milk differently than other Class II products, it is proposed that dry whole milk, storage cream, and frozen desserts be placed in the same category as nonfat dry milk and butter.

PROPOSED BY CENTRAL OHIO COOPERATIVE MILK PRODUCERS, MILK, INC., WAYNE COOPERATIVE MILK PRODUCERS

PROPOSAL NO. 15—REGARDING 7 CFR PART 1036

Amend the preamble of § 1036.50(c) to read as follows:

"(c) *Class III price.* The Class III price for all skim milk and butterfat used to produce (1) any Class III product as defined in § 1036.40(c), except butter and nonfat dry milk shall be the basic formula price for the month, and (2) butter and nonfat dry milk shall be an amount computed as follows:"

PROPOSED BY MIAMI VALLEY MILK PRODUCERS, MILK, INC., WAYNE COOPERATIVE MILK PRODUCERS

PROPOSAL NO. 16—REGARDING 7 CFR PART 1049

Amend § 1049.50(b) to read as follows:

"(b) *Class II price.* The Class II price shall be the basic formula price computed pursuant to § 1049.51, except that the price for skim milk and butterfat used to produce nonfat dry milk and butter shall be computed as provided in § 1049.50(b) (1), (2), and (3).

PROPOSED BY THE DAIRY DIVISION, AGRICULTURAL MARKETING SERVICE

PROPOSAL NO. 17

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid specified marketing areas or from the Hearing Clerk, Room 112–A, Administration Building, United States Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

Signed at Washington, D.C., on February 12, 1974.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.74–3790 Filed 2–13–74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 55]

FAT PRESERVATIVE, FAT ANTIOXIDANT; DEFINITION AND STANDARD OF IDENTITY

Withdrawal of Proposal and Termination of Proposed Rule Making Proceedings

In the FEDERAL REGISTER of January 27, 1961 (26 FR 847), the Commissioner of Food and Drugs, on his own initiative, proposed to establish a definition and standard of identity for food fat preservatives (including fat antioxidants).

The proposal was published to resolve a possible conflict between the labeling practices then permitted in regard to the label declaration of preservatives by other government agencies and the Food and Drug Administration's interpretation of the requirements of section 403(i) and (k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343 (i) and (k)).

Elsewhere in this issue of the FEDERAL REGISTER, the Commissioner is amending 21 CFR 1.12 to specify how a preservative ingredient contained in a food must be designated in the statement of ingredients on the label; therefore, the proposed standard for fat preservatives is no longer necessary.

Accordingly, the proposal is withdrawn and the rule making proceeding in this matter is hereby terminated.

This action is taken pursuant to provisions of the Federal Food, Drug, and Cosmetic Act.

(Secs. 401, 701, 52 Stat. 1046, 1055, as amended, 70 Stat. 919, 72 Stat. 948 (21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120).)

Dated: February 6, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74–3649 Filed 2–13–74;8:45 am]

Notices

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

DEPARTMENT OF STATE

Agency for International Development

[Amdt. No. 2 to Redelegation 99.1.1]

SPECIAL ASSISTANT TO THE CHIEF, REGIONAL OPERATIONS DIVISION, AND SPECIAL ASSISTANT TO THE CHIEF, CENTRAL OPERATIONS DIVISION, OFFICE OF CONTRACT MANAGEMENT

Redelegation of Authority No. 99.1.1 Concerning the Contract Function

Pursuant to the authority delegated to me by Redelegation of Authority No. 99.1 (38 FR 12836), dated May 1, 1973, from the Assistant Administrator for Program and Management Services, I hereby amend Redelegation No. 99.1.1 as follows:

Paragraph A is revised by adding "Special Assistant to the Chief, Regional Operations Division, Office of Contract Management", and "Special Assistant to the Chief, Central Operations Division, Office of Contract Management".

This amendment is effective immediately.

Dated: February 1, 1974.

JOHN F. OWENS,
Director,
Office of Contract Management.

[FR Doc.74-3619 Filed 2-13-74;8:45 am]

[Public Notice CM-109]

NATIONAL REVIEW BOARD FOR THE CENTER FOR CULTURAL AND TECHNICAL INTERCHANGE BETWEEN EAST AND WEST

Notice of Meeting

The National Review Board for the Center for Cultural and Technical Interchange Between East and West (East-West Center) will meet in open session at the Asia Room of the East-West Center, 1777 East-West Road, Honolulu, Hawaii on March 4, 1974 from 9:30 a.m. to 4:30 p.m.

The Board will discuss the Grant-in-Aid Agreement between the East-West Center and the University of Hawaii.

Dated: February 4, 1974.

CAROL M. OWENS,
Executive Secretary.

[FR Doc.74-3617 Filed 2-13-74;8:45 am]

[Public Notice CM-110]

SECRETARY OF STATE'S ADVISORY COMMITTEE ON PRIVATE INTERNATIONAL LAW, STUDY GROUP ON ENFORCEMENT OF FOREIGN JUDGMENTS

Notice of Meeting

A meeting of the Recognition and Enforcement of Foreign Judgments Study Group, a subgroup of the Secretary of State's Advisory Committee on Private International Law, will take place on Friday, March 1, 1974, in the Wheeler Room, Holmes Hall, Harvard Law School, Cambridge, Massachusetts. The meeting, which will begin at 10:00 a.m., will be open to the public.

The primary purpose of the meeting is to study the question of recognition and enforcement of foreign judgments, with particular emphasis on identifying the problems that should be resolved in bilateral treaties that the United States plans to negotiate on the subject in the near future.

Members of the public who desire to attend the meeting will be admitted up to the limits of the capacity of the meeting room.

Dated: February 7, 1974.

ROBERT E. DALTON,
Executive Director.

[FR Doc.74-3618 Filed 2-13-74;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

COLORADO

Montrose District; Redelegation of Authority to Area Managers

Under authority of Bureau Order 701, dated July 23, 1964, and as amended, the Area Managers administering the Uncompahgre Basin, Gunnison Basin, San Juan, and San Miguel Resource Areas of the Montrose District, Colorado, are authorized to act on the following matters:

Within their respective areas of responsibility in accordance with existing policies and regulations of the Department, and under direct supervision of the Montrose District Manager, they may exercise the function of the Bureau Director on the matters specified below subject to the limitations of Bureau Order 701, Part III.

AUTHORITY IN SPECIFIC MATTERS

SEC. 3.3 *Fiscal affairs.* The Area Manager may take action on:

(d) Trespass: Determine liability and issue notice of grazing trespass; recommend as to acceptance of settlement after made.

SEC. 3.7 *Range management.* The Area Manager may take all action on:

(a) Within grazing districts, the issuance of licenses and permits to graze or trail livestock.

(3) Permits or cooperative agreements to construct and maintain range improvements and determine the value of such improvements.

(b) Outside grazing districts, the issuance of grazing leases.

(c) Soil and moisture conservation; control of halogeton glomeratus.

(d) Controlled brush burning in accordance with plans and specifications approved by the State Director.

(e) Protection of wild, free-roaming horses and burros.

SEC. 3.8 *Forest Management.* The Area Manager may take all action on:

(a) Disposition of forest products including sales of timber not exceeding $100.00 in value.

SEC. 3.9 *Land use.* The Area Manager may take all action on:

(g) Disposition of materials other than forest products, not exceeding $100.00 in value.

The District Manager may at any time temporarily reserve, restrict, or withhold any portion of the above delegated authority.

This order will become effective February 14, 1974, and rescind all former delegations.

Dated: January 30, 1974.

MARLYN V. JONES,
District Manager.

Approved:

DALE ANDRUS,
State Director.

[FR Doc.74-3634 Filed 2-13-74;8:45 am]

[Serial No. I-7435]

IDAHO

Notice of Proposed Withdrawal and Reservation of Lands; Clarification

FEBRUARY 8, 1974.

Notice of an application, Serial No. I-7435, for withdrawal and reservation of lands, was published as FR Doc. 74-2518 on page 3977 of the issue for January 31, 1974. The second paragraph is clarified by including the following statement:

All the lands are requested to be temporarily withdrawn for a period of two years, followed by the possible identification and retention of 5,000 acres, or less, of the withdrawn lands for development of a demonstration geothermal power facility.

VINCENT S. STROBEL,
Chief, Branch of L&M Operations.

[FR Doc.74-3635 Filed 2-13-74;8:45 am]

REESTABLISHMENT OF BOUNDARY BETWEEN ANCHORAGE AND FAIRBANKS LAND DISTRICTS IN ALASKA

Certain Lands and Minerals Functions Suspended

In order to facilitate effective administration and conform to the regulations

in 43 CFR 1321.2–1 the boundary line between the Anchorage and Fairbanks land districts in Alaska is reestablished as follows:

Beginning at a point from which the township line between Tps. 4 and 5 N., CRM, intersects the Alaska-Canadian Boundary at latitude 62°09'51.649" N., longitude 141°00' W., thence West to SW corner T. 5 N., R. 15 E., CRM, North to NW corner T. 8 N., R. 15 E., CRM, East to SE corner T. 9 N., R. 14 E., CRM, North to corner Tps. 9–10 N., Rs. 14–15 E., CRM, West to corner Tps. 9–10 N., Rs. 11–12 E., CRM, North to NE corner T. 12 N., R. 11 E., CRM, East to SW corner T. 13 N., R. 12 E., CRM, North to SW corner T. 16 N., R. 12 E., CRM, West to corner Tps. 15–16 N., Rs. 5–6 E., CRM, North to NE corner T. 16 N., R. 5 E., CRM, West to 4th Guide Meridian East, FM at latitude 63°12'14.205" N., longitude 144°34'40.580" W., North to NE corner T. 20 S., R. 16 E., FM, West to corner Tps. 19–20 S., Rs. 15–16 E., FM, North to corner Tps. 18–19 S., Rs. 15–16 E., FM, West to corner Tps. 18–19 S., Rs. 12–13 E., FM, North to corner Tps. 17–18 S., Rs. 12–13 E., FM, West to corner Tps. 17–18 S., Rs. 5–6 E., FM, North to NW corner T. 17 S., R. 6 E., FM, East to SE corner T. 16 S., R. 5 E., FM, North to corner Tps. 15–16 S., Rs. 5–6 E., FM, West to corner Tps. 15–16 S., Rs. 7–8 W., FM, South to SE corner T. 16 S., R. 8 W., FM, West to NW corner T. 17 S., R. 12 W., FM, South to corner Tps. 17–18 S., Rs. 12–13 W., FM, West to corner Tps. 17–18 S., Rs. 14–15 W., FM, South to corner Tps. 18–19 S., Rs. 14–15 W., FM, West to corner Tps. 18–19 S., Rs. 16–17 W., FM, South to corner Tps. 19–20 S., Rs. 16–17 W., FM, West to corner Tps. 19–20 S., Rs. 22–23 W., FM, North to NE corner T. 17 S., R. 23 W., FM, West to SW corner T. 16 S., R. 22 W., FM, North to NE corner T. 13 S., R. 23 W., FM, West to SW corner T. 12 S., R. 22 W., FM, North to corner Tps. 10–11 S., Rs. 22–23 W., FM, West to boundary between Fairbanks and Kateel River Meridians at latitude 63°59'52.014" N., longitude 153°-00'00.000" W., North to Fourth Standard Parallel South KRM, West along the Fourth Standard Parallel South KRM to the SW corner T. 16 S., R. 8 W., KRM, North to the NE corner T. 16 S., R. 9 W., KRM, West to corner Tps. 15–16 S., Rs. 12–13 W., KRM a point in the waters of Norton Sound at latitude 64°08'19.570" N., longitude 161°07'-51.580" W. Thence approximately S. 72° W., out to sea passing between St. Lawrence and St. Matthew Islands.

The newly established boundary line is effective March 4, 1974.

Notice is hereby given that the Alaska State Office, 555 Cordova Street, Anchorage and the Fairbanks District Office, 1023 Aurora Drive, Fairbanks will be closed to filing of lands and minerals applications and inspection of lands and minerals records from February 25, 1974, through March 1, 1974. The temporary closure will allow transfer of lands and minerals records between the offices in accordance with the boundary described above.

CURT BERKLUND,
Director.

FEBRUARY 11, 1974.

[FR Doc.74–3665 Filed 2–13–74;8:45 am]

Office of the Secretary

[INT DES 74–10]

GUILFORD COURTHOUSE NATIONAL MILITARY PARK; PROPOSED DEVELOPMENT CONCEPT PLAN

Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act, the Department of the Interior has prepared a draft environmental statement for proposed Development Concept Plan—Guilford Courthouse National Military Park, North Carolina, and invites written comment within forty five (45) days of this notice. Written comment should be addressed to the Regional Director, Southeast Region; the Superintendent, Blue Ridge Parkway; or to the Superintendent, Guilford Courthouse National Military Park at the addresses listed below.

The draft environmental statement considers the development of a new visitor center; sequential tour routes for foot, bicycle and auto travel; historic restorations; improved utilities and miscellaneous site improvements.

Copies are available from or for inspection at the following locations:

Office of the Director
Southeast Region
National Park Service
3401 Whipple Avenue
Atlanta, Georgia 30344

Office of the Superintendent
Guilford Courthouse National Military Park
P.O. Box 9334
Greensboro, North Carolina 27408

Office of the Superintendent
Blue Ridge Parkway
P.O. Box 7606
Asheville, North Carolina 28807

Dated: February 6, 1974.

WILLIAM A. VOGELY,
Secretary of the Interior.

[FR Doc.74–3633 Filed 2–13–74;8:45 am]

[Secretarial Order No. 2960]

TRANS-ALASKA PIPELINE

Organizational and Functional Responsibilities

This Notice is issued in accordance with the provisions of 5 U.S.C. 552(a)(1). The Secretary of the Interior has issued Order No. 2960 dated January 23, 1974, regarding the administrative and management responsibilities for the Trans-Alaska Pipeline. The Order is published in its entirety below. Further information regarding the Order may be obtained from Mr. John Latz, Technical Assistant to the Under Secretary (Pipeline), U.S. Department of the Interior, Washington, D.C. 20240, telephone 202–343–2038.

Dated: February 8, 1974.

RICHARD R. HITE,
Deputy Assistant Secretary of the Interior.

[Order No. 2960]

JANUARY 23, 1974.

Subject: Trans-Alaska Pipeline—Organizational and Functional Responsibilities.

SEC. 1 *Purpose.* The purpose of this Order is to set forth the new administrative and management responsibilities for the Trans-Alaska Pipeline.

SEC. 2 *Authority.* This Order is issued in accordance with the authority provided by Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

SEC. 3 *Responsibility.* Administrative and management responsibilities are assigned as follows:

(a) *The Under Secretary.* The Under Secretary is the principal Departmental official responsible to the Secretary for Trans-Alaska Pipeline matters and the principal point of contact with Congressional Committees, pipeline officials and the general public. He supervises the Department's Authorized Officer and serves as Chairman of the Federal Task Force on Alaska Oil Development.

(b) *Authorized Officer.* There is hereby established the position of Authorized Officer, referred to in the "Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline", and in the Stipulations thereto. The Authorized Officer is responsible for ensuring contractor compliance with the terms and conditions of the "Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline", including the Stipulations thereto; and any other authorizations, including but not limited to rights-of-way, permits, and leases issued pursuant to the Trans-Alaska Pipeline Authorization Act of November 16, 1973, Pub. L. 93–153, 87 Stat. 584, which relate to the construction, operation, maintenance, or termination of the trans-Alaska oil pipeline system, and any stipulations attached to such authorizations. Additionally, the Authorized Officer is responsible for taking necessary steps to enforce the terms and conditions of the above authorizations; protecting Federal interests relating to the Trans-Alaska Pipeline; monitoring of the Permittees and their agents, contractors and subcontractors; and coordinating construction activities with State of Alaska government officials.

(c) *Technical Assistant to the Under Secretary.* The Technical Assistant to the Under Secretary provides advice and guidance to the Secretary and Under Secretary on the Trans-Alaska Pipeline issues and problems which are referred to the Secretary for solutions or decisions; assesses the adequacy, quality and effectiveness of the Authorized Officer's level of effort, technical and environmental judgments and actions, and responsiveness to problems which arise in the course of pipeline construction; coordinates Trans-Alaska Pipeline intra-department and inter-agency matters in Washington; and responds to requests for technical assistance from the Authorized Officer. He serves as Chairman of the Technical Advisory Board of the Fed-

eral Task Force on Alaska Oil Development.

(d) *Director, Bureau of Land Management.* The Director, Bureau of Land Management shall make available to the Authorized Officer the personnel of the Division of Pipeline, Alaska State Office, for the duration of the construction of the Trans-Alaska Pipeline. Such personnel shall be under the direction and supervision of the Authorized Officer.

(e) *Director, Bureau of Sport Fisheries and Wildlife and Director, U.S. Geological Survey.* The Director, Bureau of Sport Fisheries and Wildlife and/or the Director, U.S. Geological Survey shall make available to the Authorized Officer (established in section 3(b) of this Order) personnel and/or expertise as the Authorized Officer shall from time to time require. Personnel provided shall be under the direction and supervision of the Authorized Officer.

(f) *Other Bureaus and Offices.* Other bureaus and offices shall cooperate by providing any assistance and/or personnel as the Authorized Officer may from time to time require.

SEC. 4 *Secretarial Delegation of Authority.*

(a) *Authorized Officer.* The Authorized Officer (Sec. 3(b) above) is delegated the authority of the Secretary of the Interior necessary to perform the functions as specified for the Authorized Officer in the "Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline", including the Stipulations thereto; and any other authorizations, including but not limited to rights-of-way, permits and leases issued pursuant to the Trans-Alaska Pipeline Authorization Act of November 16, 1973, Pub. L. 93–153, 87 Stat. 584, which relate to the construction, operation, maintenance, or termination of the trans-Alaska oil pipeline system, and any stipulations attached to such authorizations.

(b) *Director, Bureau of Land Management.* All authority granted to the Secretary of the Interior by Title I and Title II of the Act of November 16, 1973, Pub. L. 93–153, 87 Stat. 576 (Amendments to the Mineral Leasing Act of 1920 and Trans-Alaska Pipeline Authorization Act) is hereby delegated to the Director, Bureau of Land Management; *except*, any authority of the Secretary or the Authorized Officer under the "Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline", including the authority to amend or modify said "Agreement"; *provided*, That all authorizations, including but not limited to rights-of-way, permits, and leases, issued under the Trans-Alaska Pipeline Authorization Act of November 16, 1973, 87 Stat. 584, which relate to the construction, operation, maintenance or termination of the trans-Alaska oil pipeline system shall be issued only with the concurrence of the Authorized Officer as described in sec. 4(a) of this Order and shall be delivered to the applicant by said Authorized Officer.

(c) *Redelegation.* The authority granted in sections 4(a) and 4(b) of this Order may be redelegated.

ROGERS C. B. MORTON,
Secretary of the Interior.

[FR Doc.74–3613 Filed 2–13–74;8:45 am]

DEPARTMENT OF LABOR

Office of the Secretary

MOXEES SHOE CORP., AUBURN, MAINE

Investigation Regarding Certification of Eligibility of Workers To Apply for Adjustment Assistance

After reviewing the Tariff Commission's report on its investigation of the petition for adjustment assistance filed on behalf of workers and former workers of Moxees Shoe Corporation, Auburn, Maine, a subsidiary of Multivisions Corporation, Bellows Falls, Vermont (TEA–W–215) under section 301(c)(2) of the Trade Expansion Act of 1962, and in which report the Commission being equally divided, made no finding with respect to women's and misses' footwear, the President decided, under the authority of section 330(d)(1) of the Tariff Act of 1930 as amended, to consider the findings of those Commissioners who found in the affirmative as the finding of the Commission. Accordingly, he has advised the Secretary of Labor that he may certify the group of workers involved as eligible to apply for adjustment assistance.

In view of the Tariff Commission's report, the President's authorization, and the responsibilities delegated to the Secretary of Labor under section 8 of Executive Order 11075 (28 FR 473), the Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs, has instituted an investigation, as provided in 29 CFR 90.5 and this notice. The investigation relates to the determination of whether any of the group of workers covered by the Tariff Commission report should be certified as eligible to apply for adjustment assistance, provided for under Title III, Chapter 3, of the Trade Expansion Act of 1962, including the determination of related subsidiary subjects and matters, such as the date unemployment or underemployment began or threatened to begin and the subdivision of the firm involved to be specified in any certification to be made, as more specifically provided in Subpart B of CFR Part 90.

Interested persons should submit written data, views, or arguments relating to the subjects of investigation to the Director, Office of Foreign Economic Policy, U.S. Department of Labor, Washington, D.C. 20210 on or before February 21, 1974.

Signed at Washington, D.C. this 5th day of February 1974.

GLORIA G. VERNON,
Director, Office of Foreign Economic Policy.

[FR Doc.74–3646 Filed 2–13–74;8:45 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DANIEL K. ODELL

Notice of Application for Scientific Research Permit

Notice is hereby given that the following applicant has applied for a permit to take marine mammals for scientific research as authorized by section 101(a)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and § 216.12 of the Interim Regulations Governing the Taking and Importing of Marine Mammals (37 FR 28177, December 21, 1972, which is now covered under § 216.31 of the Final Regulations, 39 FR 1851, January 15, 1974) and pursuant to the instructions for preparing applications for permits (38 FR 26622, September 24, 1973). The Secretary considers the following application sufficient for consideration under the provisions of § 216.33(e) of the Final Regulations.

Daniel K. Odell, University of Miami, 10 Rickenbacker Causeway, Miami,

Florida 33149, to collect an unspecific number of dead stranded cetaceans, in particular the bottle-nose dolphin (*Tursiops truncatus*), for scientific research.

The goals of the project are to assess the present status of the local stock and to learn as much as possible about the ecology and population biology of the bottle-nose dolphin and other cetacean species. This information will then be used in the establishment of sound management practices.

Dead cetaceans will be collected from the coast of southern Florida over a period of five years. Each collected specimen will be weighed and measured, and a necropsy will be performed. All parasites found will be collected and identified. Age will be determined by sectioning the teeth. Reproductive organs will be examined grossly and histologically. Stomach contents will be analyzed to determine food habits and preferences. Tissue samples will be collected and analyzed for pesticide residue and heavy metal content.

Data will be collected, in conjunction with aerial surveys of cetacean populations, for the purposes of: Constructing growth curves; determining longevity and mortality rates, minimum reproductive age, and number of young per female per year; assessment of stock size, and optimum population size for the area under study; and estimating the maximum sustainable yield for commercial and scientific purposes.

Skeletal material from the collected specimens will be placed in the collection of the University of Miami.

Dr. Odell is an Assistant Professor of Biology at the University of Miami's Rosenstiel School of Marine and Atmospheric Science. Over a period of eight years, he has conducted a number of research programs involving the biology of the California sea lion, the northern elephant seal and the northern fur seal.

Documents submitted in connection with this application are available as follows:

Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235, telephone 202–343–4543;

Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702, telephone 813–893–3141.

Concurrent with the publication of this notice in the FEDERAL REGISTER the Secretary of Commerce is sending copies of the application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Pursuant to § 216.33 of the Final Regulations, interested parties may submit written data or views on this application on or before March 18, 1974.

Comments should be sent to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235.

All statements and opinions contained in this notice in support of this application are those of the Applicant and do not reflect the views of the National Marine Fisheries Service.

Dated: January 30, 1974.

JACK W. GEHRINGER,
Acting Director, National Marine Fisheries Service.

[FR Doc.74–3669 Filed 2–13–74;8:45 am]

JOHN M. MEHRTENS

Issuance of Permit for Marine Mammals

On December 17, 1973, a notice was published in the FEDERAL REGISTER (38 FR 34680), stating that an application had been filed with the National Marine Fisheries Service by John M. Mehrtens, Columbia Zoological Park, Columbia, South Carolina, for a permit to take seven (7) California sea lions (*Zalophus californianus*), three (3) harbor seals (*Phoca vitulina richardii*) and five (5) southern Patagonian sea lions (*Otaria byronia*) for a public display.

Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), after having considered the application and all other pertinent information and facts, with regard thereto, the National Marine Fisheries Service issued a permit on February 8, 1974, to John M. Mehrtens, subject to certain conditions set forth in the permit, which is available for review by interested persons in the Office of the Director, National Marine Fisheries Service, Washington, D.C.

Dated: February 8, 1974.

JACK W. GEHRINGER,
Acting Director, National Marine Fisheries Service.

[FR Doc.74–3668 Filed 2–13–74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[FAP 2H2811]

ONYX CHEMICAL CO.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786; (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2H2811) has been filed by Onyx Chemical Co., 190 Warren St., Jersey City, NJ 07302, proposing that § 121.2547 *Sanitizing solutions* (21 CFR 121.2547) be amended to provide for the safe use of an aqueous solution containing equal amounts of n-alkyl (C_{12}-C_{16}) dimethyl ethylbenzyl ammonium chlorides and n-alkyl (C_{12}-C_{14}) dimethyl ethylbenzyl ammonium chlorides having an average molecular weight of 384, in combination with any or all of the following compounds—tetrasodium ethylenediamine tetraacetate, *alpha*-(p-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) having an average poly(oxyethylene) content of 11 moles, and substances generally recognized as safe. This sanitizing solution is to be used on food contact surfaces.

Dated: February 1, 1974.

ALBERT C. KOLBYE, Jr.,
Acting Director, Bureau of Foods.

[FR Doc.74–3647 Filed 2–13–74;8:45 am]

[GRASP 4G0036]

PROCTOR AND GAMBLE CO.

Notice of Filing of Petition for Affirmation of GRAS Status

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201 (s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1786; (21 U.S.C. 321(s), 348, 371 (a))) and the regulations for affirmation of GRAS status (21 CFR 121.40), published in the FEDERAL REGISTER of December 2, 1972 (37 FR 25705), notice is given that a petition (GRASP 4G0036) has been filed by Proctor and Gamble Co., Center Hill Road, Cincinnati, OH 45224, and placed on public display at the office of the Hearing Clerk, Food and Drug Administration, proposing affirmation that fully hydrogenated rapeseed oil is generally recognized as safe (GRAS) for use in food.

Interested persons may, on or before April 15, 1974, review the petition and/or file comments (preferably in quintuplicate) with the Hearing Clerk, Food and Drug Administration, Rm. 6–86, 5600 Fishers Lane, Rockville, MD 20852. Comments should include any available information that would be helpful in determining whether the substance is, or is not, generally recognized as safe. A copy of the petition and received comments may be seen in the office of the Hearing Clerk, address given above, during working hours, Monday through Friday.

Dated: February 5, 1974.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.74–3648 Filed 2–13–74;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

AIRPORT TRAFFIC CONTROL TOWER AT ORLANDO, FLORIDA

Notice of Change

Notice is hereby given that on or about January 31, 1974, the Airport Traffic Control Tower at the Orlando, Florida, Jetport (McCoy AFB) will be in operation as an FAA facility combined in with the Orlando Terminal Radar Approach Control facility. This information will be reflected in the FAA Organization Statement the next time it is issued. Communications to the tower should be as follows:

Federal Aviation Administration
Orlando Jetport ATCT/TRACON
P.O. Box 20037
Orlando, Florida 32814

Issued in East Point, Georgia, on February 4, 1974.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.74-3600 Filed 2-13-74;8:45 am]

AIRPORT TRAFFIC CONTROL TOWER AT ORLANDO, FLORIDA

Notice of Change

Notice is hereby given that on or about January 31, 1974, the Airport Traffic Control Tower at the Orlando, Florida, Herndon Airport will commence operation, as a separate VFR Airport Traffic Control Tower. This information will be reflected in the FAA Organization Statement the next time it is issued. Communications to the tower should be as follows:

Federal Aviation Administration
Airport Traffic Control Tower
Herndon Airport
P.O. Box 20855
Orlando, Florida 32814

Issued in East Point, Georgia, on February 4, 1974.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.74-3601 Filed 2-13-74;8:45 am]

AIRPORT TRAFFIC CONTROL TOWER AT GREENVILLE, SOUTH CAROLINA

Notice of Change

Notice is hereby given that on or about January 24, 1974, the Airport Traffic Control Tower at the Greenville, South Carolina, Greenville Downtown Airport will commence operation as a separate VFR Airport Traffic Control Tower. This information will be reflected in the FAA Organization Statement the next time it is issued. Communications to the tower should be as follows:

Federal Aviation Administration
Airport Traffic Control Tower
Greenville Downtown Airport
P.O. Box 5538, Station B
Greenville, South Carolina 29606

Issued in East Point, Georgia, on February 4, 1974.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.74-3599 Filed 2-13-74;8:45 am]

AIRPORT TRAFFIC CONTROL TOWER AT GREER, SOUTH CAROLINA

Notice of Change

Notice is hereby given that on or about January 24, 1974, the Airport Traffic Control Tower at Greer, South Carolina, Greenville-Spartanburg Airport will be administratively combined with the relocated Terminal Radar Approach Control facility identified as the Greer ATCT/TRACON. This information will be reflected in the FAA Organization Statement the next time it is issued. Communications to the facility should be as follows:

Federal Aviation Administration
Greer ATCT/TRACON
Greenville-Spartanburg Airport
P.O. Box 509
Greer, South Carolina 29651

Issued in East Point, Georgia, on February 4, 1974.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.74-3598 Filed 2-13-74;8:45 am]

ATOMIC ENERGY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON REGULATORY GUIDES

Notice of Meeting

FEBRUARY 12, 1974.

In accordance with the purposes of section 29 of the Atomic Energy Act (42 U.S.C. 2039), the Advisory Committee on Reactor Safeguards' Subcommittee on Regulatory Guides will hold a meeting on March 6, 1974, in Room 1046, 1717 H Street NW., Washington, D.C. The purpose of this meeting will be to discuss Regulatory Staff drafts of the following proposed Regulatory Guides in Division 1 of the Regulatory Guide series.

(1) Proposed Regulatory Guide 1.XX, "Inservice Inspection of Steam Generator Tubing", Draft 1.

(2) Proposed Regulatory Guide 1.XX, "Assumptions Used for Evaluating the Habitability of a Nuclear Power Plant Control Room During a Postulated Hazardous Chemical Release", Draft 2.

(3) Proposed Regulatory Guide 1.XX, "Sumps for Emergency Core Cooling and Containment Spray Systems", Draft 1.

(4) Proposed Regulatory Guide 1.XX, "Code Case Acceptability—ASME Section III Material", Draft 1.

(5) Proposed Regulatory Guide 1.XX, "Protection Against Postulated Piping Failure in Fluid Systems Outside of Containment", Draft 1.

The following constitutes that portion of the Subcommittee's agenda for the above meeting which will be open to the public:

WEDNESDAY, MARCH 6, 1974, 1:30 P.M. UNTIL THE CONCLUSION OF BUSINESS

Discussion with representatives of the AEC Regulatory Staff regarding the proposed Regulatory Guides which are agenda items.

In connection with the above agenda items, the Subcommittee may hold Executive Sessions, not open to the public, at approximately 1:00 p.m. and at the end of the day to exchange opinions and formulate recommendations to the ACRS.

I have determined, in accordance with subsection 10(d) of Pub. L. 92-463, that the above-noted Executive Sessions 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)). It is essential to close such portions of the meeting to protect the free interchange of internal views and to avoid undue interference with Subcommittee 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 the 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 February 27, 1974, 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 subject matter of the proposed Regulatory Guides which are agenda items and related documents which are on file and available for public inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20545.

(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 statement 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 no more than 30 minutes at an appropriate time, chosen by the Chairman of the Subcommittee, between the hours of 1:30 p.m. and 3:00 p.m. on March 6, 1974.

(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 March 5, 1974, to the Office of the Executive Secretary of the Committee (telephone 301-973-5651) between 8:30 a.m. and 5:15 p.m., e.d.t.

(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 portions 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. Copies of the transcript may be reproduced in the Public Document Room or may be obtained from Ace Federal Reporters, Inc., 415 Second Street NE., Washington, D.C. 20002 (telephone 202-547-6222) upon payment of appropriate charges.

(i) On request, copies of the Minutes of the meeting will be made available for inspection at the Atomic Energy Commission Public Document Room, 1717 H Street NW., Washington, D.C. 20545, on or after May 6, 1974. Copies may be obtained upon payment of appropriate charges.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.74-3801 Filed 1-13-74;9:32 am]

GENERAL ADVISORY COMMITTEE

Notice of Meeting

FEBRUARY 12, 1974.

In accordance with the purposes of section 26 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2036), the General Advisory Committee will hold a meeting on February 27, 28, and March 1, 1974, at Oak Ridge, Tennessee.

The following constitutes that portion of the Committee's agenda for the above meeting which will be open to the public, from 8:45 a.m. to 9:55 a.m. on Thursday, February 28, in the Technical Library Building conference room of the Oak Ridge Associated Universities located on Badger Avenue, Oak Ridge.

(1) 8:45 a.m.—Welcome and introduction by H. Postma, Director, Oak Ridge National Laboratory.

(2) 8:55 a.m.—Reactor development program overview.

(3) 9:15 a.m.—Molten salt power reactor program.

(4) 9:35–9:55 a.m.—Controlled thermonuclear research effort.

In addition to the above agenda items, the Committee will meet with members of the Commission and with representatives of the Oak Ridge complex, including both AEC and Union Carbide Corporation personnel, and the Committee will hold executive sessions not open to the public under the authority of section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act) to exchange opinions and formulate recommendations on the above topics and other agenda matters. I have determined that it is necessary to close these portions of the meeting to discuss certain information that is classified and falls within exemptions (1) and (3) of 5 U.S.C. 552 (b)); is privileged and falls within exemption (4) of (5 U.S.C. 552(b)); and to exchange opinions and formulate recommendations, the discussion of which, if written, would fall within exemption (5) 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 avoid undue interference with Commission and Committee operation.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman 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 above agenda items, the following requirements shall apply:

(a) Persons wishing to submit written statements on the agenda items noted above may do so by mailing 12 copies thereof, postmarked no later than February 20, 1974, to the Secretary, General Advisory Committee, U.S. Atomic Energy Commission, Washington, D.C. 20545. Such comments shall be based upon the above agenda items.

(b) Information as to whether the meeting has been rescheduled or relocated can be obtained by a prepaid telephone call on February 25, to the Office of the Secretary of the Committee (telephone: 301-973-5637) between 8:30 a.m. and 5:15 p.m. e.d.t.

(c) Questions may be propounded only by members of the Committee.

(d) Seating for the public will be available on a first-come, first-served basis.

(e) The use of still, movie, and television cameras, the physical installation and presence of which will not interfere with the course 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.

(f) Copies of minutes of the public sessions will be made available for copying, in accordance with the Federal Advisory Committee Act, on or after March 28, 1974 at the Atomic Energy Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., upon payment of all charges required by law.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.74-3802 Filed 2-13-74;9:32 am]

[Docket No. 50-382A]

LOUISIANA POWER AND LIGHT CO.

Order Granting Joint Discoverers Additional Time To File Discovery and Notice and Order for Fifth Prehearing Conference

In the matter of Louisiana Power and Light Co., Waterford Steam Electric Generating Station, Unit 3—Antitrust. On January 30, 1974, Joint Discoverers requested an extension of one week, until February 11, 1974, to file their joint discovery request. For good cause shown, this request is Granted.

This extension requires a modification of the schedule established at the fourth prehearing conference, January 14, 1974 (Transcript page 527). The new schedule is:

Discovery, interrogatory and document requests by Applicant. February 11, 1974.

Discovery, interrogatory and document requests by Applicant, February 11, 1974.

Filing of Objections. February 25, 1974.

Fifth Prehearing Conference. March 11 & 12, 1974.

It is so ordered.

Take notice, that pursuant to the Atomic Energy Commission's notice of February 23, 1973, published in the FEDERAL REGISTER (38 FR 5502) March 1, 1973, the Commission's Memorandum and Order of September 28, 1973, and in accordance with the Commission's rules of practice, a fifth Prehearing Conference will be held in the subject proceeding on March 11 and 12, 1974 starting at 10 a.m. each day. The location will be the Postal Rate Commission, Suite 500, 2000 L Street, NW., Washington, D.C.

The subject of this Prehearing Conference will be discovery and such other matters as will aid in the disposition of these proceedings.

Issued at Washington, D.C. this 5th day of February, 1974.

By order of the Atomic Safety and Licensing Board.

HUGH K. CLARK,
Chairman.

[FR Doc.74-3625 Filed 2-13-74;8:45 am]

[Docket Nos. 50-443 and 50-444]

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, ET AL.

Notice and Order for Second Prehearing Conference

Notice is hereby given that a second prehearing conference will be held in the above captioned proceeding by the Atomic Safety and Licensing Board (the Board) on Monday, March 11, 1974, at 10:30 a.m., local time, at the U.S. Bankruptcy Court, 1128 John W. McCormack Street, Post Office Square, U.S. Post Office and Courthouse, Boston, Massachusetts 02109.

The second prehearing conference shall deal with the following matters:

1. All pending motions, including the motion by the Intervenors New England Coalition on Nuclear Pollution (NECNP) and Seacoast Anti-Pollution League (SAPL) for financial support, the motion by NECNP and SAPL for summary judgment, the motion by the Applicants for reconsideration of that portion of the Board's first prehearing conference order that allowed intervention by Donald B. Ross, and all discovery motions;

2. The status of discovery;

3. Consideration of whether the discovery and contentions agreement[1] needs revision; and

4. Such other matters as may aid in the orderly disposal of the proceeding.

Dated this 12th day of February 1974 at Washington, D.C.

By order of the Atomic Safety and Licensing Board.

DANIEL M. HEAD,
Chairman.

[FR Doc.74-3803 Filed 2-13-74;9:33 am]

[1] This agreement is set out in paragraph 11 of the Board's First Prehearing Conference Order issued November 20, 1973.

[Docket No. 50-460]

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

Notice of Receipt of Application for Construction Permit and Facility License and Availability of Applicant's Environmental Report

Washington Public Power Supply System (the applicant), pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, has filed an application, which was docketed October 18, 1973, for authorization to construct and operate a generating unit utilizing a pressurized water nuclear reactor. The application was tendered on July 16, 1973. Following a preliminary review for compelteness, the application was rejected on August 20, 1973, for lack of sufficient information. The applicant submitted additional information on October 1, 1973, and the application was found to be acceptable for docketing. Docket No. 50-460 has been assigned to the application and it should be referenced in any correspondence relating to the application.

The proposed nuclear facility, designated by the applicant as the WPPSS Nuclear Project No. 1, is located on the applicant's site in Benton County, Washington, and is designed for initial operation at approximately 3619 megawatts thermal, and a net electrical output of approximately 1206 megawatts.

A notice of hearing with opportunity for public participation is beng published separately.

Any person who wishes to have his views on the antitrust matters of the application presented to the Attorney General for consideration should submit such views to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Office of Antitrust and Indemnity, Directorate of Licensing, on or before February 19, 1974. The request should be filed in connection with Docket No. 50-460-A.

A copy of the application is available for public inspection at the Commission's Pubic Document Room, 1717 H Street, NW., Washington, D.C. 20545, and at the Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

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 October 15, 1973. The report, which discusses environmental considerations related to the construction and operation of the proposed facility is being made available for public inspection at the aforementioned locations, and at the Office of the Governor, State Planning and Community Affairs Agency, Olympia, Washington 98504 and the Benton-Franklin Governmental Conference, 906 Jadwin Avenue, Richland, Washington 99352.

After the environmental report has been analyzed by the Commission's Director of Regulation or his designee, a draft environmental statement will be prepared by the Commission's regulatory staff. 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, with a request for comments from interested persons on the draft statement. The summary notice will aso contain a statement to the effect that comments of Federal agencies and State and local officials will be made available when received. Upon consideration of comments submitted with respect to the draft environmental statement, the Regulatory saff will prepare a final environmental statement, the availability of which will be published in the FEDERAL REGISTER.

Dated at Bethesda, Maryland, this 14th day of December, 1973.

For the Atomic Energy Commission.

A. SCHWENCER,
Chief, Light Water Reactors, Branch 2-3, Directorate of Licensing.

[FR Doc.73-27005 Filed 12-20-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 26348, etc.; Order 74-1-132]

AVIATION CONSUMER ACTION PROJECT

Order Regarding Relationships Between Financial, Brokerage, Leasing, and Manufacturing Institutions and Air Carriers; Correction

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 25th day of January 1974.

The first sentence after the side heading "Conclusion" Order 74-1-132 should have read as follows:

The public interest is inevitably affected by the decisions of airline managements in a host of areas, such as equipment acquisition, expansion planning, financing, affiliate or subsidiary acquisition or formation, and merger assessment.

Footnote 7 of the Order should have read as follows:

[7] See Lehman Brothers Interlocking Relationships Case, 15 C.A.B. 656 (1952), *aff'd*, Lehman v. C.A.B., 93 U.S. App. D.C. 81, 209 F. 2d 289 (1953), cert. denied, 347 U.S. 916 (1954).

Ordering paragraph 3 of the Order should have read as follows:

3. This order will be served upon the following, each of whom be and hereby is made a party to the proceeding: each certificated air carrier; the Departments of Justice and Transportation; the Aviation Consumer Action Project; and those listed in Appendix A hereto; [10]

Appendix A to the order should have included the following:

Ringsby Airline System
Chicago Helicopter Industries, Inc.
Flying Tiger Corporation
McCulloch Oil Corporation
GAC Corporation
Stephens, Inc.
Transamerica Corporation
UAL, Inc.
RKO General, Inc.
Summa Corporation
Jet Capital Corporation
Alaska Continental Development Corp.
Braniff International Corporation

[SEAL] EDWIN Z. HOLLAND,
Secretary.

FEBRUARY 6, 1974.

[FR Doc.74-3699 Filed 2-13-74;8:45 am]

[Docket No. 26400; Order 74-2-30]

DELTA AIR LINES, INC.

Order of Suspension and Investigation Regarding Non-Acceptance of Restricted Articles in Containers

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 8th day of February 1974.

By tariff revision [1] bearing the posting date of January 9 and marked to become effective February 23, 1974, Delta Air Lines, Inc. (Delta) proposes to establish a rule to the effect that all articles subject to the Restricted-Articles Tariff [2] will not be accepted in containers listed in the container tariff. If tendered as part of containerized shipments, such articles will be accepted only as outside pieces.

Delta asserts in support of its proposal and in answer to the complaint, inter alia, that it will be in a better position to comply with the provisions of the Restricted-Articles Tariff by insuring that labeled packages are visible at all times; that shippers of labeled articles will continue to benefit from the rating advantages of the container tariff; that removing labeled articles from the container will offer shippers the opportunity of including other traffic within the container at the lower container rate; that only 10 to 15 percent of Delta's restricted-articles traffic currently moves in containers; and that the carrier anticipates no effect on freight volume or revenues. The carrier cites materials with a flammable label (for example, peroxide) and packages with germs of communicable diseases as two cases where safety could be increased by packaging separately for container shipments.

COSTHA, the Council for Safe Transportation of Hazardous Articles, filed a complaint requesting rejection on, alternatively, suspension and investigation. The complaint alleges, inter alia, that there is no cost justification for the increased charges that would inevitably result and no substantiation for the contention that the provisions would not affect freight volume or revenues; that the separate-package shipment of restricted-articles results, when the part outside the container is more than one piece as that term is defined by Delta in Rule 9(B), in the shipper being denied

[1] Addition of Rule 18, Airline Tariff Publishers, Inc., Agent, Tariff C.A.B. No. 131.

[2] Airline Tariff Publishers, Inc., Agent, Tariff C.A.B. No. 82. Restricted articles include combustible liquids and other articles liable to damage aircraft structures, and articles possessing other inherent characteristics which make them unsuitable for air carriage unless properly prepared for shipment.

the favorable container tariff rate for such pieces; that the contention that shippers will benefit by including other traffic within the container in the space which otherwise would be occupied by restricted articles is unrealistic as they might not have unrestricted articles in the shipment; that Delta's examples are not supportive of its proposal as these examples are already adequately covered by the existing provisions of the Restricted-Articles Tariff, making the proposed rule unnecessary and redundant; and that the rule would result in increased handling costs by shippers and agents leading to inevitable increased charges, and denying many shippers advantageous container rates.

Upon consideration of the complaint and all other relevant matters, the Board finds that the proposal may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful and should be suspended pending investigations.[3]

Restricted articles are subject to § 221.38 of the Board's regulations which requires that the rules and regulations relating to the transportation of these articles, including packing, marking, and labeling requirements, be in conformity with Part 103 of the Federal Aviation Regulations as well as certain relevant portions of I.C.C. Regulations for shipments of this type. The tariff details those commodities which may be shipped and the conditions under which they will be accepted. The requirements therein provide for strict standards to insure a high degree of safety.[4]

With respect to the shipment of restricted articles in containers, Rule 17 of C.A.B. No. 82 (Restricted Articles Tariff), participated in by Delta, provides that when such commodities are properly packed, marked, and labeled, they may be assembled by banding, palletizing, or packing together in an additional outside shipping container. The shipper or agent may include them with, or without, other articles subject to certain conditions.[5] These conditions include a requirement for labels describing the contents and special-handling instructions on the outside of the container to be fully visible. These provisions are consistent with standards deemed adequate by the F.A.A. The present proposal, however, would prevent inclusion of such items in containers and would thus significantly increase shipper charges, by requiring restricted articles to be shipped at bulk rates. In our view, Delta has not justified the increased charge. Moreover, it does not appear that attention has been given to the consideration that the imposition of an additional charge for restricted articles would provide an incentive for shippers to mislabel them and thus be counter-productive to safety.

The Board, of course, supports carrier efforts to provide its services in a manner best suited to enhance the safety of transport. At the same time, however, we must be sure such efforts are consistent with the carrier's obligation to provide common carriage service for all acceptable commodities at fair rates.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof,

It is ordered, That:

1. An investigation is instituted to determine whether the provisions in Rule No. 18 on 4th Revised Page 14–D of Airline Tariff Publishers, Inc., Agent, Tariff C.A.B. No. 131, and rules, regulations, and practices affecting such provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful provisions and rules, regulations, or practices affecting such provisions;

2. Pending hearing and decision by the Board, the provisions in Rule No. 18 on 4th Revised Page 14–D of Airline Tariff Publishers, Inc., Agent, Tariff C.A.B. No. 131, are suspended and their use deferred to and including May 23, 1974, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The proceeding herein designated Docket 26400 be assigned for hearing before an Administrative Law Judge of the Board at a time and place hereafter to be designated;

4. Except to the extent granted herein, the complaint of the Council for Safe Transportation of Hazardous Articles (COSTHA) in Docket 26330 is dismissed; and

5. Copies of this order shall be filed with the tariff and served upon Delta Air Lines, Inc. and the Council for Safe Transportation of Hazardous Articles, which are hereby made parties to Docket 26400.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74–3700 Filed 2–13–74;8:45 am]

[3] The request for rejection is denied, inasmuch as the proposal appears in significant compliance with Part 221 of the Board's Regulations.

[4] The tariff indicates which restricted articles are not accepted at all; those that are not accepted in passenger aircraft, in certain aircraft types of any configuration, in the cockpit of an aircraft; detailed packing and labeling requirements; and limitations as to the quantities of various articles that are acceptable, etc. Each shipment (with certain exceptions) must be accompanied by a signed shipper's certification.

[5] The tariff states:

"(a) The assembly shall not include any packaged articles acceptable only on cargo aircraft.

(b) No assembly shall contain more than 440 pounds of dry ice, and the sum of all Transport Indexes of Radioactive Materials shall not exceed 10.0. Not more than 150 pounds net weight of any non-flammable compressed gas and 50 pounds of any other Restricted Article may be included in any assembly.

(c) Corrosive-label materials must not be packed in the same assembly with other classes of articles bearing Restricted-Articles labels (except for Magnetized Materials).

(d) The total net weight of each class of Restricted Article in the assembly must be clearly marked on the outside of the assembly.

(e) Labels and special-handling instructions of interior packages must be either fully visible or must be reproduced on the outside of the assembly.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN COLOMBIA

Entry or Withdrawal From Warehouse for Consumption

FEBRUARY 8, 1974.

On June 27, 1973, there was published in the FEDERAL REGISTER (38 FR 16931), a letter dated June 13, 1973, from the Chairman, Committee for the Implementation of Textile Agreements, to the Commissioner of Customs, establishing levels of restraint applicable to certain specified categories of cotton textiles and cotton textile products produced or manufactured in Colombia and exported to the United States during the twelve-month period beginning July 1, 1973. As set forth in that letter, the levels of restraint are subject to adjustment pursuant to paragraphs 5A and 9 of the bilateral Cotton Textile Agreement of June 25, 1971, between the Governments of the United States and Colombia, which provide that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than 5 percent; and for the limited carryover of shortfalls in certain categories to the next agreement year.

Accordingly, pursuant to the provisions of the bilateral agreement referred to above, there is published below a letter of February 8, 1974 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs amending the level of restraint applicable to cotton textile products in Category 26 (other than duck), produced or manufactured in Colombia and exported to the United States during the twelve-month period which began on July 1, 1973.

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

FEBRUARY 8, 1974.

DEAR MR. COMMISSIONER: On June 13, 1973, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning July 1, 1973 of cotton textiles and cotton textile products in certain specified categories produced or manufactured in Colombia in excess of designated levels of restraint. The Chairman

further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to paragraphs 5A and 9 of the bilateral Cotton Textile Agreement of June 25, 1971 between the Governments of the United States and Colombia, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to amend, effective as soon as possible, the level of restraint established in the aforesaid directive of June 13, 1973 for cotton textile products in Category 26 (other than duck)[2] to 4,726,033 square yards.[3]

The actions taken with respect to the Government of Colombia and with respect to imports of cotton textiles and cotton textile products from Colombia 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.74-3624 Filed 2-13-74;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

NATIONAL PRESTO INDUSTRIES, INC.

Postponement of Prehearing Conference Regarding Possible Substantial Product Hazard Involving Electric Fry Pans

In the FEDERAL REGISTER of January 30, 1974 (39 FR 3849), the Commission announced that a hearing would be held concerning certain Presto fry pans and stated the issues for the hearing.

Notice is given that the prehearing conference in this matter, scheduled for February 27, 1974, is hereby postponed at the request of counsel for National Presto Industries, Inc., and will commence at 10 a.m. on March 5, 1974, in room 6705, Department of Commerce, 14th & E Streets NW., Washington, D.C.

Dated: February 11, 1974.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.74-3676 Filed 2-13-74;8:45 am]

[1] The term "adjustment" refers to those provisions of the bilateral Cotton Textile Agreement of June 25, 1971 between the Governments of the United States and Colombia which provide, in part, that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

[2] Excluding T.S.U.S.A. Nos.:
320.__01 through 04, 06, 08
321.__01 through 04, 06, 08
322.__01 through 04, 06, 08
326.__01 through 04, 06, 08
327.__01 through 04, 06, 08
328.__01 through 04, 06, 08

[3] This level has not been adjusted to reflect any entries made on or after July 1, 1973.

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

Notice of Receipt

Environmental impact statements received by the Council on Environmental Quality from February 4 through February 8, 1974. The date of receipt for each statement is noted in the statement summary. Under Council Guidelines, the minimum period for public review and comment on draft environmental impact statements ends April 1, 1974.

Copies of individual statements are available for review from the originating agency. (Copies will also be available through two commercial sources, the National Technical Information Service of the Department of Commerce, and the Environmental Law Institute of Washington, D.C. NTIS and ELR accession numbers appear at the end of each statement summary.)

DEPARTMENT OF AGRICULTURE

Contact: Dr. Fred H. Tschirley, Acting Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 331-E, Administration Building, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Draft

Suppression Strategy, Southern Pine Beetle, February 6: The statement refers to a cooperative Federal-State program for the suppression of the southern pine beetle on Federal, State, and private lands, in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. Suppression techniques include the removal of infested trees by commercial sale, the piling and burning of infested trees and chemical treatment with the insecticide lindane (214 pages). (ELR Order No. 40220.) (NTIS Order No. EIS 74 0220-D.)

Proposed Pere Marquette Wild and Scenic River, Lake and Mason Counties, Michigan, February 6: The statement refers to the proposed legislative designation of 66.4 miles of the Pere Marquette River and 13,000 adjoining acres as part of the National Wild and Scenic Rivers System. The action is intended to protect the unique natural resource values of the area. (24 pages). (ELR Order No. 40217.) (NTIS Order No. EIS 74 0217-D.)

Murr-Baldy Planning Unit, Lolo N.F., Sanders and Flathead Counties, Montana, February 4: The statement refers to a revised multiple use plan for the 98,000 acre Murr-Baldy Planning Unit of the Lolo National Forest. The plan recommends that 67,549 acres be managed for recreation, fisheries, timber, wildlife, esthetics, watershed, and range. Two areas totaling 26,444 acres will be maintained in a roadless condition; 35,932 acres of presently roadless land will be partially roaded and developed. (ELR Order No. 40198.) (NTIS Order No. EIS 74 0198-D.)

Elgin Planning Unit, Umatilla National Forest, Umatilla and Union Counties, Oregon, February 4: The statement refers to the proposed management of six units of the 233,708 acre Elgin Planning of the Umatilla National Forest. Management will be directed towards such goals as timber production, recreational use, wildlife habitat maintenance, and the maintenance of backcountry values. Impact will result from road construction, timber harvest, and recreation development (ELR Order No. 40194.) (NTIS Order No. EIS 74 0194-D.)

Asotin Planning Unit, Umatilla N.F., Garfield and Asotin Counties, Washington, February 4: The statement refers to a proposed land use plan for the 103,267 acre Asotin Planning Unit of the Umatilla National Forest. Under the plan the Unit would be divided into six sub-units, which would be managed for such values as wildlife habitat, livestock grazing, timber production, recreation, and back-country primitive experience. (ELR Order No. 40202.) (NTIS Order No. EIS 74 0194-D.)

SOIL CONSERVATION SERVICE

Draft

Kickapoo Creek Watershed, several counties, Texas, February 4: The statement refers to a proposed watershed protection and flood prevention project for the 52,160 acre drainage area of the Kickapoo Creek Watershed. Project measures would include land treatment on 12,260 acres, and the construction of six floodwater retarding structures. Adverse impact will include the inundation of 148 acres, the clearing of 770 acres, and the commitment of an additional 125 acres to structure sites. Habitat will be lost for quail, dove, song birds, squirrel, deer, and fur-bearing animals (45 pages). (ELR Order No. 40195.) (NTIS Order No. EIS 74 0195-D.)

ATOMIC ENERGY COMMISSION

Contact: For Non-Regulatory Matters: Mr. W. Herbert Pennington, Office of Assistant General Manager, E-201, AEC, Washington, D.C. 20545, 301-973-4241. For Regulatory Matters: Mr. A. Giambusso, Deputy Director for Reactor Projects, Directorate of Licensing, P-722, AEC, Washington, D.C. 20545. 301-973-7373.

Draft

Idaho Chemical Processing Plant, Idaho, February 5: The statement refers to proposed legislative authorization and appropriation of funds for the construction and operation of an addition to the Idaho Chemical Processing Plant. The new facility will provide the capability for reprocessing fuel from High Temperature Gas Reactors (HTGR). Wastes from the addition will be disposed of by utilizing existing procedures and facilities. (ELR Order No. 40208.) (NTIS Order No. EIS 74 0208-D.)

Waste Facilities, Oak Ridge National Laboratory, Roane County, Tennessee, February 5: The statement refers to the proposed legislative authorization and appropriation of funds for the construction and operation of two additional radioactive waste storage tanks, an evaporator, and associated equipment at the Oak Ridge National Laboratory. The facilities would become operational in 1977. (ELR Order No. 40209.) (NTIS Order No. EIS 74 0209-D.)

Bellefonte Nuclear Power Plant, Jackson County, Alabama, February 4: The statement refers to the proposed issuance of construction permits to the Tennessee Valley authority for the two unit Bellefonte Nuclear Plant. The identical pressurized water reactors will produce 3600 MWt each, with steam turbine generators converting the heat to 1221 MWe (net); future power levels of 3760 MWt and 1269 MWe (net) are anticipated. Cooling water will be obtained from the Tennessee River and circulated through two natural draft towers. Fifteen hundred acres of agricultural and forested land will be committed to the project site. (ELR Order No. 40192.) (NTIS Order No. EIS 74 0192-D.)

Draft

St. Lucie Plant, Unit 2, Florida, February 8: Proposed is the issuance of a construction permit to the Florida Power and Light Company for a second unit at the St. Lucie Plant, which is located on Hutchinson Island, midway between Fort Pierce and Stuart. The

2560 MWt reactor will allow a production of 850 MWe (gross); a future power level of 2700 MWt is anticipated. Exhaust steam for both units of the Plant will be cooled by water pumped from and discharged to the Atlantic Ocean. There may be some adverse impacts to local turtle populations. (ELR Order No. 40225.) (NTIS Order No. EIS 74 0225–D.)

Fuel Fabrication Pilot Plant, Oak Ridge Laboratory, Roane County, Tennessee, February 5: The statement refers to the proposed legislative authorization and appropriation of funds for a pilot project which is intended to demonstrate the technology for refabrication of uranium-233 for use in high-temperature gas-cooled reactors (HTGR) operating on the thorium fuel cycle. The plant will be located at the Oak Ridge National Laboratory. Effluents from the plant will be discharged to existing waste handling and treatment systems (160 pages). (ELR Order No. 40210.) NTIS Order No. EIS 74 0210–D.)

Final

Millstone Nuclear Power Station, Unit 3, Connecticut, February 8: Proposed is the issuance of a construction permit to the Millstone Point Company for Unit 3, a 3579 MWt, 1209 MWe (gross) pressurized reactor unit. (Two other units at the site produce 2011 MWt, 642.1 MWe, net, and 2700 MWt, 820 MWe, net, respectively.) Exhaust steam from the Station will be condensed by a once-through flow of water from Niantic Bay, which will be discharged through a quarry pond to Long Island Sound. Some marine biota will be lost on water intake screens. Comments made by: AHP, USDA, DOC, DOI, DOT, EPA, FPC, and State and local agencies. (ELR Order No. 40226.) (NTIS Order No. EIS 74 0226–F.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary for Environmental Affairs, Deparement of Commerce, Washington, D.C. 20230, 202–967–4335.

Draft

Foreign Trade Subzone 9A, February 6: The statement refers to a proposed modification to the grant for Foreign Trade Subzone 9A issued to the State of Hawaii. The modification would permit the expansion of the refinery operated by the subzone user, Hawaii Independent Refinery Inc. The refinery would increase daily capacity from 29,500 barrels to 125,000 barrels; storage capacity would be increased by 3.3 million barrels (26.7 acres of land would be added to the subzone for this purpose); crude oil will be received through an existing offshore mooring. As a result of the modification, 214 pounds per hour of air pollutants would be released at Ewa, Oahu, and 120 gpm of process water would be released to a disposal well at Ewa. (ELR Order No. 40219.) (NTIS Order No. EIS 74 0219–D.)

Honolulu Harbor, Foreign Trade Subzone 9A Annex, Hawaii, February 6: The statement refers to a request for a grant for a foreign trade zone annex to supplement the grant for Foreign Trade Subzone 9A issued to the State of Hawaii. The annex facilities will permit the intended user, Hawaiian Independent Refinery, Inc. to transship products from its refinery at Barbers Point, Oahu, to Honolulu, Oahu. Adverse impact of the action would include the emission of eleven pounds per hour of hydrocarbon vapors at Honolulu, and that of a potential source for oil spills into Honolulu Harbor (31 pages). (ELR Order No. 40218.) (NTIS Order No. EIS 74 0218–D.)

DEPARTMENT OF DEFENSE

ARMY CORPS

Contact: Mr. Francis X. Kelly, Director, Office of Public Affairs, Attn: DAEN–PAP, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202–693–7168.

Draft

Cleveland Harbor, Maintenance Dredging, February 7: The project involves the dredging of approximately 1,125,000 cubic yards of sediment from Cleveland Harbor, and maintenance of piers and breakwaters. Adverse impacts include odor from the pumping process, increased turbidity, and increased noise and dust during the maintenance period. The major negative impact will be the depositing of dredged sediments into Lake Erie if pilot disposal sites are filled and ongoing construction of another disposal facility is not completed (Buffalo District) (70 pages). (ELR Order No. 40222.) (NTIS Order No. EIS 74 0222–D.)

Marion Local Flood Protection, Kansas, February 5: The project consists of construction of a levee and floodway on Mud Creek and Cottonwood River for flood protection at Marion. The adverse effects resulting from the project include purchase of 3 home sites, increased flooding on some lands outside of the protected area, and alteration of the ground characteristics and vegetation on 110 acres of land required for the levee and diversion channel. There will also be temporary inconvenience to area inhabitants during construction (Tulsa District) (180 pages.) (ELR Order No. 40204.) (NTIS Order No. EIS 74 0204–D.)

Gulfport Harbor Navigation, Mississippi, February 4: The project calls for the deepening and widening of the existing channel to the Gulfport Harbor in Gulfport. Additionally, approximately 68 acres of the present anchorage basin will be deepened 4 feet. The major adverse impact stems from temporary increased turbidity caused by dredging, which will have a negative effect on benthic organisms. Other impacts are the commitment of 260 acres of bottom to the channel, and periodic water quality disruption from maintenance dredging (Mobile District) (30 pages). (ELR Order No. 40193.) (NTIS Order No. EIS 74 0193–D.)

Final

Clayton Lake, Jackson Creek, Oklahoma, February 4: The project involves the construction of a dam and lake for the purposes of flood control, water supply, and wildlife. The Clayton Lake project is to be located on Jackfork Creek approximately 2.8 miles north of Clayton. The lake conservation pool will cover 14,360 acres of land which includes agricultural lands. This inundation will adversely effect terrestrial species and archeological sites in the area. Other adverse impacts are the relocation of several roads, power and telephone lines, 500 graves, and approximately 80 families (Tulsa District) (163 pages). COMMENTS MADE BY: USDA, DOI, DOT, and State and local agencies. (ELR Order No. 40199.) (NTIS Order No. EIS 74 0199–F.)

FEDERAL POWER COMMISSION

Contact: Dr. Richard F. Hill, Acting Advisor on Environmental Quality, 441 G Street NW., Washington, D.C. 20426, 202–386–6084.

Draft

Mystic Lake Project No. 2301, Stillwater and Carbon Counties, Montana, February 5: The statement refers to the proposed relicensing of Montana Power Company's Mystic Lake Project No. 2301. The existing facilities of the project would be altered by the construction of a reregulating dam, which will allow year round operation and an increase in plant capacity from 5,000 kw to 11,500 kw. (ELR Order No. 40212.) (NTIS Order No. EIS 74 0212–D.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Andrew E. Kauders, Executive Director of Environmental Affairs, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, 202–343–4161.

Draft

Federal Youth Center, San Diego, California, February 5: The statement refers to the proposed construction of a 104,000 sq. ft. Federal Youth Center, which will be operated by the Bureau of Prisons. The facility, which will be constructed in the Elliott Community of San Diego, will house up to 250 youthful offenders serving short term sentences. The center will have social and economic impacts on the surrounding community; the project is in conflict with the proposed land use of the Elliott Community and San Diego General plans (150 pages). (ELR Order No. 40211.) (NTIS Order No. EIS 74 0211–D.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Acting Director, Office of Community and Environmental Standards, Room 7206, 451 7th Street SW., Washington, D.C. 20410, 202–755–5980.

Final

Anaheim Hills Development, Orange County, California, February 4: The statement considers a proposal for HUD to provide FHA mortgage insurance for the new community of Anaheim Hills. The development is to be a "total community" of low to medium density residential neighborhoods encompassing facilities for shopping, recreation, schools and municipal services. The total Anaheim Hills new community will contain 4,200 acres with an ultimate density of 15,000 living units. Initial development of approximately 650 acres of land will contain 3,500 dwelling units (227 pages). Comments made by: HUD, DOI, COE, EPA, DOC, and State and local agencies. (ELR Order No. 40203.) (NTIS Order No. EIS 74 0203–F.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 7260, Department of the Interior, Washington, D.C. 20240, 202–343–3891.

BUREAU OF LAND MANAGEMENT

Draft

Red Rock Canyon Recreation Lands, Clark County, Nevada, February 5: The statement refers to a proposed management plan for 62,000 acres of public land and 2,000 acres of private land, located fifteen miles west of Las Vegas. The lands will be managed for the preservation of wilderness and other natural areas; for recreation development; for private commercial development (of lodges and a dude ranch); and for visitor and administrative uses. There will be some road and trail construction. (ELR Order No. 40207.) (NTIS Order No. EIS 74 0207–D.)

BUREAU OF SPORTS FISHERIES AND WILDLIFE

Draft

Proposed Santee National Wilderness Area, Clarendon County, South Carolina, February 6: The statement refers to the proposed legislative designation of 13 islands in Lake Marion, which encompass 163 acres that are presently part of the Santee National Wild-

life Refuge, as wilderness within the National Wilderness Preservation System. Some future management options would thereby be removed (27 pages). (ELR Order No. 40216.) (NTIS Order No. EIS 74 0216–D.)

Final

Allegheny National Fish Hatchery, Warren County, Pennsylvania, February 7: The proposed project is the construction and operation of a National Fish Hatchery for the propagation of brook, brown and rainbow trout and coho salmon. Hatchery effluent is expected to cause some organic enrichment of the Allegheny River and some odor in the vicinity of the effluent treatment facility. The salt load in the Allegheny River will be increased during construction (127 pages). Comments made by: DOI, COE, USDA, DOC, EPA, FPC, and State and local agencies. (ELR Order No. 40221.) (NTIS Order No. EIS 74 0221–F.)

INTERSTATE COMMERCE COMMISSION

Contact: Mr. Fritz Kahn, General Counsel, Interstate Commerce Commission, Room 5137, Washington, D.C. 20423, 202–343–4831.

Draft

Port Authority Trans-Hudson Corporation, February 5: The statement refers to a proposed increase in fare rates for the Port Authority Trans-Hudson Corporation (PATH). The fare would be increased from thirty cents per ride to fifty cents per ride for passenger service between Newark, New Jersey and New York, New York. The action may have impacts on alternative modes of transportation and on air quality standards (48 pages). (ELR Order No. 40214.) (NTIS Order No. EIS 74 0214–D.)

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Contact: Mr. Ralph E. Cushman, Special Assistant, Office of Administration, NASA, Washington, D.C. 20546, 202–962–8107.

Draft

Sewage Outfall Easement, Goddard Space Flight Center, Prince Georges County, Maryland, February 6: The statement refers to the proposed granting of an easement across the Center's property for the construction of a temporary sewage outfall line. The temporary facilities would serve a private development (Greenbriar Apartment Project) until an expected 1975 hook-up with the local public sewer system. A moratorium presently exists on public system hook-ups, subject to improvement of the Western Branch Sewage Treatment Plant. The primary environmental effect will be that resulting from the effluent discharge to the receiving stream. (ELR Order No. 40215.) (NTIS Order No. EIS 74 0215–D.)

NATIONAL CAPITAL PLANNING COMMISSION

Contact: Mr. Donald F. Bozarth, Director of Current Planning and Programming, Washington, D.C. 20576, 202–382–1471.

Draft

Bolling/Anacostia Base, Supplement, District of Columbia, February 5: The document supplements a final statement which was filed on June 12, 1973 dealing with proposed development at the Bolling/Anacostia Tract. (ELR Order No. 40213.) (NTIS Order No. EIS 74 0213–D.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Quality, 400 7th Street SW., Washington, D.C. 20590, 202–426–4357.

FEDERAL AVIATION ADMINISTRATION

Draft

Mott Municipal Airport, Hettinger County, North Dakota, February 5: The project involves the extension of the turf landing strip, and construction of a hard-surfaced runway, taxiway and apron. There will be increases in the levels of air and noise pollution as airport activity increases. Also, some ground animal and ground-nesting birds will be adversely effected by construction (36 pages). (ELR Order No. 40206.) (NTIS Order No. EIS 74 0206–D.)

Final

Kewanee Municipal Airport, Henry County, Illinois, February 4: The statement refers to the proposed construction, lighting, and marking of a new E/W runway (39,900' x 75') with a turnaround; construction, lighting and marking of a connecting taxiway to the E/W runway (375' x 40'); the construction of a 3,330 sq. yd. apron expansion; and the acquisition of 150 acres for airport development. Air and noise pollution will increase; farmland and wildlife habitat will be reduced (103 pages). Comments made by: USDA, HUD, EPA, DOI, DOT, COE, and State and local agencies. (ELR Order No. 40190.) (NTIS Order No. EIS 74 0190–F.)

FEDERAL HIGHWAY ADMINISTRATION

Draft

FAS Route 985, Del Norte County, Del Norte, County, California, February 4: The project involves repairs to approximately 2 miles of FAS Route 985, South Fork Road, which is located in Six Rivers National Forest, Del Norte County. The project is to repair storm damage which closed the road in 1971 and 1972. Several alternative repair proposals are discussed. There will be increased sedimentation in the South Fork River which will cause loss of fish downstream if adequate repairs are not made (25 pages). (ELR Order No. 40196.) (NTIS Order No. EIS 74 0196–D.)

State Route 38, Forest Highway 68, San Bernardino County, California, February 4: The project involves the upgrading of Forest Highway 68, State Route 38 in the San Bernardino National Forest, San Bernardino County. The project extends from the Forest Boundary 5.3 east to Forest Home Boulevard. The plan includes grading, paving and structures necessary to provide a two-lane, 45 m.p.h. design speed facility. Adverse impacts include normal construction disruptions, and slight increases in noise levels at certain areas (18 pages). (ELR Order No. 40197.) (NTIS Order No. EIS 74 0197–D.)

N–71, Scotts Bluff County, Nebraska, February 4: The project involves the improvement of N–71 so as to provide a high capacity roadway facility which will meet the service requirements of an area located in and near the urban limits of Gering, Terrytown and Scottsbluff. The improvement of N–71 will be for a length of approximately 8 miles and will consist of intersections, drainage structures and a possible new bridge over the North Platte River. Adverse impacts included increases in the levels of air, water and noise pollution during construction, and some loss of wildlife. Figures involving the amount of acreage needed, and the number of families who must be relocated vary depending on the alternate chosen (37 pages). (ELR Order No. 40200.) (NTIS Order No. EIS 74 0200–D.)

84th Street Modifications, Omaha, Douglas County, Nebraska, February 7: The statement refers to two related and complementary projects in Omaha. They are (a) the construction of twin tunnels under the Union Pacific Railroad at 84th Street and the widening of 84th from Papillion Parkway to F Street; and (b) the construction of a new interchange at 96th Street and I–80 which is one mile west of 84th Street. Adverse impacts include the possibility of erosion and associated water pollution during construction, and increases in the levels of air and noise pollution due to increased traffic volume (59 pages). (ELR Order No. 40223.) (NTIS Order No. EIS 74 0223–D.)

I–635, South Mesquite Creek, Texas, February 4: The project consists of the realignment and widening of the South Mesquite Creek Channel to prevent flooding of I–635. Two solutions to the flooding problem are discussed. Adverse environmental impacts of the project are increases in air and water pollution during construction, and a loss of some fish and wildlife (30 pages). (ELR Order No. 40201.) (NTIS Order No. EIS 74 0201–D.)

State Route 300, Upshur County, Texas, February 7: The project involves the construction of S.H. 300 for a length of 11.6 miles of which 5 miles is on new location. The two lane facility will extend from the Gregg County line at Seven Pines northwest to U.S. 271 in Gilmer. Adverse impacts include displacement four families and four businesses, loss of production of 275 acres of agricultural and timber land, and minor silting of streams (21 pages). (ELR Order No. 40224.) (NTIS Order No. EIS 74 0224–D.)

Final

I–40, Kingman-Ash Fork Highway, Yavapai County, Arizona, February 5: Proposed is the construction of a 3.41 mile section of I–40 south of the Town of Ash Fork. Adverse effects of the action include acquisition of land for right of way, alteration of the natural terrain, removal of vegetation, and inconvenience to the community during construction (70 pages). Comments made by: USDA, DOI, and State and local agencies. (ELR Order No. 40205.) (NTIS Order No. EIS 74 0205–F.)

Licking River Bridge, Kenton and Campbell Counties, Kentucky, February 4: The statement is concerned with a proposed highway bridge project which will span the Licking River north of Visalia. The bridge will be a 2 lane structure, and will ultimately be utilized as a part of an Ohio, Kentucky, Indiana beltway. Two families, 3 farm buildings, and 1 business will be displaced; approaches to the bridge will traverse the Licking River flood Plain; some erosion and sedimentation will result from construction (85 pages). Comments made by: DOT, USDA, EPA, USCG, and State agencies. (ELR Order No. 40191.) (NTIS Order No. EIS 74 0191–F.)

GARY L. WIDMAN,
General Counsel.

[FR Doc.74–3709 Filed 2–13–74;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19922; File No. BR–4376]

GOLDEN BROADCASTING SYSTEMS, INC.

Order Designating Application for Hearing on Stated Issues; Correction

In regards application of: Golden Broadcasting Systems, Inc., Radio Station KOAD, Lemoore, California, for renewal of license, Docket No. 19922, File No. BR–4376.

The Order in this proceeding, FCC 74–38 published in the issue of Thursday, January 17, 1974, at 39 FR 2140, released

January 11, 1974, is modified by the following corrections:

(a) In the name of the applicant in the caption, change "SYSTEM," to "SYSTEMS,";

(b) In paragraph 8, change "System," to "Systems,".

Released: February 5, 1974.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] VINCENT J. MULLINS, *Secretary.*

[FR Doc.74-3658 Filed 2-13-74;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. RP73-98]

ALGONQUIN GAS TRANSMISSION CO.

Notice of Offer of Settlement

FEBRUARY 8, 1974.

Take notice that on November 26, 1973, Algonquin Gas Transmission Company (Algonquin) and Boston Gas Company, et al. (Customers), comprising all of the purchasers of SNG-1 gas, jointly filed an Offer of Settlement (Settlement). The Settlement is concerned with Algonquin's proposed $17.8 million annual rate increase in Docket No. RP73-98, covering sales of synthetic natural gas (SNG) under its SNG-1 rate schedule.

Algonquin and Customers state that the Settlement provides for a straight-line rate of $2.99 per Mcf for the period, December 9, 1973, through November 30, 1974, in lieu of the two-part rate of $22.398 demand and $1.7468 commodity presently in effect subject to refund. The parties further state that the proposed settlement rate is based on annual sales volume of 9,200,000 Mcf rather than 40,-200,000 Mcf and includes no return on the equity investment of Algonquin SNG, Inc.

In addition, Algonquin and Customers state that the Settlement includes a deferred gas cost accounting tariff provision which would enable Algonquin to flow through any changes in the cost of naphtha feedstock incurred during the term of the Settlement. Furthermore, any rate adjustment to recover amounts recorded in the deferred account would become effective on October 16, 1974, and would be effective during the 1974-75 winter season. Algonquin and the Customers state that the deferred cost accounting provision is severable and the settlement can be approved without the provision.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 19, 1974. 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.74-3606 Filed 2-13-74;8:45 am]

[Docket No. CP73-206]

CONSOLIDATED GAS SUPPLY CORP., ET AL.

Notice of Motion To Conform Application to Evidence or in the Alternative Petition To Amend

FEBRUARY 11, 1974.

On February 1, 1974, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP73-206 a motion to amend the pleadings in said docket pursuant to § 1.11(d) of the Commission's Rules of Practice and Procedure [18 CFR 1.11(d)] or in the alternative a petition to amend the Commission's order issued in said docket on December 27, 1973 (50 FPC ——), pursuant to section 7(c) of the Natural Gas Act, all for the purpose of obtaining authorization to return volumes of gas to its customer which are the subject of the storage service authorized in the subject docket, as more fully set forth in the motion and petition which is on file with the Commission and open to public inspection.

By order of December 27, 1973, Algonquin, among others, was authorized to carry out certain natural gas storage operations and transactions for the period ending March 31, 1974. Prior to that date, Algonquin was carrying on its proposed program pursuant to a temporary certificate issued in the subject docket. Algonquin states that on two separate occasions after the issuance of the temporary certificate it tried to file tariff sheets setting forth the rate, terms and operating conditions under its implementation program for the services contemplated by its application, including the delivery of returned volumes of gas to its customers, but on each occasion these sheets were returned by a Commission letter order which stated that the outstanding temporary certificate authorization does not cover the new service proposed in these sheets. Algonquin further states that these sheets were returned because it allegedly failed to apply for authorization to sell the returned volumes of gas to its customers. Algonquin states that it disagrees with this view and regards the rejection of its tariff filings as erroneous.

In order to resolve this matter, without prejudice to its position that no certificate authorization is necessary beyond that set forth in the December 27, 1973, order, Algonquin amends its pleadings in the subject docket so as to show that it is applying for authorization to deliver its returned volumes of gas from storage to its customers. Algonquin submits that this issue, along with the rate terms and operating conditions thereof, were introduced by expressed or implied consent of the parties in this proceeding and, therefore, the issue should be treated in all respects as if it had been raised in the pleadings.

If its motion to amend the pleadings to conform to the evidence is not granted, in the alternative, Algonquin requests that the authorization granted by the December 27, 1973, order be amended to include authorization to sell and return the subject gas to its customers.

Algonquin's program consists of the release of approximately 3,300,000 Mcf of gas during the summer by its customers, of which 2,200,000 Mcf of gas will be purchased by Consolidated Gas Supply Corporation and the remaining 1,100,000 Mcf of gas will be returned to its customers under its proposed Rate Schedule S-T at a rate of $1.00 per Mcf for the storage service rendered thereunder.

Algonquin states that it tendered for filing various tariff sheets reflecting its program on January 7, 1974, and requests that these sheets be accepted as proposed in its filing, including the waiver of the notice thereof.

It appears reasonable and consistent 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 motion and petition to amend should on or before February 22, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.74-3607 Filed 2-13-74;8:45 am]

[Docket Nos. RP71-119, RP74-31-19]

PANHANDLE EASTERN PIPE LINE CO.

Notice of Petition for Extraordinary Relief

FEBRUARY 8, 1974.

The Commission in its Order issued on November 6, 1973, in the proceeding relating to a permanent plan for Panhandle Eastern Pipe Line Company (Panhandle) in Docket No. RP71-119 (50 FPC ——) accepted and made effective, as of November 1, 1973, revised tariff sheets submitted by Panhandle on October 1, 1973, proposing a curtailment plan for that pipeline which conformed to the curtailment procedures contained in the Commission's Statement of Policy issued in Docket No. R-469, Order No. 467-B.

On December 13, 1973, the Commission issued an order in which it noted that numerous petitions for extraor-

dinary relief had been filed by Panhandle's customers.[1] In the aforementioned order it granted temporary extraordinary relief to certain petitioners and set all of the petitions docketed in the caption of that order for formal hearing. An additional request for extraordinary relief has been filed subsequent to those petitions set forth in the aforementioned order.

Take notice that on January 29, 1974, Brockway Glass Company, Inc. ("Brockway"), whose principal offices are located on McCullough Avenue, Brockway, Pennsylvania 15824, filed a petition for permanent, extraordinary relief through October 31, 1974, from natural gas curtailments imposed under the 467–B curtailment plan of Panhandle Eastern Pipe Line Company ("Panhandle") at Brockway's Lapel, Indiana plant. Brockway, a direct sale customer of Panhandle, states that due to the Federal Government's regulations allocating petroleum supplies its contracted supplies of oil will be terminated on February 1, 1974, and its plant be forced to shut down operations on or about February 3, 1974, with substantial irreparable injury to its employees, itself, and the public, unless relief from Panhandle's curtailments is granted be then. Accordingly, Brockway has moved for immediate, temporary relief pending Commission action on its request for permanent relief. Brockway has pledged itself to exercise due diligence to obtain oil supplies and to use oil as an alternate fuel to the fullest extent possible.

Brockway seeks a total of 803,930 Mcf of gas from Panhandle during the months of February through October, 1974, in order to continue operations and avoid irreparable injury. Brockway states that such volumes are within the 4,500 Mcf per day specified as Panhandle's maximum delivery obligation under the contract between Brockway and Panhandle.

It appears reasonable and consistent with the public interest in this proceeding 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 protest said petition should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10) on or before February 15, 1974. 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 in accordance with the Commission's rules. This filing which was made with the Commission is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–3603 Filed 2–13–74;8:45 am]

[1] The order is entitled Panhandle Eastern Pipe Line Company, et al., in docket No. RP71–119, et al. The specific proceedings were captioned by a series of docket numbers commencing with RP74–31–1.

[Docket No. RP74–39–7]

TEXAS EASTERN TRANSMISSION CORP. AND PENN FUEL GAS, INC.

Notice of Petition for Emergency Relief

FEBRUARY 8, 1974.

Public notice is hereby given that on January 29, 1974, Penn Fuel Gas, Inc. (Penn Fuel) filed a petition for Emergency Relief pursuant to § 1.7 of the Commission's rules of practice and procedure. Penn Fuel requests that the Commission order Texas Eastern Transmission Corporation (Texas Eastern) to supply it with a minimum of 9,985 Mcf per day for resale to Standard Steel (Division of Titanium Metals Corporation of America, Inc.) for use in the manufacture of steel products.

Penn Fuel is a public utility holding company with several affiliated gas distribution companies serving Eastern Pennsylvania. One of these, Lewistown Gas Company (Lewistown) supplies Standard Steel. Lewistown purchases all of its gas from Texas Eastern.

Standard Steel has contracted with Lewistown for 14,300 Mcf per day, 90 percent of which Penn Fuel states is a firm requirement. In its petition Penn Fuel states the following about Standard Steel: Standard manufactures many specialized products for use in national defense, energy production, railroads, mass transit, and other areas vital to the Nation. Standard has converted to alternate fuels wherever possible, but still requires a minimum of 9,985 Mcf per day of natural gas to maintain full production. Standard employs 31.3 percent of the total industrial work force in Mifflin County, Pennsylvania, an area whose current rate of unemployment is approximately 7 percent. Should Standard not receive the requested relief, it states that it may be forced to curtail production laying off an undetermined number of men.

A shortened notice period in this proceeding may be in the public interest. Any person desiring to be heard or to make protest with reference to said petition should on or before February 19, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The petition is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–3604 Filed 2–13–74;8:45 am]

[Docket No. RP74–64]

TRUNKLINE GAS CO.

Notice of Change in Rates

FEBRUARY 8, 1974.

Take notice that Trunkline Gas Company (Trunkline) on January 28, 1974, tendered for filing Sixth Revised Sheet No. 37 of its FPC Gas Tariff, Original Volume No. 2. Trunkline requests that the filing be permitted to become effective as of January 1, 1974.

Trunkline states that the increased Tariff is in accordance with Rate Schedule F–2, and reflects solely the appropriate reimbursement of the increase in the Louisiana severance tax, pursuant to Commission Order No. 500, issued December 28, 1973, in Docket No. RM74–9.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 22, 1974. 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.74–3605 Filed 2–13–74;8:45 am]

[Docket No. CI74–398]

AMERADA HESS CORP.

Notice of Application

FEBRUARY 7, 1974.

Take notice that on January 21, 1974, Amerada Hess Corporation (Applicant), 1200 Milam, 6th floor, Houston, Texas 77002, filed in Docket No. CI74–398 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a sale of natural gas to Skelly Oil Company (Skelly) from the Eunice Field, Lea County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has heretofore been selling gas to Skelly from its H. Corrigan #8 well under a percentage-type contract. As an oil well, the casinghead gas therefrom is dedicated to Skelly

and as a gas well, the gas-well-gas therefrom is dedicated to Northern Natural Gas Company pursuant to a gas purchase contract dated February 29, 1952, heretofore filed as Applicant's FPC Gas Rate Schedule No. 30. Applicant states that effective August 1, 1973, the subject well was reclassified by the New Mexico Oil Conservation Commission from an oil well to a gas well and, therefore, requests authorization to abandon this sale to Skelly so that it may meet its contractual commitment to Northern.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 28, 1974, 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 permission and approval for the proposed abandonment are 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.74-3682 Filed 2-13-74;8:45 am]

[Docket No. CP68-8]

CITIES SERVICE GAS CO.

Notice of Petition To Amend

FEBRUARY 7, 1974.

Take notice that on January 28, 1974, Cities Service Gas Company (Petitioner), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP68-8 a petition to amend the order of the Commission issued March 11, 1970, in the subject docket pursuant to section 7(c) of the Natural Gas Act so as to conform such certificate authority to the facilities actually installed by deleting the authority to install certain compressor facilities and modifying the authority to construct certain pipeline and appurtenant facilities, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that in its order issued March 11, 1970, the Commission authorized the installation and operation of one 2,000 horsepower compressor unit at Petitioner's existing Higgins Compressor Station in Hemphill County, Texas. This unit has not been installed and Petitioner no longer proposes to install this unit as present operations of its system indicate that the unit is not required as existing compression facilities at Petitioner's Blackwell Compressor Station are being utilized to compress required gas volumes from the Canadian-Blackwell 26-inch pipeline.

The order issued March 11, 1970, also authorized the construction and operation of 184.2 miles of 26-inch gas pipeline and appurtenant facilities extending from a point of interconnection with the facilities of Transwestern Pipeline Company in Hemphill County, Texas, to the Blackwell Compressor Station in Kay County, Oklahoma. Petitioner advises that due to slight routing deviations from the original proposal to avoid unforeseen obstructions, it constructed 186.36 miles of 26-inch pipeline and appurtenant facilities. Petitioner states further that in order to achieve a cost savings in construction Petitioner utilized 0.250-inch wall pipe in lieu of the authorized 0.281-inch wall pipe which has resulted in a corresponding reduction in the maximum allowable operating pressure of 934 psig for the originally authorized pipeline to a current maximum allowable operating pressure of 900 psig.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 28, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-3685 Filed 2-13-74;8:45 am]

[Docket No. C174-393]

CLINTON OIL CO.

Notice of Application

FEBRUARY 7, 1974.

Take notice that on January 24, 1974, Clinton Oil Company (Applicant), P.O. Box 1201, Wichita, Kansas 67201, filed in Docket No. CI74-393 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 Gas Transmission Corporation (Texas Gas) from the East Cote Blanche Bay, Iberia Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to commence the sale of natural gas to Texas Gas from the subject acreage within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and proposes to continue said sale for two years from the first day of the month next following the month in which the initial delivery is made under the authorization requested herein within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant proposes to sell up to 3,000 Mcf of gas per day at 45.0 cents per Mcf at 15.025 psia, subject to upward and downward Btu adjustment.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 1, 1974, 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.74-3686 Filed 2-13-74;8:45 am]

[Docket No. CP74-195]

COLUMBIA GULF TRANSMISSION CO.

Notice of Application

FEBRUARY 7, 1974.

Take notice that on January 28, 1974, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP74-195 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Natural Gas Pipeline Company of America (Natural) offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport under a short-term transportation agreement with Natural, dated December 17, 1973, up to 20,000 Mcf of gas per day for Natural from a point in Block 314, Eugene Island Area, offshore Louisiana, at which pipeline facilities of Natural interconnect with those of Applicant, to a point of delivery to Michigan Wisconsin Pipe Line Company (Mich Wisc) in Eugene Island Block 250. The application states that such gas is to be further transported by Mich Wisc for redelivery to Natural in Cameron Parish, Louisiana.

Applicant states that Natural is now purchasing casinghead gas produced by Shell Oil Company (Shell) from Eugene Island Block 331 and that substantial volumes of gas-well gas will become available for purchase by Natural from Shell from said block on or about July 1, 1974. Applicant states further that casinghead gas and gas-well gas are available for purchase by Applicant's affilate, Columbia Gas Transmission Corporation (Columbia Gas), from Exxon Company U.S.A. (Exxon), in Eugene Island Block 314. Substantial additional volumes of gas-well gas will be available from Exxon by November 1, 1974, as well as other gas in 1974 from Blocks 485 and 531, West Cameron Area, offshore Louisiana.

The application states that Applicant has entered into a two-phase transportation arranagement with Natural as detailed in a letter of intent between said parties dated October 12, 1973, which will allow the parties access to and receipt of the Eugene Island and West Cameron gas.

Under the first phase or the interim arrangement, Applicant will accept deliveries of natural gas from Natural at Eugene Island Block 314 [1] and will transport such gas through its facilities to an interconnection in Block 309, Eugene Island Area, with an existing 26-inch pipeline, which is jointly owned by Applicant and Texas Gas Transmission Corporation, and through the latter pipeline to an existing interconnection in Eugene Island Block 250 with the offshore facilities of Mich Wisc for redelivery to Natural onshore in Cameron Parish.[2]

Under second phase or the long-term arrangement Applicant and Natural will jointly construct and own and Applicant will operate a 20-inch pipeline from Eugene Island Block 309 to the offshore header of the Blue Water Project pipeline (BWP) at Eugene Island Block 241. This construction will enable Applicant to make available pipeline delivery capacity in the BWP to Natural of up to 75,000 Mcf of gas per day. Natural, in turn, has agreed to make available to Applicant delivery capacity of up to 75,000 Mcf of gas per day under its entitlement in the proposed Stingray Pipeline Company's pipeline for which an application for authorization is pending in Docket No. CP73-27. Under the long-term arrangement volumes of gas equivalent to those purchased by Natural from Shell in Block 331 [3] but limited to 75,000 Mcf/day will be delivered at Block 241 for transportation by Applicant and Applicant will deliver volumes of gas purchased by Columbia Gas from West Cameron Blocks 479, 485, and 531 for transportation through the Stingray Pipeline Company's pipeline for the account of Natural. Applicant states these volumes of gas will be balanced at points of interconnection between Applicant's system and Natural's system or through a third party.

By this application Applicant is requesting authorization only as to the interim arrangement. In this regard Applicant requests a certificate of public convenience and necessity authorizing it to transport up to 20,000 Mcf of natural gas per day from the Eugene Island Block 314 to Block 250 for the account of Natural and to continue such transportation until implementation of the long-term arrangement.

Under the terms of the interim arrangement Natural will pay Applicant a transportation charge of two cents per Mcf of gas delivered, and, as a contribution in aid of construction, its proportionate cost of incremental horsepower installed by Applicant in Block 250 to deliver such gas. Applicant states that this interim arrangement will enable Natural to continue taking casinghead gas from Shell pending the construction of the 20-inch pipeline addition to the BWP as proposed under the long-term arrangement.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 1, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-3690 Filed 2-13-74;8:45 am]

[1] Applicant is constructing a pipeline connecting the Exxon gas reserves in Eugene Block 314 with the existing 26-inch pipeline in Block 309 under budget-type authorization granted in Docket No. CP73-104.

[2] Mich Wisc has filed a petition to amend the order issuing a certificate in Docket No. CP72-296 by authorizing the receipt of Natural's gas at Block 250.

[3] Less the volumes handled under the Mich Wisc transportation displacement arrangement.

[Docket No. RP74-67]

CONSOLIDATED GAS SUPPLY CORP.

Notice of Changes in Rates

FEBRUARY 8, 1974.

Take notice that Consolidated Gas Supply Corporation (Consolidated) on January 31, 1974, tendered for filing proposed tariff sheets to its FPC Gas Tariff, original volume No. 3, namely: second revised sheet Nos. 81-A, 144-A, 229-A, 382-A, 412-A, 568-A, 662-A, 691-A, and 720-A, intended to supersede rate schedules F-8, F-10, F-12, F-15, F-16, F-21, F-24, F-25 and F-26, respectively. Consolidated requests that its filings be permitted to become effective as of January 1, 1974.

Consolidated states that the proposed increases are submitted pursuant to the Commission's order No. 500, issued December 28, 1973, in Docket No. RM74-9, State of Louisiana Severance Tax-Increased Rate Filings. Consolidated alleges that the proposed rate schedule adjustments reflect solely the increase in the Louisiana severance tax, not in excess of the applicable area ceiling rates established by the Commission's opinion No. 598, as amended, issued July 16, 1971, as adjusted by order No. 500.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and pro-

cedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 22, 1974. 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.74-3680 Filed 2-13-74;8:45 am]

[Docket Nos. RP73-104 et. al.]

EL PASO NATURAL GAS CO.

Order Accepting for Filing and Suspending Tendered Tariff Sheets, Permitting Interventions, Consolidating Proceedings, Providing for Hearing and Establishing Procedures

FEBRUARY 8, 1974.

On January 10, 1974 El Paso Natural Gas Company (El Paso) tendered for filing certain revised tariff sheets[1] providing for increased rates to its Southern Division jurisdictional customers amounting to an annual increase in revenues of approximately $70 million, or an average increase of 7.09¢ per Mcf in all transmission sales zones and 5.74¢ per Mcf in production area sales. El Paso filed supporting data calculated on the basis of divestiture of its Northwest Division System properties. El Paso proposes that the increase be allowed to take effect on February 10, 1974, and requests that any suspension be limited to one day.

El Paso maintains that the principal reasons for the proposed increase are declining gas supplies resulting in reduced sales; the effect of divestiture of its Northwest Division System; increases in all items of cost including taxes, labor, capital, materials and supplies; and a proposed 9.25 percent rate of return. In addition, the proposed rate increase reflects costs which are attributable to increased payments which may be due to owners of production payments and special overriding royalty interests in the San Juan Basin. The current status of this item is the subject of a formal hearing to be held on February 12, 1974 in El Paso Natural Gas Company, Docket No. RP74-22.

In the subject filing El Paso uses the Unmodified Seaboard Method of cost classification. In light of Commission Opinion No. 671, issued October 31, 1973 in United Gas Pipe Line Company, Docket No. RP72-75, wherein the Commission adopted two-part rates based upon the classification of 75 percent of fixed costs to commodity and 25 percent of fixed costs to demand, the burden shall be upon El Paso to justify any commodity rate levels reflecting inclusion of less than 75 percent of Seaboard fixed costs.

El Paso has also included, within its rate base computations a $1.8 million adjustment to gas plant for which certification has not yet been granted.

El Paso also seeks to recover, in this proceeding, costs associated with its Development Coal Gasifier Project which is the subject of proceedings in Docket No. RP73-84. In view of the existence of common questions of law and fact related to this issue in this proceeding and Docket No. RP73-84, we shall order consolidation of both Dockets for purposes of hearing and decision.

Our review of the subject rate filing indicates that the proposed rates have not not been shown to be just and reasonable, and that they may be excessive, unduly discriminatory, or otherwise unjust and unreasonable. Accordingly, the proposed tariffs shall be accepted for filing, suspended for the full five month statutory period, subject to refund, and set for hearing.

It is noted that on May 2, 1973, in Docket No. RP73-104, El Paso filed for a rate increase for its Southern Division which was placed into effect, subject to refund, on November 2, 1973. Today's action of suspending the effect of the present filing creates a "locked in" period in Docket No. RP73-104 of November 2, 1973 through July 9, 1974. Procedural dates in that proceeding have been postponed, by Notice of the Commission Secretary issued October 15, 1973. In view of the fact that certain issues of law and fact in this proceeding are substantially the same as those in Docket No. RP73-104, we shall order consolidation of both Dockets for purposes of hearing and decision, and adopt herein a procedural schedule applicable to both dockets.

On January 14, 1974, public notice of El Paso's filing was issued, with protests or petitions to intervene to be filed on or before January 30, 1974. Petitions to intervene were timely filed by Southwest Gas Corporation; Citizens Utilities Company; the Navajo Tribal Utility Authority; and American Smelting and Refining Company, Compania Minera De Cananea, S.A., Inspiration Consolidated Copper Company and Kennecott Copper Corporation. Upon review of the petitions to intervene, we believe good cause exists to grant intervention to each petitioner.

The Commission finds:

(1) El Paso's revised tariff sheets, tendered for filing on January 10, 1974, should be accepted for filing as hereinafter ordered.

(2) It is necessary and proper in the public interest and to aid in the enforcement in the provisions of the Natural Gas Act, that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in El Paso's FPC Gas Tariffs, as proposed to be amended in Docket No. RP74-57 and that the revised sheets be suspended as hereinafter provided.

(3) The participation of the above-named petitioners may be in the public interest, provided that such participation shall be limited as set forth below.

The Commission orders:

(A) El Paso's tariff sheets proffered in Docket No. RP74-57 are accepted for filing and suspended for the full statutory period of five months, until July 10, 1974, or until such time as they are made effective in the manner provided by the Natural Gas Act.

(B) Pursuant to the authority of the Natural Gas Act (particularly section 4 and 5 thereof) the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Chapter 1), a public hearing shall be held, commencing with a prehearing conference on February 27, 1974 at 10:00 a.m., e.s.t., in a hearing room of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, concerning the lawfulness of the rates, charges, classifications, and service contained in El Paso's above mentioned proposed tariffs.

(C) At the prehearing conference on February 27, 1974 El Paso's prepared testimony (Statement P) together with its entire rate filing shall be submitted to the record as its complete case-in-chief subject to appropriate motions, if any, by parties to the proceeding. All parties will be expected to come to the conference prepared to effectuate the intent and purpose of §§ 1.18 and 2.59 of the Commission's rules of practice and procedure.

(D) On or before May 24, 1974, the Commission Staff shall serve its prepared testimony and exhibits. The prepared testimony and exhibits of all intervenors shall be served on or before June 11, 1974. Any rebuttal evidence by El Paso shall be served on or before June 26, 1974. The public hearing herein ordered shall convene on July 9, 1974, at 10:00 a.m., e.s.t.

(E) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (see Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in § 2.59 of the Commission's rules of practice and procedure.

(F) The above-named petitioners are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting rights and interests specifically set forth in the respective petitions to intervene, and *Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they, or any of them, might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(G) Docket Nos. RP73-104, RP73-84 and RP74-57 are hereby consolidated for purposes of hearing and decision.

(H) Should El Paso's uncertificated gas plant facilities, which were included by El Paso in its rate base projections, not be certificated and in service when

[1] Twelfth Revised Sheet No. 3-B to Original Vol. No. 1; Sixth Revised Sheet Nos. 285-A, 346-A and 365-A; Seventh Revised Sheet No. 556-A; Ninth Revised Sheet Nos. 303-A, 321-A and 334-A and Nineteenth Revised Sheet Nos. 416-A and 429-A to Original Volume No. 2A, FPC Gas Tariff.

El Paso's rates become effective, El Paso shall, within 30 days of such effective date, amend its filing to eliminate such items from its filing and amend the appropriate rate schedules to eliminate such costs.

(I) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.[1]

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.74-3679 Filed 2-13-74;8:45 am]

[Docket No. CI74-405]

EXXON CORP.

Notice of Application

FEBRUARY 7, 1974.

Take notice that on January 28, 1974, Exxon Corporation (Applicant), P.O. Box 2180, Houston, Texas 77001, filed in Docket No. CI74-405 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to El Paso Natural Gas Company (El Paso) from the South Carlsbad Field, Eddy County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell approximately 51,000 Mcf per month for one year at a rate of 60.0 cents per Mcf at 14.65 psia, subject to upward and downward Btu adjustment, within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Initial downward Btu adjustment is estimated at 0.30 cent per Mcf.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 1, 1974, 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.74-3687 Filed 2-13-74;8:45 am]

FLORIDA GAS TRANSMISSION CO.

[Docket No. CP74-192]

Notice of Application

FEBRUARY 7, 1974.

Take notice that on January 24, 1974, Florida Gas Transmission Company (Applicant), P.O. Box 44, Winter Park, Florida 32789, filed in Docket No. CP74-192 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain facilities and pipeline on Applicant's existing 24-inch transmission pipeline system totaling approximately 881.8 miles and extending through the states of Louisiana, Mississippi, Alabama, and Florida and for a certificate of public convenience and necessity authorizing the construction and operation of certain additional facilities on Applicant's 30-inch loop which parallels said 24-inch system to allow Applicant to convert the 24-inch system from natural gas service to a petroleum products pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that its pipeline system, as presently operated, consists of a 12- to 24-inch pipeline beginning near McAllen, Texas, and extending eastward through Texas, Louisiana, Mississippi, Alabama and into Florida with a terminus south of Miami, Florida (the 24-inch system), and a 24- to 30-inch pipeline loop, paralleling the 24-inch system from Baton Rouge, Louisiana, to Ft. Lauderdale, Florida (the 30-inch system). Applicant proposes to construct and connect certain additional pipeline facilities on the 30-inch system to complete the looping which Applicant states is 95 percent completed. When these proposed facilities are completed and the 30-inch system is in operation as a separate system, Applicant plans to retire from natural gas service that part of its 24-inch system extending from Applicant's Compressor Station 8, near Zachary, East Baton Rouge Parish, Louisiana, to Ft. Lauderdale, Florida, for use as a common carrier pipeline for petroleum products[1] from Gulf Coast refineries to Florida terminals.

Applicant states that its 30-inch system, with the facilities proposed to be added herein, will be sufficient to permit it to perform the firm services which Applicant is authorized to render and the interruptible services which Applicant's presently declining gas reserves will support. Applicant states further that at the time the 24-inch system is retired it will be sold at depreciated original cost to an affiliated company which will operate the petroleum products pipeline. Applicant plans to complete the installation of the proposed natural gas facilities on its 30-inch system and to retire the 24-inch system from gas service by June 30, 1976. The 24-inch system is planned to be converted for petroleum products transportation by January 1, 1977.

The application states that to complete the 30-inch loop an additional 68.28 miles of new pipeline must be constructed and connected consisting of the following:

30-INCH MAINLINE

10.48 miles in Louisiana.
6.80 miles in Alabama.
23.96 miles in Florida.

26-INCH MAINLINE

9.83 miles in Florida.

LATERALS

5.90 miles of 20-inch line in Florida.
11.21 miles of 4½-inch line in Florida.

Additionally, three new compressor stations will be constructed in Florida:

1. A 3,165 horsepower compressor will be located from Station No. 5, Chambers County, Texas, to Station No. 16A, Putnam County, Florida;

2. A 3,165 horsepower compressor will be relocated from Station 8, E. Baton Rouge Parish, Louisiana, to Station 17A, Lake County, Florida; and

3. A new 3,800 horsepower compressor will be installed at Station 21, Palm Beach County, Florida.

Minor additions to facilities at other locations, involving principally the installation of pig launchers and retrievers, will be required. A 3,000 gallon propane storage tank is proposed to be installed adjacent to one isolated firm direct industrial customer, now served from the 24-inch system, in order to provide continuing alternative service after the retirement of the 24-inch system from natural gas service.

The application states that the 881.8 miles of pipeline and related facilities to be abandoned on the 24-inch system consist of the following:

24-INCH MAINLINE

82.3 miles in Louisiana.
82.5 miles in Mississippi.
72.6 miles in Alabama.
444.5 miles in Florida.

20-INCH MAINLINE

98.4 miles in Florida.

18-INCH MAINLINE

101.5 miles in Florida.

Applicant estimates that the total cost of the proposed additions to its 30-inch system is $21,500,000 and estimates that the depreciated original cost of the facilities proposed to be retired on its 24-inch system is $31,558,022, as of June 30, 1976, when natural gas service through said facilities will be discontinued.

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[1] Commissioner Brooke, concurring, but dissenting to the stipulation to El Paso regarding the Atlantic Seaboard cost classification and rate design requirement of the United case.

[1] Gasoline, jet fuel, diesel fuel, kerosene and No. 2 fuel oil.

The application states further that under the terms of the indenture of the Applicant's First Mortgage Pipeline Bonds, Applicant may use a certain portion of monies received from the sale of property for the purpose of expanding its natural gas pipeline system. Specifically, when Applicant sells property covered by the indenture, the proceeds may be used to finance 60 percent of the cost of new facilities, and the balance of the proceeds is to be applied in debt retirement. Accordingly, the disposition of proceeds received from the sale of the 24-inch pipeline system will be approximately as follows:

	Amount
Proceeds from sale of 24-inch pipeline system estimated depreciated book value on June 30, 1976	$31,558,022
Cost to complete 30-inch loop	21,497,000
Disposition of proceeds from sale of 24-inch system:	
New construction ($21,497,000 × 60 percent)	12,900,000
Retire presently outstanding first mortgage pipeline bonds on a pro rata basis	18,658,022
Total	31,558,022

Applicant states that the above data pertaining to financing the proposed 30-inch system reflects the retirement of $18,658,022 of First Mortgage Pipe Line Bonds on June 30, 1976. The amount of each series of bonds to be retired was based on the percent of each series to the total amount of bonds outstanding on June 30, 1976. Regular sinking fund requirements for each issue were not altered due to the retirement of $18,658,022 of bonds. Interest expense and debt discount and expense for the proposed system have been reduced due to the retirement of the bonds. Applicant proposes to finance the remaining 40 percent of the cost of construction with internally generated funds.

The application states that Applicant is the only interstate pipeline serving peninsular Florida and with present facilites has an average day capacity of approximately 692,000 Mcf at 14.73 psia of natural gas. Applicant provides both sales and transportation services serving approximately one million consumers through sales for resale to distributors and 41 industrial customers through direct sale,[2] as well as, providing transportation service for two major Florida electric utilities, Florida Power Corporation and Florida Power & Light Company. Applicant states it is committed to transport up to 340 billion Btu daily, or slightly less than one-half of Applicant's certificated capacity, under three separate 20-year contracts with the beforementioned utilities, two of which, for approximately 140 billion Btu, will expire in June 1979. Applicant asserts that as these power companies have contracted directly with the producers for the purchase of gas and Applicant acts only as the transporter, the contracts between the producers and power companies are nonjurisdictional and can terminate according to their express terms, thereby providing Applicant with 140 billion Btu of additional capacity at that time.

Applicant states that the annual delivery capacity for sales in Florida with existing capacity is 149 trillion Btu while sales in 1973 were approximately 143.75 trillion Btu. Applicant attributes this gap between capacity and sales to gradually declining deliverability from its connected natural gas reserves and difficulty in obtaining long-term commitments for replacement supplies. Applicant states further that in response to this situation it has placed volumetric limitations on sales and expanded its efforts in the development of reserves. Applicant concludes, however, that the limit on system deliverability even after the retirement of the 24-inch system, will be set by the availability of gas supply rather than the physical capacity of the pipeline.

Applicant states that the deliverability from connected gas reserves at the time of conversion will be approximately equal to the capacity of the 30-inch system available for deliveries in Florida. Applicant's proposed 30-inch system is to have an average day capacity of 649 billion Btu for deliveries in Florida for all services which will be utilized in 1977, the first full year of operations following the conversion, as follows:

	Average Daily Deliveries (MMBtu)
Sales services	303,000
Transportation services	340,000
Total	643,000

Applicant notes that two years later, in 1979, upon the expiration of the two beforementioned transportation contracts, an additional 140 billion Btu of daily firm capacity may be available for sales service.

Applicant states that the proposed abandonment of its 24-inch pipeline from natural gas service and the construction required to allow its 30-inch loop system to function in its stead will provide the following benefits and advantages:

1. The retirement of the 24-inch system will reduce gas plant investment (rate base) by approximately $8,000,000, beginning with 1977, while Applicant will continue to provide approximately the same level of service to its customers;

2. The firm market (Rate Schedule G) and transportation customers will receive their full entitlements with the revised system with capacity remaining to deliver to resale Rate Schedule I interruptible customers and to the direct customers the balance of available gas supply for sales services after satisfaction of the entitlements of the firm customers; and

3. The retirement of the 24-inch system and its conversion to a petroleum products pipeline will provide a new method of shipping volumes of such products to the Florida market.

Applicant asserts that use of the existing facilities and rights of way in contrast with existing methods of shipping petroleum products into Florida will result in an environmental benefit to Florida. Applicant states that the converted pipeline system will have an initial daily capability of delivering 220,000 barrels of petroleum products which is slightly more than half of the petroleum products currently required by the Florida market.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 1, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of thhe 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 and permission and approval for the proposed abandonment are 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.74-3689 Filed 2-13-74;8:45 am]

[2] Except for a small volume of firm direct service, virtually all the direct sales are made on an interruptible basis. Sales for resale to distribution customers are made under two rate schedules in Applicant's FPC Gas Tariff, Original Volume No. 1: Rate Schedule G, which provides firm service for resale to residential and small commercial and industrial customers, and Rate Schedule I, which provides interruptible service to larger commercial and industrial customers.

[Docket No. E-8395]

MAINE YANKEE ATOMIC POWER CO.

Extension of Time and Postponement of Prehearing Conference and Hearing

FEBRUARY 7, 1974.

Maine Yankee Atomic Power Company filed a motion on January 28, 1974, as amended on January 30, 1974, for an ex-

tension of the procedural dates fixed by notice issued December 21, 1973, in the above-designated matter. The motion states that no party objects to the above motion.

Upon consideration, notice is hereby given that the procedural dates are modified as follows:

Service of Evidence by Staff, February 20, 1974.
Service of Evidence by Intervener, March 6, 1974.
Service of Evidence by Maine Yankee, March 21, 1974.
Prehearing Conference, March 26, 1974 (10:00 a.m., e.d.t.).
Cross-Examination, April 8, 1974 (10:00 a.m., e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-3683 Filed 2-13-74;8:45 am]

[Project No. 1835]

NEBRASKA PUBLIC POWER DISTRICT

Application for Approval of Revised Exhibits

FEBRUARY 7, 1974.

Public notice is hereby given that application for approval of revised exhibits was filed November 21, 1973, under the Federal Power Act (16 USC 791a–825r) by Nebraska Public Power District (Correspondence to: Mr. Durwood W. Hill, General Manager, Nebraska Public Power District, P.O. Box 499, Columbus, Nebraska 68601), Licensee for Project No. 1835, located on the North Platte and South Platte Rivers in Lincoln and Keith Counties, Nebraska. The proposed changes only affect project lands and works within Lincoln County.

Nebraska Public Power District, Applicant, states that site preparation work commenced in June 1973 for the Gerald Gentleman coal fired 650 megawatt steam-electric generating plant on lands adjacent to its Sutherland Reservoir, licensed as part of Applicant's Project No. 1835. Construction of this plant is scheduled to be completed by November 1977. A canal and related facilities would divert up to 860 cfs from the canal leading into the Sutherland Reservoir for steam plant condenser cooling purposes and return the water to a 200 acre auxiliary cooling area to be created in the Sutherland Reservoir by a dike and weir. An additional area not to exceed ten percent of the surface area of the reservoir would serve as a mixing zone for the warmer water released from the auxiliary cooling area.

In connection with this aforesaid plant, Applicant seeks approval of revised exhibits for Project No. 1835 consisting of the following: (1) Exhibit K, Sheet 44, showing the recent relocation of a 115 kv transmission line and a proposed revision of the project boundary to exclude land needed for the Gerald Gentleman plant; and (2) Exhibit K, Sheet 45, showing the location of a recently constructed 400-foot meteorology tower and the planned steam-electric generating facilities, including those facilities to be used to provide cooling water from the Sutherland Reservoir. The steam-electric generating facilities, except the meteorology tower and those facilities in or close to the Sutherland Reservoir needed to provide condenser cooling water, will be located outside the proposed project boundary.

Applicant alleges that the 720 acre area to be deleted from the project is no longer required for hydroelectric power purposes and has no significant recreational value. The Sutherland Reservoir was designed and constructed to store 178,000 acre feet of water at a maximum water surface elevation of 3084.0 feet. However, due to high seepage losses from the reservoir, it has not been practical to operate it with a water surface elevation above 3058.0 feet. Applicant states that this limitation in the water surface elevation makes it unnecessary for storage purposes to include in the project area lands located more than 200 horizontal feet from elevation 3058.8 feet. Applicant further alleges that the non-project facilities now existing or to be constructed will not interfere substantially with a reasonable use of Sutherland Reservoir for recreational purposes.

On November 5, 1973, a complaint was filed with the Commission (Docket No. E–8492) by the Sierra Club. The complaint alleges that Nebraska Public Power District is in violation of its license for Project No. 1835, and requests an investigation, a hearing, and issuance of an order directing Nebraska Public Power District to show cause why it should not be ordered to cease and desist construction.

On December 21, 1973, Nebraska Public Power District filed an answer to the Sierra Club complaint. The answer to the complaint maintains that Nebraska Public Power District is not in violation of its license for Project No. 1835 and requests the dismissal of the complaint filed by the Sierra Club.

Any person desiring to be heard or to make protest with reference to said application should on or before March 21, 1974 file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-3681 Filed 2-13-74;8:45 am]

[Docket No. E–8251]

NEW ENGLAND POWER CO.

Order Denying Request To Place Amendment in Effect, Instituting Investigation, and Permitting Intervention

FEBRUARY 7, 1974.

New England Power Company (NEPCO) on January 3, 1974, filed a request for extraordinary relief and a proposed amendment to rate schedule R–7 in Docket No. E–8251. NEPCO originally filed a proposed rate schedule supplement, designated as rate schedule R–7 in Docket No. E–8251 on June 1, 1973. In our July 30, 1973 order, this proposed rate schedule was accepted for filing and the use thereof deferred until January 1, 1974. Also a procedural schedule was set with a hearing date of December 19, 1973. Subsequently, the procedural schedule was revised with the hearing set for March 19, 1974. In its January 3, 1974 filing NEPCO petitioned the Commission for the following extraordinary relief: the acceptance for filing an assignment of an effective date of January 1, 1974 to an amendment to its Rate R–7 which includes cost adjustment clauses for energy and demand reduction resulting from the fuel conservation program.

NEPCO stated in its January 3, 1974 filing that their request has been made necessary by the recent and anticipated effectiveness of the fuel conservation program which is having a deleterious effect on NEPCO's revenues. NEPCO stated that in the four week period ending December 22, 1973, its sales were off 17 percent from the estimates filed in support of Rate R–7, representing a reduction in anticipated revenue under Rate R–6 of approximately $2.5 million. NEPCO also stated that since the extent of future reduction is unknown, its proposed amendment to Rate R–7 provides for automatic adjustments to the Rate R–7 charges based upon actual reduced sales.

NEPCO requests that the Commission waive the prior notice requirements, and that the cost adjustment clauses be assigned an effective date of January 1, 1974, to become effective subject to refund coincident with the basic R–7 rate increase. If this request is not granted, NEPCO alternatively requests an effective date no more than 30 days after filing.

The petition for extraordinary relief was noticed on January 10, with protests and petitions to intervene due on or before January 18, 1974. On January 18, 1974, responses to the notice were received from ITT Grinnel Corporation, Congressman Michael J. Harrington, the Rhode Island Consumers' Council and a group of NEPCO customers.[1]

The Rhode Island Consumers' Council's

[1] The customers' petition was submitted jointly by the NEPCO Customers Rate Committee and 25 electric plants and departments, together with the Manchester Electric Company and the New Hampshire Electric Cooperative, Inc.

(Council) objection states that the proposed cost adjustment clause is unprecedented and violates public policy in that it penalizes the NEPCO customers by increasing their cost of purchased power in a direct proportion to the customers' success in conserving energy pursuant to federal policy during the energy shortage. In their objection the Council moved that the request for extraordinary relief be denied and dismissed or alternatively be suspended pending full evidentiary hearings.

The customers filed a response stating that the proposed clause would virtually eliminate whatever risk may exist to NEPCO shareholders and that the proposed clause would have the customers pay a penalty for an unreasonably warm winter or cool summer, for an area wide recession or loss of customers, and for a decrease in sales caused by ice storms as recently experienced. The customers requested that the relief be denied without prejudice to refiling for rate relief not involving such an automatic adjustment.

Congressman Harrington filed a protest and petition to intervene. He objected to the fact that the proposed clause would discourage conservation efforts by customers, and he requested that the request for amendment be denied. We shall grant Congressman Harrington's petition to intervene.

ITT Grinnell Corporation (ITT) filed an objection to NEPCO's Request for Extraordinary Relief stating that the requested amendment will provide NEPCO with a guaranteed growth in sales and profit resulting in increased cost which would guarantee negative growth in sales and profits for ITT. ITT moved that the request be denied, or in the alternative, that it be suspended pending full hearings with respect to the request.

On January 29, 1974 a large number of customers of the North Attleborough, Massachusetts Municipal Electric Department filed a protest against NEPCO's January 3, 1974, filing.

NEPCO indicates that its request has been necessitated by various conservation measures implemented by its customers. We also note, however, that its alleged reduced load may be due in large part to warmer than usual weather conditions in the New England area. In any event, we are not convinced that the traditional remedies available for rate relief under section 205 of the Federal Power Act would fail to afford NEPCO full and complete protection against its alleged earnings erosion. Moreover a section 205 forum allows all parties and the Commission Staff the opportunity to consider and analyze all facets of the applicant's cost of operations and revenue levels in determining the appropriate just and reasonable rate. Accordingly, we shall not grant NEPCO's request that the proposed cost adjustment clause be assigned a January 1, 1974 effective date. We shall, however, institute a proceeding under section 206 of the Federal Power Act to determine whether NEPCO's proposed cost adjustment clause is in the public interest and if such clause should be given prospective effect. This is without prejudice to NEPCO's right to file under section 205 of the Federal Power Act and the regulations thereunder, for such rate relief as it may deem necessary. We note that our regulations provide for the use of a future test year, which should afford adequate opportunity to NEPCO to make necessary projections as to future conditions.

The Commission finds:

(1) NEPCO's request that the proposed cost adjustment clause be given a January 1, 1974 effective date should be denied.

(2) NEPCO's proposed cost adjustment clause should be set for investigation under section 206 of the Federal Power Act to determine if such clause is in the public interest and if such clause should be given prospective effect.

(3) Participation in this proceeding of Congressman Harrington may be in the public interest.

The Commission orders:

(A) NEPCO's request that the proposed cost adjustment clause be given a January 1, 1974 effective date is hereby denied.

(B) An investigation pursuant to section 206 of the Federal Power Act is hereby instituted to determine if the cost adjustment clause proposed by NEPCO in its filing of January 3, 1974, is in the public interest and if such clause should be given prospective effect.

(C) On or before February 19, 1974, the prepared testimony and exhibits of any intervenor in response to the proposed cost adjustment clause shall be served on all parties. The Commission Staff shall serve its evidence on or before March 5, 1974. On or before March 19, 1974, NEPCO shall serve its rebuttal evidence, if any. Cross examination of the evidence filed, including the Company's direct case, shall commence at 10:00 a.m. on March 26, 1974, in a hearing room of the Federal Power Commission.

(D) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (see Delegation of Authority, 18 C.F.R. 3.5(d)), shall preside at the hearing in this procedure, shall prescribe relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in § 2.59 of the Commission's rules of practice and procedure.

(E) Congressman Harrington is hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenor shall be limited to matters affecting rights and interests specifically set forth in his petition to intervene, and *Provided, further,* That the admission of such intervenor shall not be construed as recognition by the Commission that it may be aggrieved because of any order or orders issued by the Commission in this proceeding.

(F) The Secretary of the Commission shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.74-3692 Filed 2-13-74;8:45 am]

[Docket No. CI74-406]

TEXAS EASTERN EXPLORATION CO.

Notice of Application

FEBRUARY 7, 1974.

Take notice that on January 28, 1974, Texas Eastern Exploration Co. (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CI74-406 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 (Texas Eastern) from South Thornwell Field, Cameron Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell approximately 45,000 Mcf of gas per month for two years to Texas Eastern at 50.0 cents per Mcf at 15.025 psia, subject to upward Btu adjustment, within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Estimated initial upward Btu adjustment is 4.05 cents per Mcf. Applicant states that it has commenced the sale of gas from the subject acreage within the contemplation of Section 157.29 of the Regulations under the Natural Gas Act.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 1, 1974, 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.74-3688 Filed 2-13-74;8:45 am]

[Docket No. RP74-52]

TRANSWESTERN PIPELINE CO.

Order Accepting for Filing and Suspending Proposed Tariff Revisions, and Establishing Hearing Procedures

FEBRUARY 8, 1974.

On December 28, 1973 Transwestern Pipeline Company (Transwestern) tendered for filing proposed changes in its FPC Gas Tariff, Revised Volume No. 1.[1] The proposed changes increase jurisdictional sales by approximately $28,500,000 based on a twelve month period ending September 30, 1973, as adjusted for known and measurable changes through June 30, 1974. Transwestern requests an effective date of February 11, 1974.

In support of the proposed rate increase, Transwestern asserts that additional revenues are necessary because of increased cost of labor, facilities, and working capital; an increased rate of return of 9.5 percent; and an increase in the overall depreciation rate from 3.5 percent to 5.5 percent.

Apart from the proposed rate increase, Transwestern's tariff revisions would consolidate the rates on various rate schedules on one tariff sheet; amend section 19 of the general terms and conditions (purchased gas adjustment clause) to include its SG and RW Rate Schedules and base rate design determinants on estimated rather than historical sales; and add Section 20 to the tariff purportedly in conformance with Order No. 483,[2] to track Research and Development Expenditures.

Notice of Transwestern's proposed tariff revisions was issued on January 14, 1974 providing that all petitions to intervene or comments be filed on or before January 30, 1974. Numerous petitions to intervene have been received.[3]

Our review of Transwestern's filing and the issues raised therein indicates that the proposed changes have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. Accordingly, we shall suspend the proposed tariff sheets for the full statutory period and establish hearing procedures to determine their justness and reasonableness.

We note that Transwestern's proposed rates reflect costs allocated on the basis of the unmodified Seaboard[4] method. We have previously indicated,[5] that it may be necessary to establish pipeline rates for resale for industrial use more in line with the costs of competitive fuels. In order that this issue and related questions may be fully developed, the parties should address, in the evidentiary hearing we order herein, the propriety of reflecting in the commodity rate levels the inclusion of less than 75 percent of Seaboard fixed costs in accord with the cost formula prescribed in the United opinion.

The Commission finds:

(1) The proposed changes in Transwestern's FPC Gas Tariff, as shown in Appendix A hereto, should be accepted for filing, suspended, and the use thereof deferred until July 11, 1974.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of Transwestern's FPC Gas Tariff, as proposed to be amended in this docket.

(3) Good cause exists to permit the intervention of the petitioners designated in Appendix B.

(4) The disposition of this proceeding should be expedited in accordance with the procedure set forth below.

The Commission orders:

(A) Pending a hearing and decision thereon, Transwestern's proposed tariff sheets as shown in Appendix A, filed on December 28, 1973, are accepted for filing and suspended for the full statutory term and the use thereof deferred until July 11, 1974, or until such time as they are made effective in the manner provided in the Natural Gas Act.

(B) Pursuant to authority of the Natural Gas Act, particularly sections 4 and 5 thereof the Commission's rules and regulations (18 CFR, Chapter I), a prehearing conference shall be held pursuant to § 1.18 of the Commission's rules of practice and procedure on May 31, 1974, at 10:00 a.m., e.d.t., in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. A hearing for purposes of cross-examination concerning the lawfulness and reasonableness of the rates and charges in Transwestern's FPC Gas Tariff, as proposed to be amended herein, shall be held commencing on July 9, 1974.

(C) On or before May 24, 1974, the Commission staff shall serve its prepared testimony and exhibits. Any intervenor evidence will be filed on or before June 7, 1974. Any rebuttal evidence by company shall be served on or before June 21, 1974.

(D) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in § 2.59 of the Commission's rules of practice and procedure.

(E) The parties designated in Appendix B are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting the rights and interests specifically set forth in the respective petitions to intervene; and *Provided, further,* That the admission of such intervenors shall not be construed as recognition that they or any of them might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(F) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.[6]

[SEAL] KENNETH F. PLUMB,
Secretary.

APPENDIX A

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. RP74-52, REVISED TARIFF SHEETS FILED DECEMBER 28, 1973

Fifth Revised Sheet No. 1-A
Sixth Revised Sheet No. 3
Original Sheet No. 3-A
Original Sheet No. 3-B
Thirty-third Revised Sheet No. 4
Sixth Revised Sheet No. 5
Twenty-eighth Revised Sheet No. 6-A
Second Revised Sheet No. 6-C
Twelfth Revised Sheet No. 6-D
Second Revised Sheet No. 9
Twenty-second Revised Sheet No. 7
Original Sheet No. 9-A
Third Revised Sheet No. 11
Fourth Revised Sheet No. 34
First Revised Sheet No. 34-A
First Revised Sheet No. 34-B
First Revised Sheet No. 34-C
First Revised Sheet No. 34-D
Second Revised Sheet No. 34-E
Third Revised Sheet No. 34-F
Original Sheet No. 34-G

APPENDIX B

PETITIONS TO INTERVENE

Plains Gas Farmers Co-operative Society of Hereford, Texas
San Diego Gas & Electric Company
Southern California Gas Company
Pacific Lighting Service Company
Cities Service Gas Company

NOTICES OF INTERVENTION

Public Utilities Commission of the State of California

[FR Doc.74-3691 Filed 2-13-74;8:45 am]

[Docket No. RP74-63]

TRUNKLINE GAS CO.

Notice of Change in Rates

FEBRUARY 7, 1974.

Take notice that Trunkline Gas Company (Trunkline) on January 28, 1974, tendered for filing Sixth Revised Sheet No. 104 of its FPC Gas Tariff, Original Volume No. 2, which is intended to implement Rate Schedule F-5. Trunkline requests that its filing be permitted to become effective as of January 1, 1974.

Trunkline states that the revised tariff reflects solely the appropriate reimbursement for the increase in the

[1] See Appendix A.
[2] Docket No. R-462, issued April 30, 1973.
[3] See Appendix B.
[4] Atlantic Seaboard, et al., 11 FPC 43 (1952).
[5] United Gas Pipe Line Company, Opinion No. 671, Docket No. RP72-75 (Phase II), issued October 31, 1973.
[6] Commissioner Brooke, concurring, but dissenting to the stipulation to Transwestern regarding the Atlantic Seaboard cost classification and rate design requirement of the United case.

Louisiana severance tax, pursuant to Commission's Order No. 500, issued December 28, 1973, in Docket No. RM74–9.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 22, 1974. 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.74–3684 Filed 2–13–74;8:45 am]

FEDERAL RESERVE SYSTEM

C.I.T. FINANCIAL CORP.

Order Approving Acquisition of Fair Finance Company

C.I.T. Financial Corporation, New York, New York, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's regulation Y, to acquire, through its wholly-owned subsidiary, C.I.T. Financial Services, Inc. (California), substantially all of the assets of Fair Finance Company ("Company"), Santa Barbara, California, a company that engages in the activities of making consumer loans and selling credit life and disability insurance on borrowers in connection with its loans, and casualty insurance on property securing such loans. Such activities have been determined by the Board to be closely related to banking or managing or controlling banks (12 CFR 225.4(a)(1) and (9)).

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (39 FR 1121). The time for filing comments and views has expired, and none has been received. The Board has considered the application in the light of the public interest factors set forth in section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)).

Applicant[1] controls one bank which is located in New York State and holds total deposits of $2.0 billion, comprising 1.8 percent of the State's total commercial bank deposits.[2] Company is a consumer finance company operating only one office, which is located in Santa Barbara, California, and holds total assets of only $342,000. The geographic market to which the operations of Company are limited is approximated by southeastern Santa Barbara County. Applicant's subsidiary, C.I.T. Financial Services, Inc. (California), San Francisco, California, operates consumer finance offices throughout California, but does not operate in the Santa Barbara market. Its nearest offices thereto are located in Ventura and Santa Maria at distances of 24 and 54 miles from Santa Barbara, respectively. The offices of Applicant derive from Company's service area 31 loan accounts amounting to only $61,500. Slightly more than five per cent of Company's consumer receivables are due from individuals residing in service areas of Applicant's subsidiaries, but all of these loans were made in the Santa Barbara area before the borrowers relocated outside of that area. Eight other consumer finance companies and ten commercial banks operate offices in the Santa Barbara market, and Company's market share is less than 2 percent. It appears, therefore, that consummation of the proposal would not eliminate any significant existing competition between Applicant and Company. Nor would consummation of the proposal result in the foreclosure of significant potential competition. No adverse competitive effects would appear to result from the proposed acquisition since Applicant's entry through the acquisition of such a small company is tantamount to a foothold entry into the market.

Applicant proposes to expand the types of lending services offered by Company to include, for example, second mortgage loans and consumer sales financing.[3] The expanded lending services to be made available by Company upon its acquisition by Applicant, as well as its increased lending capabilities resulting from the availability of resources of Applicant, should enable Company to become a more effective competitor.

Based upon the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the application is hereby approved. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof. The transaction shall be made not later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York under authority hereby delegated.

By order of the Board of Governors,[4] effective February 6, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.74–3639 Filed 2–13–74;8:45 am]

VALLEY BANK OF NEW YORK, VALLEY STREAM, NEW YORK

Order Approving Application for Merger of Banks

Valley Bank of New York, Valley Stream, New York, a State member bank of the Federal Reserve System, has applied for the approval of the Board of Governors of the Federal Reserve System pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) of the merger of that bank with United National Bank of Long Island, Forest Hills, New York, "United Bank"), under the charter and title of Applicant. As an incident to the merger, the present offices of United Bank would become branches of the resulting bank.

As required by the Act, notice of the proposed merger, in form approved by the Board, has been published, and reports on competitive factors have been requested from the Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. This Reserve Bank has considered this application and all comments and reports in light of the factors set forth in the Act.

Both Applicant and United Bank operate in the eastern part of the Metropolitan New York market.[1]

Applicant, a subsidiary of The Bank of New York Company, Inc., New York, New York ("Holding Company"), has deposits of $183.5 million and operates 24 offices in New York State's First Banking District.[2] The aggregate deposits of Applicant and the two other banking subsidiaries of Holding Company operating in the Metropolitan New York market are

[1] Applicant, which is engaged also in a broad range of financial and insurance activities and in manufacturing, distribution and miscellaneous activities as well, has claimed, under section 4(a)(2) of the Bank Holding Company Act, entitlement to "grandfather" privileges for certain of its nonbanking activities which were engaged in on June 30, 1968, and continuously thereafter. The Board has currently under consideration and review the question of Applicant's entitlement to grandfather privileges with respect to such activities and whether termination should be required under the criteria set forth in section 4(a)(2) of the Act; a determination on that question will be issued in the future.

[2] All banking data are as of June 30, 1973.

[3] Among new services that Company would provide in the future, according to Applicant, may be full payout lease financing. In the event Applicant chooses to cause Company to initiate that activity, Applicant would be subject to the procedures set forth in § 225.4(b)(1) of Regulation Y, since the authority conferred by this Order is limited to those activities considered by the Board in acting on this application. See § 225.4(c)(2) of Regulation Y (12 CFR § 225.4(c)(2)).

[4] Voting for this action: Vice Chairman Mitchell and Governors Daane, Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Chairman Burns.

[1] The Metropolitan New York market is defined as the five boroughs of New York City, Nassau, Westchester, Putnam, and Rockland counties, a portion of Suffolk County in New York, portions of Bergen and Hudson counties in New Jersey, and a portion of Fairfield County in Connecticut.

[2] All banking data are as of June 30, 1973.

$2.8 billion, or 2.9 percent of all commercial bank deposits in the market. Holding Company is the ninth largest banking organization in the State and in the market. The deposits of Applicant alone are 0.1 percent of the commercial bank deposits in the market.

United Bank has deposits of $30.1 million and operates four offices in Queens County in New York City. United Bank's deposits equal .03 percent of those in the market; in size of deposits, United Bank ranks 17th of the 19 commercial banks with offices in Queens County and 74th in the market. Consummation of the proposed merger would not significantly increase the concentration of banking resources in any relevant area.

The nearest offices of the merging banks are approximately 6.2 miles apart, and their service areas do not overlap. An insignificant amount of competition between the merging banks would be eliminated by the proposal. However, by increasing the competitive capabilities of United Bank, consummation of the proposal is likely to result in increased future competition among banks in its service area.

While Applicant could branch de novo into the service area of United Bank under New York law, the loss of potential competition does not appear significant in view of the large number of competitors in the service area and in the market. And, although United Bank could branch into the area served by Applicant, the chance of its doing so is slight, since it has never opened a de novo branch. Accordingly, it is concluded that consummation of the proposed merger would not have any significant adverse effect on existing or potential competition in any relevant area.

The financial and managerial resources of Applicant and United Bank are satisfactory, and the prospects for the resulting bank are favorable. Consequently, banking factors are consistent with approval of the application. Consummation of the proposed merger would improve the present banking services available to customers of United Bank by increasing lending capabilities and adding to the banking services offered by United Bank such services as credit cards, trust services, overdraft checking, and certificates of deposit. None of these services are now offered by United Bank, although all are available at other banking offices in United Bank's service area. Thus, considerations relating to the convenience and needs of the area to be served lend some weight toward approval of the application.

It is the judgment of the Federal Reserve Bank of New York that consummation of the proposed merger 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 date of this Order or (b) later than three months after the date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of New York pursuant to delegated authority.

By order of the Federal Reserve Bank of New York, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, effective February 4, 1974.

[SEAL] FRED W. PIDERIT, Jr.,
Vice President,
Federal Reserve Bank of New York.

[FR Doc.74-3642 Filed 2-13-74;8:45 am]

FIRST INTERNATIONAL BANCSHARES, INC.

Order Approving Acquisition of Bank

First International Bancshares, Inc., Dallas, Texas, a bank holding company within the meaning of the Bank Holding Company Act has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of Exchange Bank, Houston, Texas ("Bank"), a proposed new 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 filing comments and views has expired, and none has been timely received. The Board has considered the application in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the largest banking organization in Texas, presently controls fifteen banks[1] with aggregate deposits of approximately $2.6 billion,[2] representing 7.51 percent of the total commercial bank deposits in Texas. Since Bank is a proposed new bank, consummation of the proposed acquisition would not immediately increase Applicant's share of commercial bank deposits in the State.

Bank is to be located in the Houston SMSA banking market, where Applicant presently has two subsidiary banks with combined deposits approximating $306 million, representing approximately 3.6 percent of the total commercial bank deposits in market. Applicant is the sixth largest banking organization in the Houston SMSA banking market; the two largest banking organizations in the market control 21 and 16 percent of the total commercial bank deposits, respectively. Since Bank is a proposed new bank, Applicant's acquisition of Bank would not have any immediate effect on Applicant's share of commercial bank deposits in the Houston SMSA banking market; nor would it have an adverse effect on existing or potential competition with respect to the Houston SMSA banking market.

The financial and managerial resources and future prospects of Applicant and its subsidiary banks are regarded as satisfactory. Bank, as a proposed new bank, has no financial or operating history; however, its prospects as a subsidiary of Applicant appear favorable. Considerations relating to the banking factors are consistent with approval of the application. Although there is no evidence in the record that the major banking needs of the community are not adequately being served, Bank would serve as an additional source of full-banking services and would have access, through Applicant, to considerable financial resources and expertise. Considerations relating to convenience and needs of the community to be served lend some weight toward approval of the application. It is the Board's judgment that the proposed acquisition is 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 made (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after that date, and (c) Exchange Bank, Houston, Texas, shall be opened for business not later than six months after the effective date of this Order. Each of the periods described in (b) and (c) may be extended for good cause by the Board or by the Federal Reserve Bank of Dallas pursuant to delegated authority.

By order of the Board of Governors,[3] effective February 5, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.74-3640 Filed 2-13-74;8:45 am]

[1] In addition, Applicant indirectly controls interest of less than 25 percent in two banks. Applicant has agreed to divest its minority interests in the two banks.

[2] All deposit figures are as of June 30, 1973, and reflect holding company formations and acquisitions approved by the Board through January 15, 1974.

FIRST NATIONAL BANCORPORATION, INC.

Order Approving Acquisition of Certain Assets of The Security Agency

The First National Bancorporation, Inc., Denver, Colorado, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y, to acquire through its wholly-owned subsidiary, First Denver Insurance Agency, Inc. ("First Denver"), certain assets of The Security Agency, Sterling, Colorado (Agency), which relate to acting as agent for the sale of credit life, credit accident and health insurance issued in connection with extensions of credit by Applicant and its subsidiaries. Such activity has been determined by the Board to be closely related to banking (12 CFR 225.4(a)(9)).

[3] Voting for this action: Vice Chairman Mitchell and Governors Brimmer, Sheehan, Bucher and Holland. Absent and not voting: Chairman Burns and Governor Daane.

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (38 FR 34512). The time for filing comments and views has expired, and none has been timely received.

Applicant, the largest banking organization in Colorado, controls ten banks with aggregate deposits of approximately $914 million, representing 15 percent of the State's total bank deposits.[1] First Denver engages in insurance agency activities at Applicant's subsidiary banks and at the branch offices of Applicant's mortgage company and, as a result of this proposal, First Denver would assume the renewals and future credit related insurance assets of Agency.

Agency (total assets of $44,000 as of June 30, 1973), which now operates out of the bank premises of The Security State Bank of Sterling ("Bank"),[2] a subsidiary of Applicant, is held under a partnership arrangement by the former principal shareholders of Bank who seek to transfer their interests in Agency's permissible insurance activities under § 225.4(a)(9) of Regulation Y to Applicant. No subsidiary of Applicant derives any amount of insurance agency business from the Logan County area, which is the market served by Agency, nor does Agency compete in areas now served by Applicant's insurance subsidiary. Therefore, consummation of the proposal would not result in the elimination of any existing competition. Further, it does not appear that any adverse effects would result from removal of Applicant as a potential competitor of Agency. While Applicant appears to be a likely de novo entrant, the proposed acquisition by Applicant would not have a significantly adverse effect on potential competition in view of the continued existence of numerous alternative sources for credit related insurance in Logan County (the relevant market) and the existing relationship between Applicant and Agency's owners which would indicate a curtailment of Agency's activities if Applicant were to enter the area de novo. The Board concludes, therefore, that consummation of the proposed acquisition would have no significant adverse effects on existing or potential competition in any relevant area.

There is no evidence in the record indicating that consummation of the proposed transaction would result in any undue concentration of resources, unfair competition, conflicts of interest, unsound banking practices, or other adverse affects on the public interest.

It is anticipated that transfer of Agency's assets to Applicant will enable Applicant to expand the quality of services that Agency presently makes available to the public. Applicant has indicated it intends to increase the amount of credit life insurance coverage available to each borrower to the full amount of the credit extended, and to expedite the payment of claims.

Based upon the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the application is hereby approved. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

The transaction shall be made not later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Kansas City.

By order of the Board of Governors,[3] effective February 8, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.74-3633 Filed 2-13-74;8:45 am]

[1] All banking data are as of June 30, 1973, and reflect bank holding company formations and acquisitions approved through December 31, 1973.

[2] Bank was acquired by Applicant on July 30, 1973.

[3] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Brimmer, Sheehan, and Holland. Absent and not voting: Governor Bucher.

FIRST TENNESSEE NATIONAL CORP.

Proposed Acquisition of Tower Loan Company

First Tennessee National Corporation, Memphis, Tennessee, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of Tower Loan Company, Hannibal, Missouri. Notices of the application were published between October 11 and 18, 1973, inclusive, in newspapers of general circulation in the following locations: Bowling Green, Brookfield, Carthage, Clinton, Crystal City, DeSoto, Escelsior Springs, Flat River, Fulton, Hannibal, High Ridge, Marshall, Mexico, Neosho, Richmond, Rolla, St. Charles, Vandalia, Washington, and West Plains, Missouri; and Wellington and Winfield, Kansas.

Applicant states that the proposed subsidiary would engage in the following activities: Making or acquiring, for its own account, interest-bearing and discount loans and other extensions of credit; acting as insurance agent or broker with respect to (1) the sale of credit life, accident and health, and disability insurance directly related to extensions of credit by Tower Loan Company; (2) any insurance sold in communities with populations not exceeding 5,000; and (3) any insurance that is otherwise sold as a matter of convenience to the purchaser, so long as the premium income from these sales does not constitute a significant portion of Applicant's aggregate insurance premium income. Such activities will be conducted at the aforementioned locations in Missouri and Kansas. Applicant states that such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis.

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 March 8, 1974.

Board of Governors of the Federal Reserve System, February 8, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.74-3637 Filed 2-13-74;8:45 am]

NCNB CORP.

Request for Determination and Order Providing Opportunity for Hearing

Notice is hereby given that a request has been made to the Board of Governors of the Federal Reserve System, pursuant to the provisions of section 2(g)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(g)(3)), by NCNB Corporation ("NCNB"), Charlotte, North Carolina, for a determination that following the transfer of all of its stockholdings in American Commercial Agency, Inc. ("Agency") to Collier Cobb & Associates, Inc., Chapel Hill, North Carolina ("Collier"), NCNB will not in fact be capable of controlling Collier, notwithstanding a sale agreement whereby the purchase price of Agency will be paid to NCNB on an installment sale basis over the next ten years and notwithstanding that Collier is currently indebted to NCNB's subsidiary bank and may borrow additional funds from NCNB's subsidiary bank in the future.

Section 2(g)(3) of the Act provides that shares transferred after January 1, 1966, by any bank holding company (or by any company which, but for such transfer, would be a bank holding com-

pany) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the Board, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.

It is ordered, That, pursuant to section 2(g)(3) of the Act, an opportunity be and hereby is provided for filing a request for hearing. Any such request or written comments on the application should be submitted in writing (in duplicate) to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received on or before March 4, 1974. The request for hearing should contain a statement of the nature of the requesting person's interest in the matter, his reasons for wishing to appear at an oral hearing, and a summary of the matters concerning which said person wishes to give testimony at such hearing. The Board will subsequently designate a time and place for any hearing ordered, and will give notice of such hearing to the transferor, the transferee, and all persons who have requested a hearing. In the absence of a request for hearing, the Board will proceed with consideration of the requested determination on the basis of documentary evidence filed in connection with the application.

By order of the Board of Governors, February 8, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc. 74-3638 Filed 2-13-74;8:45 am]

NORTHERN ILLINOIS BANCORP, INC.

Order Approving Formation of Bank Holding Company

Northern Illinois Bancorp, Inc., Joliet, 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)) of formation of a bank holding company through acquisition of 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to Louis Joliet Bank, Joliet, Illinois ("Bank"). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and none has been timely received. The Board has considered the application in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, a nonoperating corporation with no subsidiaries, was organized for the purpose of becoming a bank holding company through the acquisition of Bank. Bank (deposits of approximately $38.6 million)[1] is the fourth largest of six banks in Joliet and the fifth largest of twenty banks in the relevant banking market (approximated by Will County), controlling approximately 7.6 percent of the total deposits held by commercial banks in the market. Upon acquisition of Bank, Applicant would control 0.08 percent of total commercial bank deposits in the State. Since the purpose of the proposed transaction is essentially a reorganization to effect a transfer of the ownership of Bank from individuals to a corporation owned by the same individuals, consummation of the proposal would not eliminate any existing competition, nor would it appear to have any adverse effects on other banks or on the development of future competition in the relevant market. Therefore, competitive considerations are consistent with approval of the application.

The financial and managerial resources and future prospects of Applicant are dependent upon those of Bank. The financial and managerial resources of Bank are regarded as generally satisfactory. The future prospects of Bank are also regarded as generally satisfactory, and are expected to become more favorable in view of Bank's recently improved earnings and Applicant's commitment to increase Bank's equity capital. Although Applicant will incur debt in increasing Bank's equity capital, it appears that income from Bank will provide sufficient revenue to service the debt adequately without impairing the financial condition of Bank. Considerations relating to the banking factors are consistent with approval of the application. Although consummation of the transaction would have no immediate effect on area banking needs, considerations relating to the convenience and needs of the community to be served are consistent with approval of the application. It is the Board's judgment that consummation of the proposed transaction would be consistent with 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 made (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 Chicago pursuant to delegated authority.

By order of the Board of Governors,[2] effective February 5, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.74-3641 Filed 2-13-74;8:45 am]

[1] All banking data are as of December 31, 1972.

[2] Voting for this action: Vice Chairman Mitchell and Governors Brimmer, Sheehan, Bucher and Holland. Absent and not voting: Chairman Burns and Governor Daane.

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

BEAVER BRANCH COAL CO.

Notice of Opportunity for Public Hearing

Applications for Initial Permits for Noncompliance with the Electric Face Equipment Standard have been received for items of equipment in the underground coal mines listed below.

ICP Docket No. 4112-000, BEAVER BRANCH COAL COMPANY, Mine No. G-14, Mine ID No. 15 02212 0, Martin, Kentucky.

In accordance with the provisions of section 305(a)(2) (30 U.S.C. 865(a)(2)) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Pub. L. 91-173), notice is hereby given that requests for public hearing as to an application for an initial permit may be filed by March 1, 1974. Requests for the public hearing must be filed in accordance with 30 CFR Part 505 (35 FR 11296, July 15, 1970), as amended, copies of which may be obtained from the Panel upon request.

A copy of each application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Room 800, 1730 K Street, NW., Washington, D.C. 20006.

Dated: February 8, 1974.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

[FR Doc.74-3630 Filed 2-13-74;8:45 am]

C & W COAL CO. ET AL.

Notice of Opportunity for Public Hearing

Applications for Initial Permits for Noncompliance with the Electric Face Equipment Standard have been received for items of equipment in the underground coal mines listed below.

(1) ICP Docket No. 4111-000, C & W COAL COMPANY, Red Stone No. 4 Mine, Mine ID No. 46 01883 0, Clarksburg, West Virginia.

(2) ICP Docket No. 4337-000, LAXARE, INC., Mine No. 1-B, Mine ID No. 46 03830 0, Peytona, West Virginia.

(3) ICP Docket No. 4338-000, LAXARE, INC., Mine No. 1, Mine ID No. 46 01284 0, Peytona, West Virginia.

(4) ICP Docket No. 4339-000, BECKLEY COALS, INC., Mine No. 3, Mine ID No. 46 01044 0, Beckley, West Virginia.

(5) ICP Docket No. 4340-000, LE MARR COAL COMPANY, Mine No. 1, Mine ID No. 15 02637 0, Liggett, Kentucky.

(6) ICP Docket No. 4341-000, HAYNES R. WOOD COAL COMPANY, INC., No. 6 Wood Mine, Mine ID No. 15 02644 0, Morgantown, Kentucky.

(7) ICP Docket No. 4342-000, WARNER COAL COMPANY, Mine No. 1, Mine ID No. 15 00670 0, Evarts, Kentucky.

(8) ICP Docket No. 4344-000, RIVERTON COAL COMPANY, Mine No. 35, Mine ID No. 46 02079 0, Mount Hope, West Virginia.

(9) ICP Docket No. 4345-000, B & F COAL COMPANY, Mine No. 2, Mine ID No. 46 01696 0, Panther, West Virginia.

In accordance with the provisions of section 305(a)(2) (30 U.S.C. 865(a)(2)) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Pub. L. 91-173), notice is hereby given

that requests for public hearing as to an application for an initial permit may be filed by March 1, 1974. Requests for public hearing must be filed in accordance with 30 CFR Part 505 (35 F.R. 11296, July 15, 1970), as amended, copies of which may be obtained from the Panel upon request.

A copy of each application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Room 800, 1730 K Street, NW., Washington, D.C. 20006.

Dated: February 7, 1974.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

[FR Doc.74-3631 Filed 2-13-74;8:45 am]

NATIONAL CAPITAL PLANNING COMMISSION

HISTORIC PRESERVATION

Amendments to Site and Building Plans Requirements and Urban Renewal Requirements for Proposals

At its meeting on March 7, 1974, the National Capital Planning Commission will consider for adoption proposed amendments to its Site and Building Plans Requirements (37 F.R. 3011) and Urban Renewal Requirements for Proposals (37 F.R. 7122) relating to procedures for compliance with section 106 of Pub. L. 89-665, approved October 15, 1966 (16 U.S.C. 470 et seq.), and sections 1(3) and 2(b) of Executive Order 11593 of May 13, 1971. Interested parties are requested to make their views known to the Commission by submitting their views in writing, by March 1, 1974, and addressed to:

William H. Press, Chairman
National Capital Planning Commission
Washington, D.C. 20576

The proposed amendments are as follows:

1. Subsection C. of section 3 of the Site and Building Plans Requirements (37 F.R. 3011) is amended by adding at the end thereof the following:

(6) *Historic Preservation.* Each submission by a Federal agency shall also include a determination by the head of the sponsoring agency, or other authorized official, as to whether the project is subject to section 106 of Pub. L. 89-665, approved October 15, 1966 (16 U.S.C. 470 et seq.), or section 1(3) or section 2(b) of Executive Order 11593 of May 13, 1971. If he so determines, then he shall submit evidence that the procedures for compliance with the applicable law or Executive Order have been initiated. Each submission by a Federal agency of final site and building plans shall include evidence that such procedures for compliance have been completed.

2. Paragraph C. of section 6 of the Site and Building Plans Requirements (37 F.R. 3011) is amended by inserting "(1)" after "C." and by adding a new subparagraph to read as follows:

(2) If the proposed development is a public building to be erected by any agency of the Government of the District of Columbia within the boundaries of the central area of the District, as defined by concurrent action of the Commission and the District of Columbia Council, the Executive Director determines whether the proposed development is subject to section 106 of Pub. L. 89-665, approved October 15, 1966 (16 U.S.C. 470 et seq.). If he so determines, the Executive Director will initiate procedures for compliance with section 106 of Pub. L. 89-665 at the time of initial submission. Before Commission action on final site and building plans pursuant to D.C. Code, sec. 5-428, procedures for compliance with section 106 shall be completed.

3. Subsection B. of section 2 of the Urban Renewal Requirements for Proposals (37 FR 7122) is amended by adding at the end thereof the following:

(7) *Historic Preservation Report.* A determination by the head or other authorized official of the Agency or, with respect to proposals made by the Executive Director of the Commission, the Executive Director, as to whether the proposed urban renewal plan or modification(s) to an approved urban renewal plan is subject to section 106 of Pub. L. 89-665, approved October 15, 1966 (16 U.S.C. 470 et seq.). If he so determines, then he shall submit evidence that the procedures for compliance with section 106 of Pub. L. 89-665 have been completed.

Dated: February 11, 1974.

DANIEL H. SHEAR,
Secretary.

[FR Doc.74-3632 Filed 2-13-74;8:45 am]

NATIONAL COUNCIL ON THE HUMANITIES ADVISORY COMMITTEE

NOTICE OF MEETING

FEBRUARY 8, 1974.

Pursuant to the Provisions of the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given that a meeting of the National Council on the Humanities be conducted at Washington, D.C., on February 21 and 22, 1974.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Shoreham Building, 806. 15th Street NW., Washington, D.C. The morning session will convene at 9:30 a.m. on Thursday, February 21, and will be open to the public. The agenda for the morning session will be as follows:

I. Minutes of previous meeting
II. Reports
A. Introduction of New Members
B. Summary of Recent Business
C. Arrangements for the Jefferson Lecture
D. Budget, Fiscal Year 1975
E. Bicentennial Activities
F. FY 1974 Application Report
G. Gifts and Matching Funds
H. Report on Chairman's Grants
I. Science, Technology, and Human Values Program
J. Selected Project Evaluations
K. NEH Relationship with Two-Year Colleges

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer John W. Jordan, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-382-2031.

JOHN W. JORDAN,
Advisory Committee
Management Officer.

[FR Doc.74-3662 Filed 2-13-74;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR DEVELOPMENTAL BIOLOGY

Notice of Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Advisory Panel for Developmental Biology to be held at 9 a.m. on March 1 and 2, 1974, in Room 338 at 1800 G Street NW., Washington, D.C. 20550.

The purpose of this Panel is to provide advice and recommendations as part of the review and evaluation process for specific proposals and projects. The agenda will be devoted to the review and evaluation of research proposals.

This meeting is 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 by the Director of the National Science Foundation dated December 17, 1973, pursuant to the provisions of section 10(d) of Pub. L. 92-463.

For further information concerning this Panel, contact Dr. William A. Jensen, Program Director, Developmental Biology Program, Room 326, 1800 G Street NW., Washington, D.C. 20550.

T. E. JENKINS,
Assistant Director
for Administration.

JANUARY 31, 1974.

[FR Doc.74-3710 Filed 2-13-74;8:45 am]

ADVISORY PANEL FOR OCEANOGRAPHY

Notice of Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Advisory Panel for Oceanography to be held at 9 a.m. on February 26 and at 8:30 a.m. on February 27, 1974, at 1800 G Street, NW., Washington, D.C. 20550. The specific room numbers are indicated in the agenda below.

The purpose of this Panel is to provide advice and recommendations as part of the review and evaluation process for specific proposals and projects and to advise the Foundation of the impact of its research support programs on the scientific community in Oceanography.

The agenda for this meeting shall include:

FEBRUARY 26

(Rooms 321 and 338)

The agenda will be devoted to review and evaluation of specific research proposals.

FEBRUARY 27

8:30—Review and evaluation of specific research proposals (Rooms 321 and 338).

3:00—Discussion of the following topics (Room 338): 1. Effect of fuel shortage on oceanographic research; 2. Environmental impact statements—Law of the Sea; 3. Future directions in oceanographic research; 4. Review of Biological Oceanography, Ocean Science Committee, NAS; and 5. Other business.

The afternoon portion (starting at 3:00 p.m.) of the February 27 session shall be open to the public. Individuals who wish to attend should inform Dr. M. Grant Gross, Head, Oceanography Section, by telephone (202–632–4227) or by mail (Room 317, 1800 G Street, NW., Washington, D.C. 20550) prior to the meeting. The remainder of the meeting is 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 by the Director of the National Science Foundation dated December 17, 1973, pursuant to the provisions of section 10(d) of Pub. L. 92–463.

Persons requiring further information concerning this Panel should contact Dr. M. Grant Gross at the previously mentioned address. Summary minutes relative to the open portion of 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.

JANUARY 28, 1974.

[FR Doc.74–3711 Filed 2–13–74;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

CANADIAN JAVELIN, LTD.

Notice of Suspension of Trading

FEBRUARY 6, 1974.

In the matter of trading in securities of Canadian Javelin, Ltd. The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from February 7, 1974 through February 16, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74–3628 Filed 2–13–74;8:45 am]

[70–5449]

LOUISIANA POWER AND LIGHT CO.

Notice of Issuance and Sale of First Mortgage Bonds and Preferred Stock

Notice is hereby given that Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, an electric utility subsidiary company of Middle South Utilities, Inc., a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

LP&L proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, $45,000,000 principal amount of a new series of its First Mortgage Bonds, due March 1, 2004 ("Bonds"). The interest rate of the Bonds (which will be a multiple of 1/8th of 1 percent) and the price, exclusive of accrued interest, to be paid to LP&L for the Bonds (which will be not less than 100 percent nor more than 102¾ percent of the principal amount thereof) will be determined by competitive bidding. The Bonds will be issued under the Company's Mortgage and Deed of Trust, dated as of April 1, 1944, to The Chase Manhattan Bank (National Association), as successor Trustee, as heretofore supplemented by various indentures and as to be further supplemented by a Nineteenth Supplemental Indenture to be dated as of March 1, 1974. The Nineteenth Supplemental Indenture will include, among other things, a prohibition until March 1, 1979, against refunding the Bonds, directly or indirectly, with funds borrowed at a lower effective interest cost.

LP&L also proposes to establish, by appropriate corporate action, a new series of its Preferred Stock, Cumulative, $100 par value per share, which shall consist of 100,000 shares ("Stock"), and to issue and sell the Stock, subject to the competitive bidding requirements of Rule 50 under the Act. The dividend rate of the Stock (which will be a multiple of 1/25th of 1 percent and the price to be paid to LP&L for the Stock (which will be not less than $100 nor more than $102.75 per share) will be determined by the competitive bidding. The terms of the Stock will include a prohibition until March 1, 1979, against refunding the Stock, directly or indirectly, with funds derived from the issuance of debt securities at a lower effective interest cost or from the issuance of other stock, which ranks prior to or on a parity with the Stock as to dividends or assets, at a lower effective dividend cost.

The sale of the Bonds and the sale of the Stock are separate transactions not contingent one upon the other.

LP&L states it will apply the net proceeds derived from the issue and sale of the Bonds and the Stock to the payment of short-term borrowings estimated to total $25,000,000 at the time the sale proceeds are received, to the payment at maturity of $15,297,000 of First Mortgage Bonds, 3 percent series due April 1, 1974, to the financing in part of the Company's construction program, and to other corporate purposes.

Fees and expenses incident to the issuance and sale of the Bonds total $118,000, including legal fees of $33,000; fees and expenses in respect of the Stock total $42,000, including counsel fees of $19,000. AP&L states that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than March 1, 1974, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will re-

ceive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-3629 Filed 2-13-74;8:45 am]

[File No. 500-1]

ROYAL PROPERTIES INC.

Notice of Suspension of Trading

FEBRUARY 6, 1974.

In the matter of trading in securities of Royal Properties Incorporated. It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Royal Properties Incorporated, being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from February 7, 1974 through February 16, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-3627 Filed 2-13-74;8:45 am]

SPECIAL ACTION OFFICE FOR DRUG ABUSE PREVENTION

ADVISORY COMMITTEE ON DRUG DETECTION

Notice of Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Advisory Committee on Drug Detection on February 26, 1973, 10:00 a.m., Room 3104, the New Executive Office Building, 726 Jackson Place NW., Washington, D.C. The principal purpose of the meeting is determination of future goals and procedures of the Center for Disease Control Urine Proficiency Testing System.

The morning session will be open to the public. The afternoon session will be closed to all persons except committee members. Any member of the public wishing to attend or participate should contact the Chairman, John A. Whysner, M.D., (202) 456-6611. If attendance is not possible, the Chairman will receive written statements which will be read at the time and in the manner permitted by the Committee.

JOHN A. WHYSNER,
Chairman.

[FR Doc.74-3661 Filed 2-13-74;8:45 a.m.]

TENNESSEE VALLEY AUTHORITY

ENVIRONMENTAL QUALITY MANAGEMENT

Policy and Procedures

The Board of Directors of the Tennessee Valley Authority has adopted the following revision of Code IX, Environmental Quality Management. This code provides intra-agency guidance for compliance by TVA with the National Environmental Policy Act (Pub. L. No. 91-190, 42 U.S.C. 4321-4347 (1970)), including guidelines for the preparation of environmental impact statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The proposed revision upon which the revision is based was published for comments on November 15, 1973, and appears at 38 FR 31655. Because this code is for intra-agency use, it will not be codified for publication as a section of the Code of Federal Regulations.

The revision follows:

TENNESSEE VALLEY AUTHORITY

PROCEDURES FOR ENVIRONMENTAL PLANNING AND ASSESSMENT

I. *Purpose.* This code provides guidance for compliance by TVA with the National Environmental Policy Act (Pub. L. No. 90-190, 42 U.S.C. 4321-4347 (1970)), including guidelines for preparing environmental statements on proposals for legislation and other major federal actions significantly affecting the quality of the human environment.

II. *Definitions.* When used in this code the following definitions will apply:

A. Act means the National Environmental Policy Act (Pub. L. No. 91-190, 42 U.S.C. 4321-4347 (1970)).

B. Action means projects and program activities directly undertaken by TVA, or supported in whole or in part by TVA; deeds, permits, leases, licenses or other entitlements for use, issued, granted or approved by TVA; and the making, modification or establishment of regulations, rules, procedures, and policy.

C. Legislation means legislation significantly affecting the quality of the human environment.

D. Initiating office or division means the office or division which has the primary or lead role in an action.

E. EER means Environmental Evaluation Record.

F. CEQ means the Council on Environmental Quality.

G. Preliminary draft means preliminary draft environmental impact statement.

H. Draft statement means draft environmental impact statement.

I. Final statement means final environmental impact statement.

J. Outline means Outline of Environmental Quality Procedures.

III. *Policy.* TVA, to the fullest extent possible, directs its policies, plans, and programs to protect and enhance environmental quality. In carrying out this policy, this code will establish procedures which assure that actions are viewed in a manner to encourage productive and enjoyable harmony between man and his environment by building into the decisionmaking process, beginning at the earliest possible point, an appropriate and careful consideration of the environmental aspects of proposed actions in order that adverse environmental effects may be avoided or minimized.

IV. *Environmental Evaluation Record.* A. An Environmental Evaluation Record will be prepared for each action listed in sections VI-A and VI-B. For an action listed in section VI-C, an EER will be prepared if the initiating office or division determines that circumstances require a detailed environmental evaluation. The format outlined in section IV-B is intended as a guide, not a rigid requirement. In practice, various sections of the EER may be combined or eliminated depending upon the scope and nature of the action. The purpose of the EER is to ensure that adequate environmental consideration is given to each action at each significant stage in the decisionmaking process.

B. The EER will be compiled in accordance with the following guidelines:

1. *Need or opportunity.* This section will be completed by the initiating office or division.

This section contains a description of a need or opportunity which has arisen and which is expected to lead to a proposal for an action, as defined in IV-B-2. As part of this section of the EER, the initiating office or division will evaluate or identify in a preliminary manner, the consequences resulting from not filling the need or taking advantage of the opportunity. If sufficient information is available, the initiating office or division also will identify alternative means to fill the need or take advantage of the opportunity and discuss, in a preliminary manner, the expected consequences of each alternative identified.

The office or division completing this section will forward copies for comment to the Office of the General Manager, the Division of Environmental Planning, the Division of Law, and other offices and divisions which will be involved in the planning and evaluation process.

2. *Proposal.* This section will be completed by the initiating office or division and may accompany the need or opportunity section. In the case of uncomplicated actions the proposal section may be brief and completed at one time. In the case of more complicated actions, it may be completed in several stages leading to one or more solutions which are to be favored in the planning process.

This section will include, in addition to a discussion of the one or more solutions which are to be favored in the planning process, a discussion of the alternatives identified in IV-B-1, any alternatives identified by the commenting offices and divisions, and any further alternatives identified by the initiating office or division. The discussion should include environmental, economic, and any other considerations deemed appropriate by the initiating office or division or set forth in supplemental instructions to be issued in accordance with section IV-F.

Upon completion of each stage of this section, or in the case of uncomplicated actions upon completion of this section, copies will be forwarded for comment to the offices and divisions which received copies of the EER material described in IV-B-1.

A decision as to whether an environmental impact statement is needed for a VI-B or VI-C action may be made by the initiating division at this stage if enough information is available. If the decision is made at this

point to not have an environmental impact statement, further instructions are given in section IV–B–3–b. In this event, the initiating office or division will delay preparing the Outline of Environmental Compliance pending concurrence or noncurrence by the Division of Environmental Planning.

3. *Outline of environmental compliance procedure.* a. For actions listed in VI–A and those in VI–B and VI–C requiring an environmental impact statement or requiring more information before a decision can be made, an Outline of Environmental Compliance Procedure will be prepared by the initiating office or division and will be circulated to offices and divisions who receive EER material outlined in sections IV–B–1 and IV–B–2.

(1) A listing and proposed time schedule of each major step in the planning process, including a listing of significant subsidiary decisions to be made prior to determination of whether a draft statement is needed.

(2) A list and timing of studies and investigations which are proposed to assess the action. The studies and investigations may be conducted by TVA personnel or by outside parties. The parties conducting the studies will furnish upon request of the initiating division an estimate of the time required for these studies.

(3) A recommended appropriate time for deciding whether a statement is needed if the action is listed in VI–B or VI–C.

b. In any case in which a decision is made concerning the need for an environmental impact statement, the determination should include a discussion of the basis for this decision with appropriate references to the EER. The initiating division will seek concurrence of the Division of Environmental Planning in any determination as provided in section IV–G. For actions in which a determination to prepare an environmental statement has been made, the initiating office or division will include in or add to the Outline of Environmental Compliance Procedure a recommended appropriate time for issuing the draft statement.

In making this recommendation, the initiating office or division should estimate the time needed to prepare a draft statement, keeping in mind the need to acquire information sufficient for purposes of a draft statement and to complete the environmental review on a schedule that will allow timely consideration of environmental matters in the decisionmaking process.

C. Each office or division which receives a copy of the EER material outlined in IV–B–3 will:

1. Review the Outline and suggest to the initiating office or division with a copy to the Division of Environmental Planning revisions or additions which appear appropriate to assure the thorough and expeditious environmental evaluation of the action.

2. Prepare and submit to the initiating office or division with a copy to the Division of Environmental Planning a firm schedule for completion of studies or investigations which the receiving office is required to undertake by the Outline.

D. The Division of Environmental Planning, in consultation with the initiating office or division, and the other interested offices or divisions, will resolve conflicts as to timing and priorities which develop during preparation of the Outline of Environmental Compliance Procedure for various actions undertaken by TVA.

E. In appropriate cases, offices and divisions may consult with non-TVA groups about any relevant aspect of an action. This will usually be done through normal working relationships which have been established with non-TVA governmental and nongovernmental groups.

F. In accordance with guidelines issued by the Council on Environmental Quality (40 CFR 1500.6b), supplemental instructions for the preparation of the EER will be prepared and issued for certain specific types of actions and will identify:

1. What basic information needs to be gathered.

2. How and when such information is to be assembled and analyzed.

3. On what basis environmental assessments and decisions to prepare impact statements will be made.

G. As outlined in IV–B–2 and IV–B–3, during or after completion of the EER material described in section IV–B–2, the initiating office or division may decide whether or not the action is a major Federal action significantly affecting the quality of the human environment. In all other cases the decision will be made during or after the studies and investigation discussed in section IV–B–3–a. In order to obtain a final determination on whether an environmental statement is required, the initiating office or division will forward to the Division of Environmental Planning, with copies to the Division of Law and the Office of the General Manager, a preliminary determination as to whether the action is a major Federal action significantly affecting the quality of the human environment. This discussion should include the basis for the determination and, as appropriate, the results of the studies and investigations undertaken pursuant to section IV–B.

H. If the Division of Environmental Planning, after consultation with the Division of Law, concurs with the preliminary determination, the determination is a final determination. If the Division of Environmental Planning does not concur or if it advises that the determination should await a later stage in the preparation of the EER, the initiating office or division may refer the matter to the Office of the General Manager, which will decide either whether an environmental statement is required or that the determination should await a later stage in the preparation of the EER. In appropriate cases, the Director, Division of Environmental Planning, may refer the preliminary determination directly to the General Manager, with or without a recommendation. The General Manager will consider such a referral and, after consultation with the Division of Law and other appropriate offices and divisions, will decide whether an environmental statement is needed or if additional study of the matter is required.

V. *Publication of environmental impact statement determinations.* A. The Division of Environmental Planning shall:

1. On or before the effective date of this code, prepare a list of environmental statements under preparation and forward it to CEQ.

2. On or before the first business day of each subsequent calendar quarter, prepare a revision of such list and send such revisions to CEQ.

3. Forward the list and revisions provided for in V–A–1 and V–A–2 to the Information Office where they will be available for public inspection.

4. When decisions are made to prepare an environmental statement, consult with the Office of the General Manager and the Information Office to determine if additional publicity is needed of that decision.

B. The Division of Environmental Planning will prepare a publicly available record setting forth TVA's reasons for not preparing an environmental impact statement whenever a decision is made that such a statement is not necessary for a proposed action which:

1. Is included in section VI as one normally requiring an environmental impact statement,

2. Is similar to actions for which TVA has previously prepared a significant number of statements,

3. TVA has previously announced would be the subject of a statement,

4. TVA has made a negative determination in response to a request from CEQ pursuant to 40 CFR 1500.11(f).

C. The Division of Environmental Planning shall maintain and distribute lists of the negative determinations made in accordance with the provisions of section V–B in the same manner as it does for the lists provided for in section V–A.

VI. *Determination of applicability of National Environmental Policy Act section 102(2)(C).* A. The following actions normally will require an environmental impact statement:

1. Large water resource development and water control projects;

2. New power generating facilities;

3. Major transmission system additions, 500 kV and above;

4. Addition of new navigation locks;

5. Port facilities;

6. New town projects;

7. System-wide vector control and watermilfoil control programs;

8. Any major action, the environmental impact of which is expected to be highly controversial; and

9. Any other major action which, based on the Environmental Evaluation Record prepared as outlined in section IV, is expected to have a significant effect on the quality of the human environment.

B. The following actions may or may not require an environmental impact statement, depending upon the circumstances: (Subclasses of some of these actions are set out in VI–C as normally not requiring environmental impact statements.)

1. Major modifications or additions to existing TVA activities or facilities including water resources and water control projects, power generating facilities, and facilities for the production of fertilizer;

2. Major research and development projects;

3. Other TVA actions not listed in VI–A or VI–C (These actions will be studied, classified, and assigned to VI–A, VI–B, or VI–C during the process of developing supplemental instructions pursuant to section IV–F); and

4. Actions listed in VI–B may involve classes of actions which contain subclasses of a routine or recurrent nature. Where such subclasses can be identified, and all or most of the activities within a particular subclass have substantially similar impacts, an environmental assessment of the subclass may be undertaken. If the assessment results in a fining that the actions within a subclass normally do not require an environmental impact statement, then subsequent actions in that subclass shall be treated as if they were listed in section VI–C of these guidelines.

C. The following actions normally do not require environmental impact statements:

1. Routine operation, maintenance, and minor upgrading of existing TVA facilities;

2. Minor research, development, and joint demonstration projects;

3. Technical and planning assistance to state and local organizations;

4. Establishment of environmental quality monitoring programs and field monitoring stations;

5. Permits under section 26a of the TVA Act for minor structures, boat docks and shoreline facilities;

6. Procurement contracts;

7. Personnel actions;

8. Contracts for the sale, purchase, or interchange of electricity;

9. Accounting, auditing, financial reports, and disbursement of funds under delegation to the Division of Finance;

10. Communications, transportation, computer services, and other office services under delegation to the Division of Property and Supply;

11. Activities related to the promotion and maintenance of employee health; and

12. Activities of TVA's Equal Employment staff.

VII. *Preparation of preliminary draft environmental statements.* A. The initiating office or division prepares a preliminary draft which may include appropriate information from the EER.

B. Prior to initiation of the preliminary draft, the initiating office or division consults with the Division of Environmental Planning and other interested offices and divisions regarding additional studies or investigations deemed appropriate in order to complete environmental assessment of the proposed action, the schedule for completing these studies or investigations, and the overall schedule for preparing the environmental statement.

C. During the preparation of the preliminary draft, the initiating office or division requests from other offices and divisions comments relating to the environmental impacts of the action as they relate to the expertise and program interests of the respective offices and divisions. Offices and divisions send their comments to the initiating office or division with a copy to the Division of Environmental Planning.

D. At appropriate stages of preparation of the preliminary draft, the initiating office or division reviews the proposal with the Division of Environmental Planning. This review, which can be initiated by either the initiating office or division or the Division of Environmental Planning, includes a review of the comments received and the alternatives evaluated.

E. The Division of Environmental Planning advises the initiating office or division of changes which it deems environmentally desirable and assists in further evaluation of the action.

F. In all cases, the preliminary drafts are prepared in sufficient time to meet the requirements of CEQ guidelines, this code and other applicable requirements. Normal time schedules may be modified as provided in 40 CFR 1500.11(e).

VIII. *Contents of draft environmental impact statements.* In developing draft statements, efforts should be made to convey the required information succinctly in a form easily understood, both by members of the public and by public decisionmakers, giving attention to the substance of the information conveyed rather than to the particular form, length, or detail of the statement. Each of the points described below, for example, need not always occupy a distinct section of the statement if it is otherwise adequately covered in discussing the impact of the proposed action and its alternatives. The scope and detail of the draft statement should be reasonably related to the scope and impact of the action involved.

Draft statements prepared after the effective date of this instruction will include:

A. A summary sheet.

B. A description of the proposed action, a statement of its purposes, and a description of the environment affected, including information, summary technical data, and maps and diagrams where relevant, adequate to permit an assessment of probable environmental impact by commenting agencies and the public. Highly technical and specialized analyses and data should be avoided in the body of the draft impact statement. Such materials should be attached as appendixes or footnoted with adequate bibliographic references. The statement should also succinctly describe the environment of the area affected as it exists prior to a proposed action, including other Federal activities in the area affected by the proposed action which are related to the proposed action. Where appropriate, the interrelationships and cumulative environmental impacts of the proposed action and other related Federal projects shall be presented in the statement. The amount of detail provided in such descriptions should be commensurate with the extent and expected impact of the action, and with the amount of information required at the particular level of decisionmaking (planning, feasibility, design, etc.). In order to ensure accurate descriptions and environmental assessments, site visits should be made where feasible. The statement should also identify, as appropriate, population and growth characteristics of the affected area and any population and growth assumptions used to justify the project or program or to determine secondary population and growth impacts resulting from the proposed action and its alternatives. It is essential that the sources of data used to identify, quantify, or evaluate any and all environmental consequences be expressly noted.

C. The relationship of the proposed action to land use plans, policies, and controls for the affected area. This requires a discussion of how the proposed action may conform or conflict with the objectives and specific terms of approved or proposed Federal, state and local land use plans, policies, and controls, if any, for the area affected, including those developed in response to the Clean Air Act or the Federal Water Pollution Control Act Amendments of 1972. Where a conflict or inconsistency exists, the statement should describe the extent to which the proposed action has been reconciled with the plan, policy, or control, and the reasons for deciding to proceed notwithstanding the absence of full reconciliation.

D. The problem impact of the proposed action on the environment.

1. This requires assessment of the positive and negative effects of the proposed action as it affects the environment. The attention given to different environmental factors will vary according to the nature, scale, and location of proposed actions. Primary attention should be given in the statement to discussing those factors most directly impacted by the proposed action.

2. Significant secondary or indirect, as well as primary or direct, consequences for the environment should be included in the analysis.

E. Alternatives to the proposed action. An exploration and objective evaluation of the environmental impacts of reasonable alternatives, particularly those that might enhance environmental quality or avoid some or all of the adverse environmental effects, is essential. Sufficient analysis of such alternatives and their environmental benefits, costs and risks should accompany the proposed action through the review process in order not to foreclose prematurely options which might enhance environmental quality or have less detrimental effects. Examples of such alternatives include: The alternative of taking no action or of postponing action pending further study; alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts (e.g., nonstructural alternatives to flood control programs); alternatives related to different designs or details of the proposed action which would present different environmental impacts (e.g., cooling ponds vs. cooling towers for a power plant or alternatives that will significantly conserve energy); alternative measures to provide for compensation of fish and wildlife losses, including the acquisition of land, waters, and interests therein. In each case, the analysis should be sufficiently detailed to reveal the agency's comparative evaluation of the proposed action and each reasonable alternative. Where an existing impact statement already contains such an analysis, its treatment of alternatives may be incorporated provided that such treatment is current and relevant to the precise purpose of the proposed action.

F. Any probable adverse environmental effects which cannot be avoided (such as water or air pollution, undesirable land use patterns, damage to life systems, urban congestion, threats to health, or other consequences adverse to the environmental goals set out in section 101(b) of the Act). This normally would be a brief section summarizing in one place those effects discussed in item D of this section that are adverse and unavoidable under the proposed action. This may include a statement for purposes of contrast of how other avoidable adverse effects discussed in item C of this section will be minimized.

G. The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. This section normally would contain a discussion of the extent to which the proposed action involves tradeoffs between short-term gains at the expense of long-term losses, or vice versa, and a discussion of the extent to which the proposed action forecloses future options. In this context short-term and long-term do not refer to any fixed time periods, but should be viewed in terms of the environmentally significant consequences of the proposed action.

H. Any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. This normally would include a discussion of the extent to which the action irreversibly curtails the range of potential uses of the environment. When an economic cost-benefit analysis of a proposed action is prepared, it, or summaries thereof, should be attached to the environmental impact statement and should clearly indicate the extent to which environmental costs have not been reflected in such analyses, and the reasons therefor.

IX. *Review of preliminary draft.* A. The preliminary draft is reviewed by the Division of Environmental Planning, the Division of Law, and other offices and divisions included in the circulation of the EER.

B. The initiating office or division, with the advice and assistance of the Division of Environmental Plannng, reviews all comments received, modifies the preliminary draft as appropriate, and submits it to the Division of Environmental Planning.

C. The Division of Environmental Planning approves the preliminary draft and transmits it to the General Manager. Accompanying the preliminary draft when it is sent to the General Manager are recommendations made in consultation with the initiating office or division, the Division of Law, and the Division of Navigation Development and Regional Studies regarding formal consultation and review with Federal, state, regional and local governmental agencies and regarding the holding of public hearings.

D. After review, the General Manager approves or rejects the preliminary draft. If he rejects it, he returns it to the Division of Environmental Planning with instructions for corrective action. The Division of Environmental Planning is then responsible for ensuring that the instructions are carried out and that a revised preliminary draft is transmitted to the General Manager for his further review. If the General Manager approves the prelimipary draft, it becomes the draft statement and is circulated for external review in accordance with section X.

X. *External review of draft environmental impact statement.* A. The General Manager

transmits the draft statement to the Council on Environmental Quality. To the maximum extent practicable, no action will commence until 90 days after CEQ publishes in the FEDERAL REGISTER notice of availability of a draft statement.

B. The Division of Environmental Planning, by requesting comments on the draft statement, consults with Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved.

C. The Division of Navigation Development and Regional Studies requests review by state and local agencies authorized to develop and enforce relevant environmental standards.

D. All action described in items X–A, X–B, and X–C will be undertaken in accordance with the CEQ guidelines, procedures established pursuant to the Office of Management and Budget Circular A–95 (revised) and Bulletin 72–6, as hereafter amended or supplemented, and special requests of agencies relating to review by their regional, district or local offices.

E. The Division of Environmental Planning, in consultation with the initiating office or division, establishes the time limits for the receipt of comments. Except in emergency situations, the minimum review period will be 45 days after CEQ publishes in the FEDERAL REGISTER notice of availability of a draft statement. Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these guidelines concerning minimum period for review and advance availability of environmental statements, the initiating office or division will consult with the Division of Law with a view to adopting alternative arrangements.

F. When required and as prescribed by section 309 of the Clean Air Act and 40 CFR 1500.9(b), the draft statement is transmitted to the Environmental Protection Agency for review. In any case in which review is required under section 309 of the Clean Air Act but for which no statement is being prepared, the Division of Environmental Planning will obtain the necessary review as soon as practicable, but in all cases well enough in advance of submission of the proposed action for authorization to allow 45 days for review by the Environmental Protection Agency. The Division of Environmental Planning forwards copies of comments to offices and divisions having pertinent responsibility or expertise.

G. At the same time the draft statement is circulated for comment and furnished to the Council on Environmental Quality, it is also made available to the public through the Information Office, except where advance public disclosure within the meaning of 40 CFR 1500.11(b) would result in significantly increased costs to the Government, and the Board determines it is not in the public interest to release the statement.

H. With respect to recommendations or reports on proposals for legislation to which section 102(2)(C) applies, the final text of the environmental statement and comments thereon should be available to the Congress and to the public for consideration in connection with the proposed legislation or report. In cases where the scheduling of congressional hearings on recommendations or reports on proposals for legislation which the Federal agency has forwarded to the Congress does not allow adequate time for the completion of a final text of an environmental statement (together with comments), a draft environmental statement may be furnished to the Congress and made available to the public pending transmittal of the comments as received and the final text.

I. Environmental impact statement material is provided to all parties free of charge unless because of the quantity of the materials or the volume of the demand for them, costs of free distribution is unreasonable. Where the costs of free distribution appear unreasonable, the Information Office, after consultation with appropriate offices and divisions, will establish a fee for such materials which does not exceed the actual cost of their reproduction.

XI. *Public hearings.* A The Division of Environmental Planning and the Information Office will advise the General Manager on the desirability of holding a public hearing on an action involving an environmental statement, taking into consideration as:

1. The magnitude of the proposal in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of the resources involved.

2. The degree of interest in the proposal as evidenced by requests from the public and from Federal, state and local authorities that a hearing be held.

3. The complexity of the issue and the likelihood that information will be presented at the hearing which will be of assistance to TVA in fulfilling its responsibilities under the Act.

4. The extent to which public involvement already has been achieved through other means, such as earlier public hearings, meetings with citizens, and written comments on the proposed action.

B. Based upon the advice received and any other factors he considers relevant, the General Manager will decide if a public hearing is to be held.

C. No hearing in aid of preparation of a final statement will be held prior to 15 days after the draft statement concerning the action being considered has been made available to the public.

D. The Division of Law schedules and conducts public hearings held by TVA.

E. The Division of Law obtains a transcript of the public hearing and forwards it, along with a summary of points raised, when it believes such a summary would be helpful, to the Division of Environmental Planning and the initiating office or division.

F. The Information Office disseminates to the public information concerning public hearings.

G. The Division of Environmental Planning requests from other appropriate offices and divisions their review of comments made at the public hearing related to points not previously raised.

H. The Division of Law handles or coordinates the presentation by TVA at any hearing held by another agency.

XII. *Evaluation of comments and preparation of final statement.* A. The Division of Environmental Planning receives comments from reviewing Federal agencies and the general public, and the Division of Navigation Development and Regional Studies receives comments from reviewing state, regional, and local agencies and forwards them to the Division of Environmental Planning.

B. The Division of Environmental Planning disseminates comments to interested offices and divisions and those having special expertise in the areas covered by the review comments. Where appropriate, the Division of Environmental Planning may request that the initiating office or division handle this dissemination.

C. Reviewing offices and divisions prepare responses and furnish them to the Division of Environmental Planning with copies to the initiating division.

D. Where opposing professional views and responsible opinion are brought to TVA's attention through the commenting process, TVA will review the proposed action in light of those views and will make a meaningful reference in the final statement to the existence of any responsible opposing view not adequately discussed in the draft statement, indicating TVA's response to the issues raised.

E. Following completion of evaluation of comments, the Division of Environmental Planning prepares a draft of the final statement or requests another office or division to do so. The final statement consists of either a new statement or the draft statement, together with separate indication of any corrections or changes therein deemed to be desirable. All substantive comments received on the draft (or summaries thereof where response has been exceptionally voluminous) should be attached to the final statement, whether or not each such comment is thought to merit individual discussion by the agency in the text of the statement. A copy of the draft statement may be appended to the final statement.

F. The draft of the final statement is reviewed by the initiating office or division and the offices and divisions which reviewed previous drafts, as well as other appropriate offices and divisions. Each reviewing office and division forwards any comments it has to the Division of Environmental Planning and to the initiating office or division. In consultation with the initiating office or division, the Division of Environmental Planning makes revisions in the statement which it deems desirable.

G. The Division of Environmental Planning obtains approval of the proposed final environmental statement from the Division of Law and transmits the statement to the General Manager, along with the comments of reviewing offices and divisions concerning any unresolved internal comments.

XIII. *Review and balancing; authorization.* A. The General Manager conducts an independent review and balancing of environmental and nonenvironmental considerations (including unquantified as well as quantified environmental amenities and values along with economic and technical considerations) involved in all proposed actions for which a proposed final environmental statement has been prepared.

B. Following such review and balancing, the General Manager may approve, modify, or disapprove the final statement. When he disapproves a statement, he may return it for revision and may also direct the suspension of further planning work on an action pending preparation of a revised statement.

C. Where under the TVA Code the proposed action is one which will require Board approval, the General Manager forwards to the Board a report concerning his or the Assistant General Manager's review and balancing and conclusions concerning the proposed action, and a copy of the final environmental statement if he has approved one.

D. Where the proposed action is one which under the TVA Code can be approved by the General Manager without Board approval, the General Manager employs results of the foregoing review and balancing as part of his consideration of the request for authorization.

E. Where the proposed action is one which under the TVA Code could otherwise be approved by an office or division, the General Manager's approval is required prior to the authorization if the action is one for which a proposed final environmental statement has been prepared.

F. The General Manager consults with the Board as he deems appropriate on proposed actions which do not require Board approval.

XIV. *Distribution of final environmental impact statements.* A. The General Manager submits the final statement to the Council on Environmental Quality.

B. Copies of the final statement are forwarded by the Division of Environmental Planning to the Division of Navigation Development and Regional Studies, which makes them available to appropriate state, regional, and metropolitan clearinghouses, and to the Information Office, which makes them available to the public.

C. The Division of Environmental Planning also sends the final statement to the Environmental Protection Agency, to all Federal agencies who made substantive comments, and if practicable, to private organizations who made substantive comments and individuals who requested a copy of the final statement. Where the number of comments on a draft statement or the requests for final statements is such that distribution of the final statement to private entities and individuals appears impracticable, the Division of Environmental Planning shall initiate consultations with CEQ concerning alternate arrangements for distribution of the statement.

D. The Division of Environmental Planning maintains a file on all environmental statements.

XV. *Commencement of an action.* An administrative action subject to section 102(2)(C) of the Act shall not commence until 30 days after the final statement has been made available to CEQ and to Federal and state agencies and the public as provided in section XIV of this code, or 90 days after a notice of availability of the draft statement has been published in the FEDERAL REGISTER, whichever is later, except for emergency actions undertaken in accordance with section X-E of this code.

XVI. *Review of statements prepared by other Agencies.* A. The Division of Environmental Planning reviews, in consultation with other interested TVA offices and divisions, environmental statements submitted to TVA by other Federal agencies and prepares a response, which after review by the Division of Law and the Office of the General Manager is forwarded to the initiating agency, with an additional five copies being sent to CEQ.

B. Where another Federal agency is preparing a statement in connection with a TVA action, the procedures outlined in this instruction may be utilized to such extent and with such modifications as the General Manager deems appropriate.

XVII. *Review of existing projects and programs.* To the maximum extent deemed by the General Manager to be practicable, the procedure described above should be applied to actions having a significant impact on the environment even though such actions arise from policies, projects, programs, or classes of action which were initiated prior to January 1, 1970.

XVIII. *Modifications of these procedures.* A. The assignments to offices and divisions in these procedures may be modified by agreement of the offices or divisions involved, or by special instructions from the General Manager.

B. The procedures also may be modified by the Division of Environmental Planning, with the concurrence of the General Manager and the concurrence of the Division of Law as to legal propriety, where the action involves TVA policies; where it involves changes necessary or desirable to conform with the policies, procedures, or preferences of another agency also involved in the proposed action, as in the case of a proposed nuclear power plant project; where it involves actions planned or in progress prior to July 1, 1971; or where modification is necessary or desirable because of a change in the CEQ guidelines or other similar regulations.

XIX. *Substantial compliance.* Because of unforeseen situations or emergencies, or through inadvertence, or for other reasons, some of the steps outlined in procedures may be consolidated, modified, or omitted by offices or divisions. The Division of Law shall be promptly asked to approve any such consolidation, modification, or omission, and may do so if such change would conform to legal requirements and substantially comply with the intent of this code.

The Division of Law shall consult with CEQ as it deems appropriate before approving any such changes.

XX. *Application of these procedures to actions in progress.* These procedures apply to the fullest extent practicable to further work in connection with actions in progress as of the effective date of these procedures.

XXI. *Effective Date.* This code shall become effective February 7, 1974.

LYNN SEEBER,
General Manager.

[FR Doc.74-3701 Filed 2-13-74;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

GRAIN STANDARDS

North Dakota Inspection Point

Statement of consideration. Williston Grain Inspection, Williston, North Dakota, has applied for designation (in accordance with § 26.96 of the regulations (7 CFR 26.96) under the U.S. Grain Standards Act) to operate as an official inspection agency at Williston, North Dakota. By definition an official inspection agency is an agency or person located at an inspection point designated by the Secretary for the conduct of official inspection under this Act. Williston Grain Inspection presently operates a Protein Analysis Laboratory at Williston, and desires to expand its operations to provide grain inspection services in the Williston, North Dakota, area.

Minot Grain Inspection, Inc., Minot, North Dakota, is designated to operate as an official inspection agency in accordance with the provisions of section 7(f) of the U.S. Grain Standards Act (7 U.S.C. 79(f)), and Minot, North Dakota, is assigned as its designated inspection point. By definition, a designated inspection point is a city, town, or other location assigned under the regulations to an official inspection agency for the conduct of official inspections, and within which the official inspection agency or one or more of its licensed inspectors is located (7 CFR 26.1(b)(13)).

Minot Grain Inspection, Inc., has requested that its assignment be amended in accordance with § 26.99(b) of the regulations (7 CFR 26.99(b)) to add Williston, North Dakota, as a designated inspection point and plans to station one or more of its licensed grain inspectors there, if so designated.

Notice is hereby given that the Agricultural Marketing Service has under consideration (1) the application by Williston Grain Inspection for designation to operate as an official inspection agency in the Williston, North Dakota, area with its designated inspection point at Williston, North Dakota, and (2) the request from Minot Grain Inspection, Inc., to amend its assignment to add Williston, North Dakota, as a designated inspection point under the U.S. Grain Standards Act. These applications do not preclude other interested persons from making similar applications for designation to operate as an official grain inspection agency at Williston, North Dakota.

NOTE: Section 7(f) of the Act (7 U.S.C. 79(f)) generally provides that not more than one inspection agency shall be operative at any one time for any one city, town, or other area.

Interested persons are hereby given opportunity to submit written views and comments with respect to the applications as described above, and to make application for designation to operate as an official inspection agency at Williston, North Dakota, pursuant to the requirements in § 26.96 of the regulations (7 CFR 26.96) under the U.S. Grain Standards Act.

Any interested persons who wish to submit views and comments are requested to include the name of the person or agency which they recommend to be designated to operate as an official inspection agency at Williston, North Dakota.

All such views and comments should be submitted in writting to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250. All material submitted should be in duplicate and mailed to the Hearing Clerk not later than March 18, 1974. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Hearing Clerk and to all other information available to the U.S. Department of Agriculture before final determination is made with respect to this matter.

Done in Washington, D.C. on February 7, 1974.

E. L. PETERSON,
Administrator,
Agricultural Marketing Service.

[FR Doc.74-3663 Filed 2-13-74;8:45 am]

Forest Service

ENVIRONMENTAL STATEMENTS UNDER PREPARATION

Status

A list of environmental statements is here published to provide timely public information on the status of Forest Service environmental statements under preparation as of December 15, 1973. Persons interested in a particular action and environmental statement should contact the responsible official directly.

For ease in use of this list, statements are grouped by Forest Service organizational units proposing the action. Statements marked with an asterisk indicate, in total or in part, land use planning, developments, or activities within inventoried roadless areas. National Forest inventoried roadless areas are defined as roadless and undeveloped areas 5,000 acres or larger, except that smaller areas adjoining existing Wilderness and Primitive Areas could be included. Existing Wilderness and Primitive Areas are excluded from this definition.

Forest Service field addresses and State abbreviations are given at the end of the listing of environmental statements.

ADRIAN M. GILBERT,
Acting Deputy Chief,
Forest Service.

FEBRUARY 5, 1974.

Forest Service environmental statements under preparation as of Dec. 15, 1973

Title of environmental statement	Location of proposal	Nature of proposal (i.e., land use, herbicide, etc.)	Responsible official	Date draft filed w/CEQ (or estimated date)	Estimated date of final
Washington Office, USDA, Forest Service, 12th St. and Independence Ave. SW., Washington, D.C. 20250					
Environmental Program for the Future.	Washington	Program plan	Chief	February 1974	September 1974.
Absaroka-Beartooth and Cutoff Mountain Wilderness.	Custer, Gallatin, and Shoshone National Forests, Mont. and Wyo.	Resource plan	do	January 1974	July 1974.
Flathead Wild and Scenic River Proposal.	Flathead National Forest, Mont.	Legislative	do	September 1973	February 1974.
*Absaroka-Beartooth	Gallatin, Custer, and Shoshone National Forests, Mont. and Wyo.	do	do	April 1974	September 1974.
Gila Wilderness Proposal	Gila National Forest, N. Mex	do	do	October 1972	February 1974.
Salmon River Wild and Scenic River Proposal.	Idaho	do	do	May 1974	September 1974.
Idaho and Salmon River Breaks Wilderness Classification.	do	do	do	November 1973	March 1974.
Snake River Wild and Scenic River Proposal.	Traghee National Forest, Idaho and Wyo.	do	do	April 1974	September 1974.
Regulations for Use of Private Land in Sawtooth National Recreation Area.	Sawtooth National Forest, Idaho	do	do	May 1973	January 1974.
North Fork American River Wild and Scenic River.	Tahoe National Forest	do	do		
Monarch Wilderness Proposal	Sierra and Sequoia National Forests, Calif.	do	do	October 1972	August 1974.
Trinity Alps Wilderness Proposal	Klamath, Six Rivers, Shasta-Trinity National Forests, Calif.	do	do	do	Do.
Cascade Head-Salmon River	Siuslaw National Forest, Oreg	do	do	February 1974	Do.
Weyerhaeuser-Gifford Pinchot Landownership Adjustment.	Gifford-Pinchot National Forest, Wash.	Land exchange	do	May 1973	February 1974.
Skagit Wild and Scenic Rivers Study.	Mount Baker National Forest, Wash.	Legislative	do	February 1974	January 1975.
Sipsey River Eastern Wilderness	Bankhead National Forest, Ala	do	do	June 1973	January 1974.
Cohutta Mountains Unit	Chattahoochee National Forest, Ga.	do	do	do	February 1974.
Chattooga River	do	do	do	June 1971	January 1974.
Gee Creek Eastern Wilderness	Cherokee National Forest, Tenn	do	do	June 1973	Do.
Beaver Creek Eastern Wilderness	Kentucky	do	do	do	Do.
Management of the Laurel River Unit.	Daniel Boone National Forest, Ky.	do	do	May 1974	December 1974
Ellicott's Rock Eastern Wilderness.	Sumter National Forest, S.C	do	do	June 1973	January 1974.
Laurel Fork Unit	Highland County, Va., Pendleton County, W. Va.	do	do	do	April 1974.
Cave Mountain Lake Unit	Jefferson National Forest, Va	do	do	do	January 1974.
Caney Creek Eastern Wilderness	Ouachita National Forest, Ark. and Okla.	do	do	do	Do.
Land for Land Exchange With Inland Steel.	Superior National Forest, Minn	Land exchange	do	November 1973	March 1974.
Pere Marquette National Scenic River.	Manistee National Forest, Mich	Legislative	do	do	February 1974.
*Ketchikan Pulp Co. Timber Sale (1974–79 operating period).	Ketchikan area, Alaska	Timber sale	do	December 1973	March 1974.
*East Bradfield Timber Sale	East Bradfield River, Alaska	do	do	November 1973	Do.
*Perenosa Timber Sale	Afognak Island, Alaska	do	do	July 1973	February 1974.
Regional Office, Missoula, Mont., Region I, Northern Region, USDA, Forest Service, Federal Bldg., Missoula, Mont. 59801					
Big Game Habitat Improvement	Northern Idaho	Land treatment	Steve Yurich, Regional Forester.	January 1974 (estimated).	March 1974.
Microbial Insecticide Test for Douglas-fir Tussock Moth.	do	Pilot test	do	do	May 1974.
Douglas-fir Tusscok Moth Control (DDT).	do	Insecticide	do	do	Do.
Northern Region's Slash Disposal Program.	Montana	Land treatment (slash disposal)	do	July 1973	September 1974.
*Jackpine Gulch	Beaverhead National Forest, Mont.	Timber sale	C. Hartgraves, Forest Supervisor.	December 1973	February 1974.
Little-Lake Miner	do	do	do	January 1974	March 1974.
*Upper West Fork	Bitterroot National Forest	Land use plan	O. Daniels, Forest Supervisor	August 1973	February 1974.
*Camp-Tolan	do	do	do	October 1973	April 1974.
*Sleeping Child Skalkaho-Gird	do	do	do	May 1973	January 1974.
*Bitterroot North	do	do	do	January 1974 (estimated).	May 1974.
*Bitterroot Range South	do	do	do	February 1974 (estimated).	November 1974.
*Sapphires	do	do	do	August 1974 (estimated).	Do.
*Lower West Fork	do	do	do	July 1974 (estimated).	December 1974.
*Warm Springs-Medicine Tree	do	do	do	June 1974 (estimated).	October 1974.
Little Sleeping Child-Rye	do	do	do	July 1974	December 1974.
Timber Management Plan	do	Resource plan	do	do	September 1974.
White Pine	Clearwater National Forest, Idaho.	Land use plan	K. Norman, Forest Supervisor		January 1974.
Elk Summit	do	do	do	December 1973	
Canadian Face	Coleville National Forest Wash	do	R. Smart, Forest Supervisor	December 1973 (estimated).	April 1974
Basin Unit Plan	Basin, Mont	do	G. Smith, Forest Superivsor	February 1974	August 1974.
North End Plan	Deerlodge National Forest Mont.	do	do	do	Do.
Forest Transportation Plan	do	Road construction and maintenance	do	do	Do.
Forest Timber Plan	do	Resource plan	do	do	Do.
*Swan Lake	Flathead National Forest, Mont.	Land use plan	E. Corpe, Forest Supervisor	December 1973 (estimated).	March 1974.
Interim Revision, Flathead National Forest 10-year Timber Management Plan.	do	Interim revision timber management plan.	do	July 1973	December 1973

Title of environmental statement	Location of proposal	Nature of proposal (i.e., land use, herbicide, etc.)	Responsible official	Date draft filed w/CEQ (or estimated date)	Estimated date of final
*Holland Lake	do	Land use plan	do	December 1973 (estimated).	March 1974.
*Spotted Bear	do	do	do	January 1974 (estimated).	April 1974.
*North Fork	do	do	do	February 1974 (estimated).	Do.
*Lake V	do	do	do	do	Do.
*Porcupine/Buffalo Horn	Gallatin National Forest, Mont	do	L. Hawkes, Forest Supervisor	August 1973	February 1974 (estimated).
*South Cottonwood	do	do	do	do	March 1974 (estimated).
*Cedar/Bassett	do	do	do	do	April 1974 (estimated).
*Spanish Peaks	do	do	do	do	February 1974 (estimated).
*Helgen Lake	do	do	do	do	Do.
*W½ Yellowstone	do	do	do	May 1974 (estimated).	November 1974 (estimated).
Ski Yellowstone	do	Winter sport site	do	April 1974 (estimated).	August 1974 (estimated).
*Tepee Creek	do	Timber sale	do	January 1974 (estimated).	June 1974 (estimated).
*Deer Creek	do	Land use plan	do	November 1973	July 1974 (estimated).
*Bridger Bowl	do	Timber sale	do	January 1974 (estimated).	June 1974 (estimated).
Elk Horns	Helena National Forest, Mont	Land use plan	R. Morgan, Forest Supervisor	December 1973	February 1974.
East Belts	do	do	do	March 1974	May 1974.
Mike Horse	do	do	do	do	Do.
Colorado-Unionville-Travis	do	do	do	January 1974	February 1974.
Magpie-Confederate	do	do	do	April 1974	June 1974.
Timber Management Plan, Kaniksu W.C.	Kaniksu National Forest, Idaho and Wash.	Resource plan	R. Kizer, Forest Supervisor	October 1972	January 1974.
3-Year Road Program	St. Joe National Forest, Idaho	do	do	April 1973	February 1974.
Emerald Creek	do	Land use plan	do	January 1974 (estimated).	
Siwast Planning Unit	do	do	do	January 1974	
Canyon-Snow Park Planning Unit.	do	do	do	do	
Napoleon Planning Unit	Kaniksu National Forest, Idaho and Wash.	do	do	do	
Lakeview	do	do	do	do	
Horseheaven-Bumblebee	Coeur d'Alene National Forest, Idaho.	do	do	February 1974	
Beaver Creek	Kaniksu National Forest, Idaho and Wash.	do	do	March 1974	
*Warland No. 21	Kootenai National Forest, Mont	do	R. Damon, Acting Forest Supervisor.	April 1973	January 1974.
*Pleasant Valley No. 28	do	do	do	August 1973	February 1974.
*South Fork Yaak No. 38	do	do	do	July 1973	Do.
*Lower Wolf No. 23	do	do	do	January 1974	May 1974.
*Eureka-Grave Creek No. 2	do	do	do	do	Do.
*Inch Mountain No. 20	do	do	do	do	June 1974.
*Libby Face No. 1	do	do	do	do	May 1974.
*Upper Fisher No. 27	do	do	do	do	July 1974.
*Callahan No. 11	do	do	do	do	Do.
*W. Kootenai No. 9	do	do	F. Marita, Forest Supervisor	May 1974	August 1974.
*Cross Mountain No. 41	do	do	do	do	Do.
*O'Brien No. 10	do	do	do	July 1974	October 1974.
*Seventeenmile No. 40	do	do	do	August 1974	December 1974.
Kootenai	do	Timber management plan	do	April 1973	February 1974.
Smith River	Lewis and Clark National Forest, Mont.	Land use plan	G. Engler, Forest Supervisor	February 1974	May 1974.
Rocky Mountain Front	do	do	do	do	Do.
Eagle Park-Smokey Mountains	do	do	do	do	May 1974.
Castle Mountain	do	do	do	March 1974	June 1974.
Little Snowies	do	do	do	do	Do.
Logging-Pilgrim Creek	do	do	do	do	Do.
Yogo-Bear Park	do	do	do	April 1974	Do.
Cherry Creek	Lolo National Forest, Mont	do	J. Large, Forest Supervisor	June 1974	November 1974.
Deerhorn	do	do	do	July 1974	October 1974.
Cube Iron-Silcox	do	do	do	February 1974	June 1974.
Murr-Baldy	do	do	do	May 1974	October 1974.
Ward-Eagle	do	do	do	April 1974	September 1974.
North Cutoff-Kennedy	do	do	do	August 1974	January 1975.
Ninemile	do	do	do	May 1974	October 1974.
Petty Mountain	do	do	do	do	Do.
Gold Creek	do	do	do	January 1974	June 1974.
Chain of Lakes	do	do	do	June 1974	October 1974.
Placid-Blanchard	do	do	do	July 1974	December 1974.
*Combined Timber Management Plan and Road Program.	Nez Perce National Forest, Idaho.	Resource plan	R. Rehfeld, Forest Supervisor	July 1973	January 1974.
Coordinated Interim Timber Harvest and Road Construction Program.	Lolo National Forest, Idaho	do	J. Large, Forest Supervisor	March 1974	September 1974.
*Little Slate Creek	Nez Perce National Forest, Idaho.	Land use plan	R. Rehfeld, Forest Supervisor	July 1973	January 1974.
*West Fork of Race Creek	do	Timber sale	do	December 1973 (estimated).	March 1974 (estimated).
Blue Ridge Plan	do	Land use plan	do	Plan unacceptable; won't be filed this fiscal year or until new one completed.	
Elk City Unit Plan	do	do	do	January 1974 (estimated).	April 1974 (estimated).
Hot Point Plan	do	do	do	May 1974 (estimated).	August 1974 (estimated).
Rainy Day Plan	do	do	do	April 1974 (estimated).	July 1974 (estimated).
Kelly Bullion Plan	do	do	do	February 1974 (estimated).	May 1974 (estimated).
John Day Plan	do	do	do	do	Do.
Cougar Mountain Plan	do	do	do	March 1974 (estimated).	June 1974 (estimated).
Stillman Point Plan	do	do	do	June 1974 (estimated).	October (estimated).

Title of environmental statement	Location of proposal	Nature of proposal (i.e., land use, herbicide, etc.)	Responsible official	Date draft filed w/CEQ (or estimated date)	Estimated date of final
Red River Plan	do	do	do	March 1974 (estimated).	June 1974 (estimated).
Horse Creek	do	Timber sale and watershed research.	do	February 1975 (estimated).	May 1975 (estimated).
	Regional Office, Denver, Colo., Region 2, Rocky Mountain Region, USDA, Forest Service, Denver Federal Center, Bldg. 85, Denver, Colo. 80225				
Timber Management	Arapaho National Forest, Colo.	Resource plan	Regional Forester	April 1974	October 1974.
Swan-Snake Creek	do	Land use plan	Forest Supervisor	do	Do.
Timber Management	Bighorn National Forest, Wyo.	Resource plan	Regional Forester	October 1974	April 1975.
Timber Management	Grand Mesa, Uncompahgre National Forests, Colo.	do	do	April 1974	October 1974.
Timber Management	Gunnison National Forest, Colo.	do	do	do	Do.
*Sawtooth	do	Land use plan	Forest Supervisor	June 1974	December 1974.
East River	do	do	do	do	Do.
*Grand Mesa-Muddy Creek	Gunnison National Forest (also on the Grand-Mesa National Forest, Colo.	do	do	do	Do.
Timber Management	Medicine Bow National Forest, Wyo.	Resource plan	Regional Forester	April 1974	October 1974.
*South Fork	Rio Grande National Forest, Colo.	Land use plan	Forest Supervisor	do	Do.
Timber Management	do	Resource plan	Regional Forester	do	Do.
Blacktail Mountain	Routt National Forest, Colo.	Land use plan	Forest Supervisor	do	Do.
*Mount Welba	do	do	do	December 1974	June 1975.
*Sugarloaf	do	do	do	October 1974	April 1975.
Timber Management	do	Resource plan	Regional Forester	April 1974	October 1974.
Conquistador Winter Sports Site (Hermit Management Unit).	San Isabel National Forest, Colo.	Winter sports site	Forest Supervisor	June 1974	December 1974.
*Storm Peak	San Juan National Forest, Colo.	Land use plan	do	December 1974	June 1975.
*First Fork	do	do	do	do	Do.
Timber Management	do	Resource plan	Regional Forester	April 1974	October 1974.
Do	Shoshone National Forest, Wyo.	do	do	do	Do.
*No Name Timber Sale (Holy Cross Roadless Area).	White River National Forest, Colo.	Timber sale	Forest Supervisor	do	Do.
*Jakeman Timber Sale (Red Table East Roadless Area).	do	do	Regional Forester	October 1974	April 1975.
*Last Chance (Holy Cross Roadless Area).	do	do	Forest Supervisor	April 1974	October 1974.
*Thompson Creek Management Unit (Perham Roadless Area).	do	Land use plan	do	do	Do.
*Upper Eagle Planning Unit (Holy Cross Roadless Area).	do	do	do	do	Do.
	Regional Office, Albuquerque, N. Mex., Region 3, Southwestern Region, USDA, Forest Service, 517 Gold Avenue SW., Albuquerque, N. Mex. 87101				
Proposed Taos Ski Valley Expansion.	Carson National Forest, N. Mex.	Winter sports site	Regional Forester	February 1974	May 1974.
Proposed Timber Management Plan.	do	Resource plan	do	June 1973	January 1974.
Sandia Mountain Land Use Plan	Cibola National Forest, N. Mex.	Land use	Forest Supervisor	December 1973	May 1974.
Manzano Mountain Land Use Plan.	do	do	do	January 1974	June 1974.
Mount Taylor Winter Sports Area	do	Winter sports site	Regional Forester	do	Do.
Mogollon Rim Land Use Plan	Sitgreaves, Tonto, and Coconino National Forests, Ariz.	Land use	Forest Supervisors	do	January 1975.
Cinder Hills Land Use Plan	Coconino National Forest, Ariz.	do	Forest Supervisor	April 1974	September 1974.
Oak Creek Land Use Plan	do	do	do	February 1974	June 1974.
Woods Canyon Land Use Plan	do	do	do	November 1974	April 1975.
Santa Catalina Land Use Plan	Coronado National Forest, Ariz.	do	do	January 1974	Do.
Madera Canyon Land Use Plan	do	do	do	November 1973	January 1974.
Williams Land Use Plan	Kaibab National Forest, Ariz.	do	do	June 1974	December 1974.
Phelps Dodge-FS Land Exchange	Prescott National Forest, Ariz.	Land exchange (mining)	Regional Forester	do	November 1974.
Dome Roadless Area	Santa Fe National Forest, N. Mex.	Land use	Forest Supervisor	do	December 1974.
Proposed Timber Management Plan.	do	Resource plan	Regional Forester	February 1973	January 1974.
Cholla Project	Sitbreaves National Forest, Ariz.	Land use	do	April 1974	October 1974.
Timber Management Plan, Proposed.	do	Resource plan	do	June 1974	November 1974.
Proposed Mineral Exploration and Development Mazatzal Wilderness.	Tonto National Forest, Ariz.	Land use	do	January 1974	June 1974.
	Regional Office, Ogden, Utah, Region 4, Intermountain Region, USDA, Forest Service, 324 25th St., Ogden, Utah 84401				
Flaming Gorge NRA General Management Plan.	Ashley National Forest, Utah	Land use plan, resource plan	Chief and Regional Forester	February 1974	June 1974.
Goslin Mountain and Eagle Creek Portions of North Slope.	do	Land use plan	Forest Supervisor	June 1974	October 1974.
Vernal Planning Unit	do	do	do	December 1973	April 1974.
Bear Valley Planning Unit	Boise National Forest, Idaho	do	do	March 1974	July 1974.
Deadwood Planning Unit	do	do	do	December 1973	April 1974.
Idaho City Planning Unit	do	do	do	July 1974	November 1974.
Landmark Planning Unit	Boise National Forest, Idaho	do	do	do	Do.
Middle Fork Boise Planning Unit	do	do	do	March 1974	July 1974.
Mountain Home Planning Unit	do	do	do	June 1974	October 1974.
Shafer Butte Planning Unit	do	do	do	February 1974	June 1974
South Fork Payette Planning Unit.	do	do	do	May 1974	September 1974.
South Fork Salmon Planning Unit.	Boise National Forest, Payette National Forest, Idaho.	do	Boise and Payette Forest Supervisors.	March 1974	July 1974.
Big Piney Planning Unit	Bridger National Forest, Teton National Forest, Wyo.	do	Forest Supervisor	February 1974	June 1974.
Moccasin Basin Squaw Papoose	do	Timber sale	do	July 1974	Do.
Spread Creek-North Gros Ventre Planning Unit.	do	Land use plan	do	December 1973	April 1974.
Union Pass Planning Unit	do	do	do	May 1974	September 1974
Bighorn Winter Sport Site	Caribou National Forest, Idaho	Winter sport site	do	April 1974	August 1974
Pioneer Mountains Planning Unit.	Challis National Forest, Sawtooth National Forest, Idaho.	Land use plan	Challis and Sawtooth Forest Supervisors.	May 1974	September 1974.
Boulder Planning Unit	Dixie National Forest, Utah	do	Forest Supervisor	do	Do.

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Enterprise Planning Unit	do	do	do	February 1974	June 1974.
Utah Power & Light Transmission Line Study (North Emery Line and Generator Plus Coal Lease).	Fishlake National Forest Manti-LaSal National Forest, Utah.	Powerline right-of-way	BLM (lead agency) FS	August 1974	December 1974.
Utah Power & Light Powerline Study (Sigurd-Cedar City Line).	Fishlake National Forest, Dixie National Forest, Utah.	do	do	June 1974	October 1974.
Mount Moriah	Humboldt National Forest, Nev.	Land use plan	Forest Supervisor	August 1974	December 1974.
Ruby Mountains	do	do	do	February 1974	June 1974.
Santa Rosa	do	do	do	May 1974	September 1974.
*Black Canyon Roadless Area No. 236.	Manti-LaSal National Forest, Utah.	do	do	March 1974	July 1974.
Monticello Planning Unit	do	do	do	June 1974	October 1974.
Council Planning Unit	Payette National Forest, Idaho	do	do	May 1974	September 1974.
McCall Planning Unit	do	do	do	July 1974	November 1974.
New Meadows Planning Unit	do	do	do	March 1974	July 1974.
Warren Planning Unit	do	do	do	January 1974	May 1974.
Payette Timber Management Plan	do	Resource plan	do	March 1974	July 1974.
Silverleads Planning Unit	Salmon National Forest, Idaho	Land use plan	do	do	Do.
Red Rock Planning Unit	do	do	do	June 1974	October 1974.
Moose Creek Basin Planning Unit	do	do	do	October 1974	February 1975.
Sawtooth N RA General Management Plan.	do	Land use plan, resource plan	Chief and Regional Forester	March 1974	July 1974.
Soldier Mountain Ski Area Expansion.	do	Winter sport		January 1974	May 1974.
Big Wood Ski Area	do	Winter sport site	Forest Supervisor	February 1974	June 1974.
Black Pine Planning Unit	do	Land use plan	do	July 1974	November 1974.
West Slope Tetons Planning Unit	Targhee National Forest, Idaho and Wyo.	do	do	March 1974	July 1974.
Central Nevada Land Use Plan	Toiyabe National Forest, Nev. and Calif.	do	do	February 1974	June 1974.
American Fork Canyon-Provo Peak Land Use Plan.	Uinta National Forest, Utah	do	do	January 1974	Do.
Four Seasons Ski Area	do	Winter sport site	do	January 1975	May 1975.
Sundance Ski Area Expansion	do	do	do	do	Do.
North Slope of the High Uintas Land Use Plan.	Wasatch National Forest, Ashley National Forest, Utah.	Land use plan	Ashley and Wasatch Forest Supervisors.	May 1974	September 1974.
Kamas Planning Unit	Wasatch National Forest, Utah	do	Forest Supervisor	October 1974	February 1975.
Little Cottonwood Management Area.	do	do	do	May 1974	September 1974.
Pinyon-Juniper Chaining Programs on National Forest Lands in Nevada.	National forest lands in Nevada	Land treatment	Regional Forester	July 1973	February 1974.
Herbicide Control of Sagebrush and Wyethia on National Forest Lands in Nevada.	do	do	do	do	Do.

Regional Office, San Francisco, Calif., Region 5, California Region, USDA, Forest Service, 630 Sansome Street, San Francisco, Calif. 94111

Rangeland Enhancement	National forests in California	Land treatment	Regional Forester R4 and R5	July 1973	January 1974.
Forest Reestablishment	do	Reforestation program	Regional Forester	November 1973	April 1974.
*San Gabriel Planning Unit	Angeles National Forest, Calif.	Land use plan	Forest Supervisor	August 1974	December 1974.
Trabuco Canyon Planning Unit	Cleveland National Forest, Calif.	do	do	December 1974	May 1974.
*Palomar Mountain Planning Unit.	do	do	do	February 1974	July 1974.
Laguna-Morena Planning Unit	do	do	do	January 1975	June 1975.
*Trabuco District	do	do	do	December 1974	May 1975.
Silver Basin Winter Sports Area	Eldorado National Forest, Calif.	Winter sports site	Regional Forester	February 1974	September 1974.
Eldorado Timber Management Plan.	do	Resource plan	do	September 1974	February 1975.
Volcanoville Planning Unit	do	Land use plan	Forest Supervisor	June 1974	January 1975.
Mammoth Planning Unit	Inyo National Forest, Calif.	do	do	March 1974	June 1974.
Mono Basin Planning Unit	do	do	do	June 1974	September 1974.
Bishop Creek Planning Unit	do	do	do	February 1974	May 1974.
Horseshoe Meadows	do	Limited land use plan	do	December 1973	April 1974.
Mount Whitney Planning	do	Land use plan	do	March 1974	June 1974.
Inyo National Forest Timber Management Plan.	do	Resource plan	Regional Forester	February 1975	July 1975.
Klamath Timber Management Plan.	Klamath National Forest, Calif.	do	do	January 1974	April 1974.
*King Planning Unit	do	Land use plan	Forest Supervisor	April 1974	August 1974.
*Grider Planning Unit	do	do	do	July 1974	November 1974.
*Proposed General Plan for Management of National Forest Lands in the Lake Tahoe Basin.	Lake Tahoe Basin management unit, California and Nevada.	do	Administrator, Lake Tahoe Basin.	August 1973	July 1974.
Sierra-Pacific Powerline, Buckeye to Round Hill.	Lake Tahoe Basin management unit and Toiyabe National Forest, Nev.	Transmission line	Regional Forester R4 and R5	June 1974	September 1974.
Lassen National Forest Timber management Plan.	Lassen National Forest, Calif.	Resource plan	Regional Forester	February 1974	June 1974.
Rim Planning Unit	do	Land use plan	Forest Supervisor	May 1974	August 1974.
*Almanor Planning Unit	do	do	do	April 1975	July 1975.
Hat Creek Planning Unit	do	do	do	do	Do.
Big Sur Planning Unit	Los Padres National Forest, Calif.	do	do	September 1974	December 1974.
Mount Pinos Planning Unit	do	do	do	December 1974	March 1975.
*Middle Eel Planning Unit	Mendocino National Forest, Calif.	do	do	January 1975	July 1975.
Mendocino Timber Management Plan.	do	Resource plan	Regional Forester	April 1975	September 1975.
Hayden Hill Planning Unit	Modoc National Forest, Calif.	Land use plan	Forest Supervisor	March 1974	July 1974.
Modoc Timber Management Plan	do	Resource plan	do	do	Do.
*Bucks Lake Planning Unit	Plumas National Forest, Calif.	Land use plan	do	December 1973	May 1974.

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Mohawk Planning Unit	do	do	do	December 1974	April 1975.
Plumas Timber Management Plan.	do	Resource plan	Regional Forester	February 1974	June 1974.
Southern California National Forests Timber Management Plan.	Angeles, Cleveland, Los Padres, and San Bernardino National Forests, Calif.	do	do	December 1974	April 1975.
Big Bear Basin Planning Unit	San Bernardino National Forest, Calif.	Land use plan	Forest Supervisor	March 1975	August 1975.
Mineral King	Sequoia National Forest, Calif.	Recreation	Regional Forester	June 1974	December 1974.
*Little Kern Planning Unit	do	Land use plan	Forest Supervisor	July 1974	January 1975.
Sequoia Timber Management Plan.	do	Resource plan	Regional Forester	October 1974	March 1975.
Shasta-Trinity Timber Management Plan.	Shasta-Trinity National Forest, Calif.	do	do	March 1974	July 1974.
*Upper Trinity Planning Unit	do	Land use plan	Forest Supervisor	January 1974	April 1974.
*Mount Shasta Planning Unit	do	do	do	March 1974	August 1974.
*NRA Planning Unit	do	do	do	May 1974	November 1974.
*South Fork Mountain Planning Unit.	do	do	do	October 1974	April 1975.
*McCloud-Squaw Creek Planning Unit.	do	do	do	August 1974	February 1975.
*Girard-Salt Creek Planning Unit	do	do	do	do	Do.
*North Shore Huntington Lake	Sierra National Forest, Calif.	Timber sales	do	September 1973	January 1974.
*Aspen-Horsethief	do	do	do	January 1974	April 1974.
*Sierra Land Use and Timber Management Plan.	do	Land use and resource plans	do	March 1975	July 1975.
*Fox Planning Unit	Six Rivers National Forest, Calif.	Land use plan	do	August 1973	January 1974.
*Eightmile-Blue Creek Planning Unit.	do	do	do	February 1974	June 1974.
*Siskyou Planning Unit	do	do	do	June 1974	December 1794.
*Horse Linto Planning Unit	do	do	do	December 1974	April 1975.
Stanislaus National Forest Timber Management Plan.	Stanislaus National Forest, Calif.	Resource plan	Regional Forester	December 1973	April 1974.
Mount Reba Master Plan	do	Winter sports site	do	November 1974	April 1975.
*Truckee-Little Truckee Planning Unit.	Tahoe National Forest, Calif.	Land use plan	Forest Supervisor	January 1975	June 1975.
Tahoe Timber Management Plan	do	Resource plan	Regional Forester	April 1975	September 1975.
	Regional office, Portland, Oreg., Region 6, Pacific Northwest Region, USDA, Forest Service, 319 Southwest Pine St., Portland, Oreg. 97208				
Vegetation Management	Siskiyou, Siuslaw, Umpqua National Forests Oreg. and Calif.	Herbicide	Regional Forester	October 1973	February 1974.
Drift Creek Unit	Siuslaw National Forest (Waldport), Oreg.	Management plan	Forest Supervisor	February 1974	October 1974.
Oregon Dunes National Recreation Area.	NRA, Siuslaw National Forest	do	do	do	February 1975.
Timber Management Plan	Gifford Pinchot National Forest, Wash.	Timber Management Plan	Regional Forester	March 1974	June 1974.
Management Proposal for Davis Mountain.	Packwood R.D., Gifford Pinchot National Forest, Wash.	Roadless area	Forest Supervisor	April 1974	July 1974.
Management Proposal Rogue	Siskiyou National Forest, Oreg.	do	do		
Weyerhaeuser County Road—Hansen Creek.	Snoqualmie National Forest, Wash.	Nonshare cost, road construction.	do	January 1974	April 1974.
Mount Baker Ski Area Development Plan.	Mount Baker National Forest, Wash.	Recreation development	do	do	
Mount Baker Land Use Plan	do	Land use plan	do	April 1974	
Timberline Lodge Objective Statement.	Mount Hood National Forest, Oreg.	Recreation site	do	do	November 1974.
Huckleberry Planning Unit	do	Land use plan	do	do	January 1975.
Eagle Creek Planning Unit	do	do	do	December 1973	September 1974.
Roaring River-Salmon River Planning Unit.	do	do	do	July 1973	July 1974.
Alpine Lakes Study Area	Snoqualmie National Forest, Wash.	Wilderness proposal	do	do	April 1974.
Deschutes National Forest 10-Year Timber Management Plan.	Deschutes National Forest, Oreg.	10-year timber management plan.	Regional Forester	February 1974	July 1974.
Cascade Lakes Highway	do	Forest highway	Forest Supervisor	December 1974	June 1975.
Moore-Rock Timber Sale	do	Timber sale	do	October 1974	March 1975.
Metolius Unit	do	Land use plan	do	November 1974	Do.
Soleduck Unit	Olympic National Forest, Wash.	do	do	July 1974	January 1975.
Lake Quinault Sewage Collection Facility.	do	Sewage facility	do	September 1973	February 1974.
Lake Fork Land Use Plan	Wallowa - Whitman National Forest, Oreg.	Undeveloped area	do	January 1974	July 1974.
Joseph Creek-Wildhorse Land Use Plan.	do	do	do	February 1974	January 1975.
Hoodoo Ski-Bowl	Willamette National Forest, Oreg.	Ski-area expansion	do	April 1974	July 1974.
Willamette National Forest Land Use Plan.	do	Land use allocations	do	June 1974	February 1975.
Willamette National Forest Timber Management Plan.	do	10-year timber management	Regional Forester	do	Do.
Quartz-Dumont-Last Creek Land Use Plan.	Umpqua National Forest, Oreg.	Roadless area land use	Forest Supervisor	February 1974	
Williams Creek-Cougar Bluffs Land Use Plan.	do	do	do	do	
Farview-Puddin Rock-Canton-Steelhead Land Use Plan.	do	do	do	do	
	Regional Office, Atlanta, Ga., Region 8, Southern Region, USDA, Forest Service, 1720 Peachtree Rd. NW., Atlanta, Ga. 30309				
El Yunque Peak Electronics Site	El Yunque Park, Caribbean National Forest, ITF.	Land use permit	Forest Supervisor	July 1974	October 1974.
Upper Hiwassee Unit	Cherokee National Forest, Tenn., Polk and Monroe Counties.	Land use plan	do	December 1973	April 1974.
Unaka Unit	Cherokee National Forest, Tenn., Unicoi, Washington, and Carter Counties.	do	do	April 1974	June 1974.
South Holston Unit	Cherokee National Forest, Sullivan County, Tenn., and Washington County, Va.	do	do	March 1973	December 1973.

Title of environmental statement	Location of proposal	Nature of proposal (i.e., land use, herbicide, etc.)	Responsible official	Date draft filed w/CEQ (or estimated date)	Estimated date of final
Management of the Red River Gorge Unit.	Daniel Boone National Forest, Ky.	do	do	July 1973	January 1974.
Management of the Beaver Creek Unit.	do	do	do	January 1974	July 1974.
Limestone Mining-Plan	Withlacoochee State Forest, Fla.	Resource plan	Regional Forester	do	April 1974.
Juniper-Pat and Hughes Island Unit.	Ocala National Forest, Fla.	Land use plan	Forest Supervisor	November 1973	Do.
Transmission Line—City of Tallahassee.	Tallahassee, Fla	Land use permit	Regional Forester	May 1974	September 1974.
John D. Long III Lake	Tyger R. D., Sumter National Forest, S.C.	Recreation	Forest Supervisor	February 1974	July 1974.
Keowee Unit	Andrew Pickens R. D., Sumter National Forest, S.C.	Land use plan	do	December 1973	April 1974.
Chauga Unit	Sumter National Forest, S.C.	do	do	March 1974	July 1974.
North River Unit	Augusta County, Va.	do	do	January 1974	April 1974.
Big Levels Unit	Augusta and Nelson Counties, Va.	do	do	do	Do.
Mount Rogers National Recreational Area.	Jefferson National Forest, Va.	do	do	do	Do.
Timber Management Plan	Kisatchie National Forest, La.	Resource plan	do	do	May 1974.
Wilson Creek Unit	Pisgah National Forest, N.C.	Land use plan	do	December 1973	March 1974.
Davidson River and Northwest Fork of the French Broad River Units.	do	do	do	January 1974	April 1974.
Whitewater River and Cullasaja River Units.	Nantahala National Forest, N.C.	do	do	February 1974	May 1974.
Ozone Unit	Ozark National Forest, Ark	do	do	April 1974	August 1974.
Blanchard Springs Caverns Tours B & C.	do	Recreation	do	do	Do.
Caddo National Grassland	Decatur, Tex	Land use plan	do	March 1974	July 1974.
Cross Timbers National Grassland.	do	do	do	do	Do.
Pocket Gopher Control	Angelina National Forest, Tex.	Rodent control	do	August 1972	February 1974.
Caney Creek Eastern Wilderness	Quachita National Forest, Ark. and Okla.	Legislative	Chief	June 1973	January 1974.
	Regional Office, Milwaukee, Wis., Region 9, Eastern Region, USDA, Forest Service, 633 West Wisconsin Ave., Milwaukee, Wis. 53203				
Off-Road Vehicle Plan	Chequamegon National Forest, Wis.	Land use plan	Forest Supervisor	April 1974	December 1974.
Timber Management Plan	Chippewa National Forest, Minn	Resource plan	Regional Forester	January 1974	July 1974.
Deerfield River (Mount Snow)	Green Mountain National Forest, Vt.	Land use Plan	do	June 1974	December 1974.
Timber Management Plan	do	Resource plan	do	August 1972	March 1974.
Off-Road Vehicle Plan	Hiawatha National Forest, Mich.	Land use plan	Forest Supervisor	February 1974	June 1974.
Eagle Lake and Associated Recreation Development.	Monongahela National Forest, W. Va.	do	Regional Forester	January 1974	Do.
Off-Road Vehicle Plan	Nicolet National Forest, Wis	do	Forest Supervisor	March 1974	September 1974.
Boundary Waters Canoe Area Plan.	Superior National Forest, Minn	do	Regional Forester	August 1973	March 1974.
Prairie Portage Dam BWCA	do	do	do	February 1974	July 1974.
Cedar Creek Management Plan	National forests, Missouri	do	Forest Supervisor	January 1974	March 1975.
	Regional Office, Juneau, Alaska, Region 10, Alaska Region, USDA, Forest Service, Federal Office Bldg., Box 1628, Juneau, Alaska 99801				
*Fishways in Roadless Areas	Regionwide	Fish habitat improvement	Regional Forester	June 1973	January 1974.
*West Chichagof-Yakobi Island Land Use Plan.	West Chichagof-Yakobi Island	Land use plan	Area Manager	October 1974	February 1975.
*Recreation Cabins	Ketchikan area	Recreation	do	September 1973	February 1974.
*Cholmondeley Management Plan	Cholmondeley Sound, Ketchikan area.	Land use plan	do	December 1973	March 1974.
*Thorne Arm-Carroll Inlet Management Plan.	Thorne Arm and Carroll Inlet, Ketchikan area.	do	do	do	Do.
*Honker Divide Land Use Plan	Prince of Wales Island	do	do	March 1974	August 1974.
*Tongass National Forest Land Use Plan.	Tongass National Forest, Alaska.	do	Area Managers	February 1974	May 1974.
*Chugach National Forest Land Use Plan.	Chugach National Forest, Alaska.	do	Area Manager	January 1974	April 1974.
*Barry Arm No. 1 Timber Sale	Near Port Wells	Timber sale	do	do	Do.
*Westside Timber Sale	Montague Island	do	Regional Forester	do	Do.
	Southeastern Area Office, S. & P.F., USDA, Forest Service, 1720 Peachtree Rd. NW., Atlanta, Ga. 30309				
Suppression Strategy for Control of Southern Pine Beetle.	Southeastern United States	Bark beetle suppression	Area Director	January 1974	March 1974.
	Area Office, North Central Forest Experiment Station, USDA, Forest Service, Folwell Ave., St. Paul, Minn. 55101				
Radiobiology of Northern Forest Communities.	Rhinelander, Wis	Research plan	Area Director	October 1972	December 1973.

STATE ABBREVIATIONS

Ala.—Alabama
Alaska—Alaska
Ariz.—Arizona
Ark.—Arkansas
Calif.—California
C.Z.—Canal Zone
Colo.—Colorado
Conn.—Connecticut
Del.—Delaware
D.C.—District/Columbia
Fla.—Florida
Ga.—Georgia
Guam—Guam
Hawaii—Hawaii
Idaho—Idaho
Ill.—Illinois
Ind.—Indiana
Iowa—Iowa
Kans.—Kansas
Ky.—Kentucky
La.—Louisiana
Maine—Maine
Md.—Maryland
Mass.—Massachusetts
Mich.—Michigan
Minn.—Minnesota
Miss.—Mississippi
Mo.—Missouri
Mont.—Montana
Nebr.—Nebraska
Nev.—Nevada
N.H.—New Hampshire
N.J.—New Jersey
N. Mex.—New Mexico
N.Y.—New York
N. Dak.—North Dakota
N.C.—North Carolina
Ohio—Ohio
Okla.—Oklahoma
Oreg.—Oregon
Pa.—Pennsylvania
P.R.—Puerto Rico
R.I.—Rhode Island
S.C.—South Carolina
S. Dak.—South Dakota
Tenn.—Tennessee
Tex.—Texas
Utah—Utah
Vt.—Vermont
Va.—Virginia
V.I.—Virgin Islands
Wash.—Washington
W. Va.—West Virginia
Wis.—Wisconsin
Wyo.—Wyoming
Canada—Canada

FOREST SERVICE FIELD ADDRESSES

Northern Region—Address: Federal Bldg., Missoula, Mont. 59801.

Idaho

Clearwater	Orofino
Coeur d'Alene	Coeur d'Alene
Kaniksu	Sandpoint
Nezperce	Grangeville
St. Joe	St. Maries

Montana

Beaverhead	Dillon
Bitterroot	Hamilton
Custer	Billings
Deerlodge	Butte
Flathead	Kalispell
Gallatin	Bozeman
Helena	Helena
Kootenai	Libby
Lewis and Clark	Great Falls
Lolo	Missoula

Washington

Colville	Colville

Rocky Mountain Region—Address: Denver Federal Center, Bldg. 85, Denver, Colo. 80225.

Colorado

Arapaho	Golden
Grand Mesa-Uncompahgre [1]	Delta
Gunnison	Gunnison
Pike	Colorado Springs
Rio Grande	Monte Vista
Roosevelt	Fort Collins
Routt	Steamboat Springs
San Isabel	Pueblo
San Juan	Durango
White River	Glenwood Springs

Nebraska

Nebraska	Chadron

South Dakota

Black Hills	Custer

Wyoming

Bighorn	Sheridan
Medicine Bow	Laramie
Shoshone	Cody

Southwestern Region—Address: 517 Gold Ave. SW., Albuquerque, N. Mex. 87101.

Arizona

Apache	Springerville
Coconino	Flagstaff
Coronado	Tucson
Kaibab	Williams
Prescott	Prescott
Sitgreaves	Holbrook
Tonto	Phoenix

New Mexico

Carson	Taos
Cibola	Albuquerque
Gila	Silver City
Lincoln	Alamogordo
Santa Fe	Santa Fe

Intermountain Region—Address 324 25th St., Ogden, Utah 84401.

Idaho

Boise	Boise
Caribou	Pocatello
Challis	Challis
Payette	McCall
Salmon	Salmon
Sawtooth	Twin Falls
Targhee	St. Anthony

Nevada

Humboldt	Elko
Toiyabe	Reno

Utah

Ashley	Vernal
Cache	Logan
Dixie	Cedar City
Fishlake	Richfield
Manti-La Sal	Price
Uinta	Provo
Wasatch	Salt Lake City

Wyoming

Bridger	Kemmerer
Teton	Jackson

California Region—Address: 630 Sansome St., San Francisco, Calif. 94111.

California

Angeles	Modoc
Cleveland	Plumas
Eldorado	San Bernardino
Inyo	Sequoia
Klamath	Shasta-Trinity [1]
Lassen	Sierra
Los Padres	Six Rivers
Mendocino	Stanislaus
Tahoe	Alturas
Pasadena	Quincy
San Diego	San Bernardino
Placerville	Porterville
Bishop	Redding
Yreka	Fresno
Susanville	Eureka
Santa Barbara	Sonora
Willows	Nevada City

[1] Two separately proclaimed National Forests under one supervisor.

Pacific Northwest Region—Address: 319 Southwest Pine St., P.O. Box 3623, Portland, Oreg. 97208.

Oregon

Deschutes	Bend
Fremont	Lakeview
Malheur	John Day
Mount Hood	Portland
Ochoco	Prineville
Rogue River	Medford
Siskiyou	Grants Pass
Siuslaw	Corvallis
Umatilla	Pendleton
Umpqua	Roseburg
Wallowa-Whitman	Baker
Willamette	Eugene
Winema	Klamath Falls

Washington

Gifford Pinchot	Vancouver
Mount Baker	Bellingham
Okanogan	Okanogan
Olympic	Olympia
Snoqualmie	Seattle
Wenatchee	Wenatchee

Eastern Region—Address: 633 West Wisconsin Ave., Milwaukee, Wis. 53203.

Illinois

Shawnee	Harrisburg

Indiana

Hoosier	Bedford

Michigan

Hiawatha	Escanaba
Huron	Cadillac
Manistee	Cadillac
Ottawa	Ironwood

Minnesota

Chippewa	Cass Lake
Superior	Duluth

Missouri

Clark	Rolla
Mark Twain	Springfield

New Hampshire

White Mountain	Laconia

Ohio

Wayne	Bedford, Ind.

Pennsylvania

Allegheny	Warren

Vermont

Green Mountain	Rutland

West Virginia

Monongahela	Elkins

Wisconsin

Chequamegon	Park Falls
Nicolet	Rhinelander

Southern Region—Address: 1720 Peachtree Rd. NW., Atlanta, Ga. 30309.

Alabama

National Forests in Alabama, 1765 Highland Ave., P.O. Box 40, Montgomery 36101.

William B. Bankhead	Talladega
Conecuh	Tuskegee

Arkansas

Ouachita	Hot Springs
Ozark	Russellville
St. Francis	Russellville

Florida

National Forest in Florida, 214 South Bronough St., P.O. Box 1050. Tallahassee 32302.

Apalachicola	Osceola
Ocala	

Georgia

National Forests in Georgia, 322 Oak St. NW., Gainesville 30501.

Chattahoochee	Oconee

Kentucky

Daniel Boone	Winchester

Louisiana

Kisatchie	Pineville

Mississippi

National Forests in Mississippi, 350 Milner Bldg., P.O. Box 1291, Jackson 39205.

Bienville	Holly Springs
Delta	Homochitto
DeSoto	Tombigbee

North Carolina

National Forests in North Carolina, B-level Plateau Bldg., 50 S. French Broad, P.O. Box 2570, Asheville 28802.

Croatan	Pisgah
Nantahala	Uwharrie

South Carolina

National Forests in South Carolina, Room 350, 1801 Main St., Columbia 29201.

Francis Marion	Sumter

Tennessee

Cherokee	Cleveland

Texas

National Forests in Texas, Federal Bldg., P.O. Box 969, Lufkin 75901.

Angelina	Sabine
Davy Crockett	Sam Houston

Virginia

George Washington	Harrisonburg
Jefferson	Roanoke

Alaska Region—Address: Federal Office Bldg., P.O. Box 1628, Juneau, Alaska 99801.

Alaska

Chugach	Anchorage
North Tongass	Juneau
South Tongass	Ketchikan

RESEARCH HEADQUARTERS

LABORATORY

Forest Products Laboratory, North Walnut St., P.O. Box 5130, Madison, Wis. 53705.

INSTITUTES

Institute of Tropical Forestry, P.O. Box AQ, Rio Piedras, P.R. 00928.
Institute of Northern Forestry, Fairbanks, Alaska 99701.

FOREST AND RANGE EXPERIMENT STATIONS

Pacific Northwest—809 Northeast Sixth Ave., P.O. Box 3141, Portland, Oreg. 97208.
Pacific Southwest—1960 Addison St., Berkeley, Calif. 94701.
Intermountain—507 25th St., Ogden, Utah 84401.
Rocky Mountain—240 West Prospect St., Fort Collins, Colo. 80521.
North Central—Folwell Ave., St. Paul, Minn. 55101.
Northeastern—6816 Market St., Upper Darby, Pa. 19082.
Southern—Federal Bldg., 701 Loyola Ave., New Orleans, La. 70113.
Southeastern—Post Office Bldg., P.O. Box 2570, Asheville, N.C. 28802.

STATE AND PRIVATE FORESTRY AREAS

State and private forestry offices are located in the regional headquarters with the exception of the following areas:

Northeastern Area—S&PF (Includes States in the Eastern Region—see map).
6816 Market St., Upper Darby, Pa. 19082.
Southeastern Area—S&PF (Includes States in the Southern Region—see map).
1720 Peachtree Rd. NW., Atlanta, Ga. 30309.

[FR Doc.74-3238 Filed 2-13-74;8:45 am]

LAKE QUINAULT SEWAGE COLLECTION AND TREATMENT FACILITY

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the proposed Lake Quinault Sewage Collection and Treatment Facility, Washington State, USDA-FS-FES(Adm)74-32.

The environmental statement concerns a proposed sewage collection and treatment facility to abate pollution emanating from Forest Service facilities on the south shore of Lake Quinault, Washington.

This final environmental statement was transmitted to CEQ on February 6, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3230
12th St. & Independence Ave., SW.
Washington, D.C. 20250

USDA, Forest Service
Olympic National Forest
Federal Building
Olympia, Washington 98501

USDA, Forest Service
Pacific Northwest Region
319 SW. Pine Street
Portland, Oregon 97204

A limited number of single copies are available upon request to Wynne M. Maule, Forest Supervisor, Olympic National Forest, Federal Building, Olympia, Washington 98501.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, state, and local agencies as outlined in the CEQ guidelines.

Dated: February 6, 1974.

ROBERT B. TERRILL,
Acting Regional Forester.

[FR Doc.74-3615 Filed 2-13-74;8:45 am]

WESTSIDE TIMBER SALE

Notice of Availability of Draft Environmental Statement

Pursuant of section 102(2(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Westside Timber Sale, Report Number USDA-FS-DES (Adm) R10-74-03.

This environmental statement concerns a proposed timber sale involving the harvesting of 11,068,000 million board feet of timber.

This draft environmental statement was transmitted to CEQ on February 8, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3231
12th St. & Independence Ave., SW.
Washington, D.C. 20250

U.S. Department of Agriculture
Forest Service—Alaska Region
Federal Building
Juneau, Alaska 99801

Chugach National Forest
121 W. Fireweed Lane, Suite 205
Anchorage, Alaska 99503

Area Manager, Chatham Area
Tongass National Forest
Federal Building
Sitka, Alaska 99835

Area Manager, Stikine Area
Tongass National Forest
Federal Building
Petersburg, Alaska 99833

Area Manager, Ketchikan Area
Tongass National Forest
Federal Building, Room 313
Ketchikan, Alaska 99901

A limited number of single copies are available upon request to Clay Beal, Area Manager, Chugach National Forest, 121 W. Fireweed Lane, Anchorage, Alaska 99503.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Clay Beal, Area Manager, Chugach National Forest, 121 W. Fireweed Lane, Anchorage, Alaska 99503. Comments must be received by April 1, 1974 in order to be considered in the preparation of the final environmental statement.

C. A. YATES,
Regional Forester, Alaska Region.

FEBRUARY 8, 1974.

[FR Doc.74-3666 Filed 2-13-74;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 445]

ASSIGNMENT OF HEARINGS

FEBRUARY 11, 1974.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC-F-11318, Superior Trucking Co., Inc.—Purchase—(Portion)—Daniel Hamm Dray- & Rigging Company—Purchase (Portion)—Daniel Hamm Drayage Company; and MC-F-11742, Ace Doran Hauling & Rigging Co.—Control—Daniel Hamm Drayage Company, is continued to February 14, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-116077 Sub 349, Robertson Tank Lines, Inc., now being assigned hearing March 11, 1974 (3 days), will be held in Room 5A15-17 New Federal Building, 1100 Commerce Street, Dallas, Texas.

MC-138922, Leggitt Leasing Corporation, now being assigned hearing March 13, 1974 (2 days), will be held in Room 5A15-17 New Federal Building, 1100 Commerce Street, Dallas, Texas.

MC 75320 Sub-162, Campbell Sixty-Six Express, Inc., is continued to March 4, 1974, at Dallas, Texas, in the Holiday Inn—Downtown, 1015 Elm Street.

MC-127834 Sub 86, Cherokee Hauling & Rigging, Inc., now assigned February 19, 1974, at Memphis, Tenn., is cancelled and the application is dismissed.

MC 101219 Sub-50, Merit Dress Delivery, Inc., now assigned March 4, 1974, at New York, N.Y., will be held in Room B-2231, 26 Federal Plaza.

MC 42487 Sub 817, Consolidated Freightways Corporation of Delaware, now being assigned hearing June 4, 1974 (3 weeks), at San Diego, Calif., in a hearing room to be later designated.

MC 8948 Sub-104, Western Gillette, Inc., now being assigned March 26, 1974, at Dallas, Texas, in a hearing room to be later designated.

MC 74 Sub 9, Valley Transit Company, Inc., continued to February 12, 1974 (4 days), at the Sheraton Fairway Motor Hotel, 2105 South 10th Street, McAllen, Texas.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-3712 Filed 2-13-74;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

FEBRUARY 11, 1974.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1100.40) and filed on or before March 1, 1974.

FSA No. 42803—*Iron and Steel Articles from Points in Minnesota.* Filed by Western Trunk Line Committee, Agent (No. A-2696), for interested rail carriers. Rates on iron and steel articles, in carloads, as described in the application, from specified points in Minnesota, to Alton, East St. Louis, Ill., also St. Louis, Missouri.

Grounds for relief—Barge competition.

Tariff—Supplement 193 to Western Trunk Line Committee, Agent, tariff 130-M, I.C.C. No. A-4663. Rates are published to become effective on March 12, 1974.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-3714 Filed 2-13-74;8:45 am]

[Notice 23]

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 March 6, 1974. 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 matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-74239. By order of February 4, 1974, the Motor Carrier Board approved the transfer to Everette Truck Line, Inc., Washington, N.C., of the operating rights in Certificates No. MC-109638, MC-109638 (Sub-No. 8), MC-109638 (Sub-No. 13), MC-109638 (Sub-No. 20) issued June 28, 1960, November 5, 1958, June 8, 1961 and March 4, 1969 respectively to Woodrow Everette, doing business as W. Everette Truck Line, Washington, N.C., authorizing the transportation of various commodities from, to and between specified points and areas in Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.

No. MC-FC-74760. By order of February 4, 1974, the Motor Carrier Board approved the transfer to Bay Delivery Corp., Farmingdale, N.Y., of a portion of Permit No. MC-136841 (Sub-No. 1) issued to L.I.A.C. Trucking, Inc., Farmingdale, N.Y., authorizing the transportation of: Toys, sporting goods, swimming pools, supplies, etc., from Farmingdale, N.Y., to points in Georgia, Maryland, Virginia, Pennsylvania, Delaware, and District fo Columbia. Arthur J. Piken, Attorney, One Lefrak City Plaza, Flushing, N.Y. 11368.

No. MC-FC-74943. By order of February 5, 1974, the Motor Carrier Board approved the transfer to George Pandolfo dba Service Truck Lines, Oakland, Calif., of Certificate of Registration No. MC-99561 (Sub No. 3) issued to East Bay Drayage & Warehouse Co., Berkeley, Calif., evidencing a right to engage in interstate or foreign commerce in the transportation of: General commodities solely within the State of California. Raymond A. Greene, Jr., Attorney, 100 Pine St., San Francisco, Calif. 94111.

No. MC-FC-74951. By order of February 5, 1974, the Motor Carrier Board approved the transfer to Metropolitan Warehouse Company, a corporation, Los Angeles, Calif., of certificate of Registration No. MC-29309 (Sub No. 2) issued to Metro Distribution Centers, Inc., Los Angeles, Calif., evidencing a right to engage in interstate or foreign commerce, in the transportation of property, solely within the State of California. Donald Murchison, Attorney, 9454 Wilshire Blvd., Beverly Hills, Calif. 90212.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-3713 Filed 2-13-74;8:45 am]

[Notice 12]

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER APPLICATIONS

JANUARY 8, 1974.

The following applications (except as otherwise specifically noted, each applicant (on applications filed after March 27, 1972) states that there will be no sig-

nificant effect on the quality of the human environment resulting from approval of its application), are governed by Special Rule 1100.247[1] of the Commission's general rules of practice (49 CFR, as amended), published in the FEDERAL REGISTER issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after date of notice of filing of the application is published in the FEDERAL REGISTER. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one (1) copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) of the Commission's rules of practice further provides that each applicant shall, if protests to its application have been filed, and within 60 days of the date of this publication, notify the Commission in writing (1) that it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further processing steps (whether modified procedure, oral hearing, or other procedures) will be determined generally in accordance with the Commission's general policy statement concerning motor carrier licensing procedures, published in the FEDERAL REGISTER issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

No. MC 2135 (Sub-No. 11), filed November 29, 1973. Applicant: D. J. McNICHOL CO., a Corporation, 2519 Morris Street, Philadelphia, Pa. 19145. Applicant's representative: Harold P. Boss, 1100 Seventeenth Street NW., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such foods, commodities, and equipment* as are used in connection with the operation of cafeterias (a) from Philadelphia, Pa., to points in Maryland and the District of Columbia; (b) between Philadelphia, Pa., on the one hand, and, on the other, points in New Castle County, Del., points in that part of New York on and south of U.S. Highway 6 and those in New Jersey on and north of a line beginning at Trenton, N.J., and extending along New Jersey Highway 33 to intersection New Jersey Secondary Highway 537, thence along New Jersey Secondary Highway 537 to Freehold, N.J., thence along New Jersey Secondary Highway 537 through Colts Neck and Tinton, N.J., to Eatontown, N.J., thence along New Jersey Highway 71 to intersection unnumbered highway near Oceanport, N.J., and thence along unnumbered highway through Long Branch, N.J., to the Atlantic Ocean; and (c) from Philadelphia, Pa., to points in Connecticut, Massachusetts, Rhode Island, Virginia (except those in Washington, D.C., Commercial Zone), and those points in Delaware, New Jersey, and New York not specified in 1(b) above; and (2) on return, *shipments* which have been accepted by a consignee which are subsequently to be returned to ARA Services, Inc., from the destination territory described in 1(c) above and points in Maryland and the District of Columbia, to Philadelphia, Pa., under a continuing contract or contracts with ARA Services, Inc.

NOTE.—Common control and dual operations may be involved.

Applicant states that it is presently performing the operations requested in 1 (a) and (b) above, with a restriction on the commodities described therein in 1(a) "as are used in connection with the operation of industrial plant and institutional cafeterias," and in 1(b) "as are used in industrial plant cafeterias." By the instant application, applicant seeks removal of said restriction and extension of present operating authority as specified herein. Applicant further states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa., or Washington, D.C.

No. MC 2202 (Sub-No. 457), filed January 11, 1974. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, Ohio 44309. Applicant's representative: William Slabaugh (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the Holiday Industrial Park, De Soto County, Miss., as an off-route point in connection with applicant's regular-route operations.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn., or Washington, D.C.

No. MC 2860 (Sub-No. 140), filed December 6, 1973. Applicant: NATIONAL FREIGHT, INC., 57 West Park Avenue, Vineland, N.J. 08360. Applicant's representative: Jacob P. Billig, 1126 16th Street NW., Suite 300, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ores, NOIBN*, between Winslow, N.J., on the one hand, and, on the other, points in Michigan, Illinois, Indiana, and Ohio.

NOTE.—Applicant states that the requested authority can be tacked at Winslow, N.J., to provide service between the Middle Atlantic and Southern New England states. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 5623 (Sub-No. 23), filed January 11, 1974. Applicant: ARROW TRUCKING CO., a Corporation, P.O. Box 6027, Tulsa, Okla. 74106. Applicant's representative: Joseph G. Dail, Jr., 1111 E. Street NW., Suite 501, Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Refractories*, (1) from the plantsite of North American Refractories Co., located at or near Farber, Mo., to points in Alabama, Arizona, California, Florida, Georgia, Idaho, Louisiana, Mississippi, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming; and (2) from the plantsites of North American Refractories Co., located in Berks, Huntingdon, and Clearfield Counties, Pa., and Jackson, Ohio, to points in Arizona, Arkansas, Colorado, California, Florida, Georgia, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Cleveland, Ohio.

No. MC 10794 (Sub-No. 4), filed January 8, 1974. Applicant: PERROW MOTOR FREIGHT LINES, INCORPORATED, P.O. Box 811, Charleston, W. Va. 25323. Applicant's representative: John A. Pillar, 2310 Grant Bldg., Pittsburgh, Pa. 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Charleston, W. Va., on the one hand, and, on the other, points in West Virginia, and those in Pike and

Greenup Counties, Ky.; Washington, Jefferson, Belmont, Monroe, Athens, Meigs, Gallia, and Lawrence Counties, Ohio, and Tazewell County, Va., restricted to traffic having a prior or subsequent movement in interstate commerce.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Charleston, W. Va.

No. MC 11722 (Sub-No. 38), filed January 2, 1974. Applicant: BRADER HAULING SERVICE, INC., P.O. Box 655, Zillah, Wash. 98953. Applicant's representative: Douglas A. Wilson, 303 East D Street, Yakima, Wash. 98901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty containers, and parts thereof;* (1) from Richmond, Calif., to points in Oregon, Washington, and Idaho; and (2) from Tacoma, Wash., to points in Oregon, Idaho, and California.

NOTE.—Applicant holds contract carrier authority in MC 124658 Subs 2 and 4, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg., or Seattle, Wash.

No. MC 29120 (Sub-No. 172), filed January 11, 1974. Applicant: ALL-AMERICAN, INC., 900 West Delaware, P.O. Box 769, Sioux Falls, S. Dak. 57101. Applicant's representative: Michael J. Ogborn (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, skins, hides, and chromes, and those requiring special equipment), between Denver, Colo., and St. Louis, Mo.: From Denver over Interstate Highway 80 to junction Interstate Highway 29, thence over Interstate Highway 29 to junction Interstate Highway 70, thence over Interstate Highway 70 to St. Louis, serving no intermediate points, as an alternate route for operating convenience only in connection with carrier's regular route operations.

NOTE.—Common control was approved in MC-F-11285. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo., or St. Louis, Mo.

No. MC 29934 (Sub-No. 16), filed January 11, 1974. Applicant: LE BIONDO BROTHERS MOTOR EXPRESS, INC., RD No. 6, Bridgeton-Vineland Pike, west of Morton Ave., P.O. Box 160, Bridgeton, N.J. 08302. Applicant's representative: Martin Werner, 2 West 45th Street, New York, N.Y. 10036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insecticides and fungicides* (except in bulk), from Malaga, N.J., to Middleport, and Sodus, N.Y., restricted to traffic originating at and destined to the named destination points.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Washington, D.C.

No. MC 30844 (Sub-No. 493), filed January 11, 1974. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 2125 Commercial Street, P.O. Box 5000, Waterloo, Iowa 50702. Applicant's representative: Larry Strickler (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* (except hides and commodities in bulk), as defined in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (1) from the plantsite and warehouse facilities of Wilson & Co., Inc., at Omaha, Nebr., to points in Connecticut, Indiana, Massachusetts, Maine, Maryland, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Vermont, Virginia, West Virginia, and the District of Columbia; and (2) from the plantsite and warehouse facilities at Cherokee, Iowa, to points in Virginia, restricted to the transportation of traffic originating at the above named origins and destined to the named destinations.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Okla., or Washington, D.C.

No. MC 30844 (Sub-No. 494), filed January 7, 1974. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 2125 Commercial Street, P.O. Box 5000, Waterloo, Iowa 50702. Applicant's representative: Paul Rhodes (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, fro mthe plant site and warehouse facilities of Western Potato Service, Inc., at or near Grand Forks, N. Dak., to points in Connecticut, Delaware, the District of Columbia, Indiana, Kentucky, Massachusetts, Michigan, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn., or Washington, D.C.

No. MC 31389 (Sub-No. 177), filed January 10, 1974. Applicant: McLEAN TRUCKING COMPANY, a Corporation, 617 Waughtown Street, Winston-Salem, N.C. 27107. Applicant's representative: David F. Eshelman, P.O. Box 213, Winston-Salem, N.C. 27102. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving that part of De Sota County, Miss., on and bounded by a line beginning at the Tennessee-Mississippi State Line and extending along Germantown Road to junction Goodman Road, thence along Goodman Road to junction Center Hill Road, thence along Center Hill Road to the Tennessee-Mississippi State Line and thence along the Tennessee-Mississippi State Line to the point of beginning, as an off-route point in connection with the carrier authorized regular route operations from and to Memphis, Tenn.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Memphis, Tenn.

No. MC 33641 (Sub-No. 111), filed January 7, 1974. Applicant: IML FREIGHT, INC., 2175 South 3270 West, Salt Lake City, Utah 84110. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, between the plant site of Pepperidge Farms near Richmond, Utah and Salisbury, Md.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or New York, N.Y.

No. MC 33641 (Sub-No. 112), filed January 9, 1974. Applicant: IML FREIGHT, INC., 2175 South 3270 West, Salt Lake City, Utah 84110. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the site of the Jim Bridger Power Project, at or near Rock Springs, Wyo., as an off-route point in connection with applicant's regular route operations.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Cheyenne, Wyo., or Salt Lake City, Utah.

No. MC 33970 (Sub-No. 14), filed January 9, 1974. Applicant: GEORGE HILDEBRANDT, INC., R.F.D. No. 2, Hudson, N.Y. 12534. Applicant's representative: John J. Brady, Jr., 75 State Street, Albany, N.Y. 12207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime, lime products and by-products, limestone, limestone products and by-products, sand, asphalt patching mix*, in packages, *lime mixed with sand or cement, and lime mixed with sand and cement*, from Lee, Mass., to points in Ohio, Virginia, West Virginia, Maryland, Delaware, District of Columbia, and Pennsylvania (except the counties of Susquehanna, Wyoming, Wayne, Pike, Lackawanna, Luzerne, and Bradford).

NOTE.—Applicant states that the requested authority cannot be tacked with its existing

authority. If a hearing is deemed necessary, applicant requests it be held at Albany, N.Y.

No. MC 35045 (Sub-No. 15), filed January 8, 1974. Applicant: HORNE HEAVY HAULING, INC., 1124 De Kalb Avenue, NE., Atlanta, Ga. 30307. Applicant's representative: Monty Schumacher, Suite 310, 2045 Peachtree Road NE., Atlanta, Ga. 30309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Machinery and equipment*, from the plant site of the Cord Co., a division of Tuftco International, Inc., Chattanooga, Tenn., to points in the United States (except Alaska and Hawaii) and return of *damaged or refused shipments*.

NOTE.—Dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 52460 (Sub-No. 134), filed December 17, 1973. Applicant: ELLEX TRANSPORTATION, INC., P.O. Box 9637, Tulsa, Okla. 74107. Applicant's representative: Steve B. McCommas, 1420 West 35th Street, Tulsa, Okla. 74107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and related advertising material*, from Memphis, Tenn., to points in Kansas and Missouri; and (2) *returned empty malt beverage containers*, from points in Kansas and Missouri, to Memphis, Tenn.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex., or Oklahoma City or Tulsa, Okla.

No. MC 52460 (Sub-No. 135), filed January 10, 1974. Applicant: ELLEX TRANSPORTATION, INC., 1420 West 35th Street, P.O. Box 9515, Tulsa, Okla. 74107. Applicant's representative: Steve B. McCommas (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicles, from the terminal of Mapco, Inc., near Clay Center, Kans., to points in Nebraska, Missouri, and Iowa.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo., or Omaha, Nebr.

No. MC 52704 (Sub-No. 113), filed January 8, 1974. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer H, LaFayette, Ala. 36862. 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: *Empty glass containers, corrugated cartons and fillers, and those materials and supplies used in the manufacture of glass containers* (except in bulk), between the plantsite of Midland Glass Company, Inc., at or near Warner Robins, Ga., on the one hand, and, on the other, points in Florida.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 59135 (Sub-No. 28), filed January 11, 1974. Applicant: RED STAR EXPRESS LINES OF AUBURN, INCORPORATED, doing business as RED STAR EXPRESS LINES, 24–50 Wright Avenue, Auburn, N.Y. 13021. Applicant's representative: Leonard A. Jaskiewicz, 1730 M Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except commodities in bulk, household goods as defined by the Commission, Classes A and B explosives, and those requiring special equipment), serving Williamson, N.Y., as an off-route point in connection with carrier's regular route operations.

NOTE.—Common control was approved in MC–F–9570 and MC–F–10540. If a hearing is deemed necessary, applicant requests it be held at Syracuse, N.Y., or Washington, D.C.

No. MC 59856 (Sub-No. 59), filed January 11, 1974. Appplicant: SALT CREEK FREIGHTWAYS, a Corporation, 3333 West Yellowstone, Casper, Wyo. 82601. Applicant's representative: John R. Davidson, Room 805, Midland Bank Building, Billings, Mont. 59103. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment because of size or weight), (1) Between Rapid City, S. Dak., and Spearfish, S. Dak.: From Rapid City over Interstate Highway 90 and U.S. Highway 14 to Spearfish and return over the same routes, serving no intermediate points except serving Sturgis, S. Dak., for the pick-up of lumber only; and (2) Between Newcastle, Wyo., and Rapid City, S. Dak.: From Rapid City, S. Dak., over U.S. Highway 16 to Newcastle and return over the same route, serving no intermediate points, (1) and (2) restricted against traffic originating at or destined to South Dakota points which moves from, to, or through Denver, Colo.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Rapid City, S. Dak.

No. MC 69116 (Sub-No. 164), filed January 9, 1974. Applicant: SPECTOR FREIGHT SYSTEM, INC., 205 West Wacker Drive, Chicago, Ill. 60606. Applicant's representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Iron and steel products, and metal and metal alloy products*, serving New Castle, Ind., as an off-route point in connection with carrier's otherwise authorized regular-route operations.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 82492 (Sub-No. 100), filed December 19, 1973. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., P.O. Box 2853, 2109 Olmstead Road, Kalamazoo, Mich. 49003. Applicant's representative: William C. Harris (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), from Versailles, Ohio, to points in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin, restricted to traffic originating at the named origin and destined to the named destination points.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Washington, D.C. or Chicago, Ill.

No. MC 87689 (Sub-No. 11) (Correction), filed December 7, 1973, published in the FEDERAL REGISTER issue of January 31, 1974, and republished as corrected this issue. Applicant: INTER-CITY TRUCK LINES LIMITED, P.O. Box 900, Station U, Toronto, Ontario, Canada M8Z 5R3. Applicant's representative: Rex Eames, 900 Guardian Building, Detroit, Mich. 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Port Huron, Mich., and the ports of entry on the International Boundary line of the United States and Canada at Port Huron, Mich.

NOTE.—The purpose of this republication is to correct the applicant's name, which was previously published in error. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich.

No. MC 95540 (Sub-No. 894), filed January 14, 1974. Applicant: WATKINS MOTOR LINES, INC., 1940 Monroe Drive, P.O. Box 1636, Atlanta, Ga. 30301. Applicant's representative: Jerome F. Marks (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs, and nonedible foods* (except commodities in bulk), from Logansport, Ind., to points in Alabama, Georgia, Louisiana, Florida, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 100300 (Sub-No. 10), filed January 7, 1974. Applicant: H. B. NELSON AND SONS, INC., P.O. Box 241, Alexandria, Minn. 56308. Applicant's representative: Robert D. Gisvold, 1000 First National Bank Bldg., Minneapolis,

Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and related advertising materials*, from Olympia, Wash., to points in Minnesota; and (2) *empty containers, pallets, and rejected or returned shipments*, from points in Minnesota to Olympia, Wash.

NOTE.—Applicant holds contract carrier authority in MC 134469, therefore, dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn.

No. MC 100449 (Sub-No. 42), filed January 9, 1974. Applicant: MALLINGER TRUCK LINE, INC., R.F.D. 4, Fort Dodge, Iowa 50501. Applicant's representative: William L. Fairbank, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the plantsite of Royal Packing Company located at or near East St. Louis, Ill., to points in Iowa, Minnesota, Nebraska, North Dakota, South Dakota, Texas, and Wisconsin.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo.

No. MC 103051 (Sub-No. 299), filed January 14, 1974. Applicant: FLEET TRANSPORT COMPANY, INC., 934 44th Ave. North, Nashville, Tenn. 37209. Applicant's representative: Russell E. Stone (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products*, in bulk, in tank vehicles, from points in Mecklenburg County, N.C., to points in Tennessee.

NOTE.—Common control and dual operations may be involved.

Applicant states that the requested authority can be tacked with its existing authority as follows: In the lead certificate (a) on liquid petroleum products, at Tyner, Tenn., to serve points in Alabama within 125 miles of the terminals of the Colonial Pipe Line Company located in Georgia, and (b) on petroleum products, at Chattanooga, Tenn., to serve points in Alabama within 125 miles of Chattanooga, Tenn., in Sub-No. 184, on fertilizer solutions at points in Hamilton County, Tenn., to serve points in Kentucky, in Sub-No. 195, (a) on petroleum products at Chattanooga and Tyner, Tenn., to serve Carrollton, Ga., and points in Georgia on and north of a line beginning at the Georgia-South Carolina State Boundary line and extending along U.S. Highway 29 to Atlanta, Ga., and thence along U.S. Highway 78 to the Alabama-Georgia State Boundary line, (b) on gasoline at Knoxville, Tenn., to serve Greenville, S.C., and (c) on gasoline, kerosene, and lubricating oils (except residual fuel oils) at points in Knox County, Tenn., to serve points in Fannin County, Ga., in Sub-No. 196 on anhydrous ammonia and fertilizer solutions at Tyner, Tenn., to serve points in Alabama; in Sub-No. 217 on chemicals at points in Robertson County, Tenn., to serve points in Alabama, Arkansas, Georgia, Kentucky, Indiana, Michigan, Mississippi, North Carolina, Ohio, South Carolina, Virginia, and Tennessee and specified parts of Illinois and Missouri in Sub-No. 224 on petroleum and petroleum products at Nashville, Tenn., to serve Fort Campbell, Ky.; and in Sub-No. 230 at points in La Vergne, Tenn., commercial zone as defined by the Commission except those points located in the Metropolitan Government of Nashville and Davidson Counties, Tenn., to serve points in Alabama, Arkansas, Georgia, Kentucky, Illinois (except that part of Illinois on and north of U.S. Highway 34), Indiana, Michigan, Mississippi, Missouri (except that part of Missouri on and north of U.S. Highway 24), North Carolina, Ohio, South Carolina, and Virginia. If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn., or Atlanta, Ga.

No. MC 103051 (Sub-No. 298), filed January 14, 1974. Applicant: FLEET TRANSPORT COMPANY, INC., 934 44th Ave. North, Nashville, Tenn. 37209. Applicant's representative: Russell E. Stone (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transparting: *Plastic resin*, in bulk, in tank vehicles, from Nashville, Tenn., to points in Tennessee.

NOTE.—Dual operations may be involved. Common control may also be involved. Applicant states that the existing authority can be tacked (1) in MC-103051 (Sub-No. 217), at points in Robertson County, Tenn., to serve points in Alabama, Arkansas, Georgia, Kentucky, Indiana, Michigan, Mississippi, North Carolina, Ohio, South Carolina, Virginia, and Tennessee (except Kingsport and Elizabethton), and specified points in Illinois and Missouri, and (2) in Sub-No. 230, at La-Vergne, Tenn., Commercial Zone, to serve points in Alabama, Arkansas, Georgia, Kentucky, Illinois, Indiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, South Carolina, and Virginia. If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn., or Atlanta, Ga.

No. MC 103498 (Sub-No. 38), filed January 7, 1974. Applicant: W. D. SMITH TRUCK LINE, INC., P.O. Drawer C., DeQueen, Ark. 71832. Applicant's representative: Donald T. Jack, Jr., 1550 Tower Building, Little Rock, Ark. 72201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Particleboard*, from points in Monroe County, Ala., to points in Louisiana, Arkansas, Texas, Mississippi, Kansas, Missouri, Tennessee, and New Mexico; and (2) *lumber and lumber products*, from points in Scott County, Miss., to points in Louisiana, Arkansas, Texas, Alabama, Kansas, Missouri, Tennessee, and New Mexico.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark., or Shreveport, La.

No. MC 103498 (Sub-No. 39), filed December 14, 1973. Applicant: W. D. SMITH TRUCK LINE, INC., P.O. Drawer C, DeQueen, Ark. 71832. Applicant's representative: Donald T. Jack, Jr., 1550 Tower Building, Little Rock, Ark. 72201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and building materials*, from the plant site of Bird and Son, Inc., Shreveport, La., to points in Arkansas, Oklahoma, Kansas, and Missouri.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, the applicant requests it be held at either Little Rock, Ark., or Shreveport, La.

No. MC 106497 (Sub-No. 91), filed January 11, 1974. Applicant: PARKHILL TRUCK COMPANY, a Corporation, P.O. Box 912 (Bus. Rte I–44 East), Joplin, Mo. 64801. Applicant's representative: A. N. Jacobs, P.O. Box 113, Joplin, Mo. 64801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Off-highway vehicles; and parts, attachments, and accessories for or of off-highway vehicles*, (1) between Tulsa, Okla.; Lufkin, Conroe, and Houston, Tex.; and Lark, Utah, on the one hand, and, on the other, points in the United States including Alaska, but excluding Hawaii, restricted to shipments originating at or destined to the facilities of Unit Rig and Equipment Company, at Tulsa, Okla.; Houston, Tex.; and Lark, Utah; and the facilities of Kimco, Inc., at Houston, Lufkin, and Conroe, Tex.; and (2) from Niagara Falls, N.Y., to points in the United States (including Alaska, but excluding Hawaii), restricted to shipments originating from the facilities of Unit Rig and Equipment Company (Canada), Ltd., Niagara Falls, Ontario, Canada, and further restricted to foreign commerce.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 106644 (Sub-No. 171), filed December 17, 1973. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road NW., P.O. Box 916, Atlanta, Ga. 30301. Applicant's representative: W. Randall Tye, 1500 Candler Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Commodities* which, because of size, weight, or shape, require the use of special equipment or special handling; and (b) *attachments, parts, machinery, materials, and supplies*, related to the commodities named in Part (1) (a) and moving in connection therewith; (2) *self-propelled articles*, each weighing 15,000 pounds or more, and related machinery, tools, parts, and supplies, moving in connection there-

with; and (3) *commodities* which because of size, weight or shape, do not require the use of special equipment or special handling when transported as part of the same shipment with either (a) commodities which because of size, weight, or shape require the use of special equipment or special handling, or (b) self-propelled articles each weighing 15,000 pounds or more, between points in Wisconsin, on the one hand, and, on the other, points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia.

NOTE.—Applicant states that the requested authority can be tacked with its existing authority in (1) Sub-No. 30 on commodities at Georgia, to provide service between points in Texas and Wisconsin; (2) Sub-No. 41 on knitting machinery, at Illinois to provide service between Wisconsin, California, Michigan, Minnesota, and Texas; (3) Sub-No. 47 on self-propelled articles, at Georgia to provide service between points in Wisconsin and Texas; (4) Sub-No. 90, on iron and steel articles at Alabama to provide a through service from Wisconsin to points in Texas; (5) Sub-No. 113 on aluminum ingots, pigs, billets, blooms, and plates at Scottsboro, Ala., to provide a through service from points in Wisconsin to points in California, Oregon, Texas, and Washington; (6) Sub-No. 136 on sand and gravel spreaders, fertilizer spreaders, feed bodies, and slurry spreaders, at Cedar Rapids, Iowa, to provide a through service from points in Wisconsin to all points in the United States (except Alaska, Hawaii, South Dakota, Montana, Wyoming, Colorado, California, Utah, Oregon, Washington, Idaho, and Nevada); and (7) MC–F–11318 currently pending at Ohio and Mississippi to provide service between points in Wisconsin and Texas. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 106644 (Sub-No. 172), filed January 10, 1974. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road NW., P.O. Box 916, Atlanta, Ga. 30301. Applicant's representative: W. Randall Tye, 1500 Candler Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum billets, blooms, ingots, pigs, and slabs, and non-ferrous metals* for recycling purposes, from the plantsite of Culp Smelting and Refining Co., at or near Steele, Ala., to points in Arkansas, Florida, Georgia, Illinois, Indiana, Mississippi, Iowa, Kansas, Kentucky, Louisiana, Michigan, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, Virginia, Tennessee, Texas, West Virginia, and Wisconsin.

NOTE.—Applicant states that the requested authority can be tacked transporting aluminum commodities at North Carolina, in Sub-No. 41, to serve points in Maryland, Pennsylvania, New Jersey, New York, Massachusetts, and Rhode Island. If a hearing is deemed necessary, the applicant requests it be held at either Birmingham, Ala., or Atlanta, Ga.

No. MC 106644 (Sub-No. 173), filed January 11, 1974. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road NW., P.O. Box 916, Atlanta, Ga. 30301. Applicant's representative: W. Randall Tye, 1500 Candler Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Commodities* which, because of size, weight or shape, require the use of special equipment or special handling; and (b) *attachments, parts, machinery, materials, and supplies* related to the commodities named in part (1) (a) and moving in connection therewith; (2) *self-propelled articles*, each weighing 15,000 pounds or more, and related machinery, tools, parts and supplies moving in connection therewith; and (3) *commodities* which, because of size, weight, or shape, do not require the use of special equipment or special handling when transported as part of the same shipment with either (a) *commodities* which, because of size, weight, or shape require the use of special equipment or special handling, or (b) *self-propelled articles* each weighing 15,000 pounds or more, between Escanaba, Mich., on the one hand, and, on the other, points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 107107 (Sub-No. 432), filed January 7, 1974. Applicant: ALTERMAN TRANSPORT LINES, INC., 12805 NW. 42d Ave. (LeJeune Rd.), Opa Locka, Fla. 22054. Applicant's representative: Ford W. Sewell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Candy and confectionery and related products* (except in bulk), and (2) *advertising matter, premium and display materials* when shipped in the same vehicle with commodities described in (1), in vehicles equipped with mechanical refrigeration, from the plant site and warehouse facilities of M & M Mars, Division of Mars, Inc., located at or near Albany, Atlanta, Decatur, and Doraville, Ga., to points in Arkansas, Colorado, Louisiana, Texas, Missouri, and Minnesota, restricted to the transportation of traffic originating at the plant site and warehouse facilities of M & M Mars, Division of Mars, Inc.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Miami or Orlando, Fla.

No. MC 107839 (Sub-No. 155), filed January 14, 1974. Applicant: DENVER-ALBUQUERQUE MOTOR TRANSPORT, INC., 2121 East 67th Avenue, Denver, Colo. 80216. Applicant's representative: Edward T. Lyons, Jr., Suite 1600 Lincoln Center, 1660 Lincoln Street, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Amarillo, Tex., to points in Alabama, Florida, North Carolina, South Carolina, Georgia, Mississippi, Louisiana, and Tennessee, restricted to the transportation of traffic originating at the plant site and storage facilities of John Morrell & Co.

NOTE.—If a hearing is deemed necessary, applicant requests a consolidated hearing.

No. MC 108411 (Sub-No. 6), filed January 14, 1974. Applicant: STEARLY'S MOTOR FREIGHT, INC., Box B, Collegeville, Pa. 19426. Applicant's representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, Pa. 17011. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Overhead traveling cranes, gantry cranes, and crane parts*, from the plantsite or facilities of the American Crane and Equipment Corp., at or near Douglassville, Pa., to points east of North Dakota, South Dakota, Nebraska, Colorado, and New Mexico; and (2) *materials, supplies, or equipment* used incidental to or in connection with the sale, manufacture or distribution of the above-named commodities from the above-named destination territory, to the above-named origin point, restricted to traffic originating at and destined to the plantsite or facilities of the American Crane and Equipment Corp., at or near Douglassville, Pa.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Harrisburg, Pa.

No. MC 108676 (Sub-No. 59), filed January 11, 1974. Applicant: A. J. METLER HAULING & RIGGING, INC., 117 Chicamauga Avenue NE., Knoxville, Tenn. 37917. Applicant's representative: Carl U. Hurst, P.O. Box E, Bowling Green, Ky. 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Refuse containers and cargo containers*, (2) *refuse container systems and cargo container systems*, and (3) *parts, attachments, and accessories* for the commodities described in (1) and (2) above, from Cleburne, Tex., and Danville, Pa., to points in the United States (except Alaska and Hawaii).

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Knoxville or Nashville, Tenn.

No. MC 110525 (Sub-No. 1083), filed January 10, 1974. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, Pa. 19335. Applicant's representative: Thomas J. O'Brien (same address as applicant). Authority sought to operate as

a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Crushed blast furnace slag*, in bulk, in tank vehicles, from Morrisville, Pa., located in Falls Township (Bucks County), Pa., to ports of entry on the International Boundary line between the United States and Canada, located in Maine, and (2) *granulated slag (Melite 40)*, in bulk, in tank vehicles, from Bow, N.H., to Millville, N.J.

NOTE.—Applicant states that the requested authority can be tacked at Morrisville, Pa., with the combined authority in Sub-No. 1043, Item No. 822, Item No. 824 and Sub-No. 608, Item No. 366, to provide a through service from points in Delaware, New Jersey, Maryland, and the District of Columbia to the ports of entry on the International Boundary line between the United States and Canada, located in Maine. If a hearing is deemed necessary, the applicant requests it be held at either Trenton, N.J., or Philadelphia, Pa.

No. MC 110525 (Sub-No. 1084), filed January 11, 1974. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, Pa. 19335. Applicant's representative: Thomas J. O'Brien (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry chemicals*, in bulk, from the plant sites and storage facilities of the Dow Chemical Company located at or near Midland, Mich.; Hanging Rock, Ohio; Pevely, Mo.; and Channohan Township (Will County), Ill., to all points in the United States on and east of U.S. Highway 85, restricted to the transportation of shipments originating at the Dow Chemical plant sites and storage facilities named above.

NOTE.—Applicant states that the requested authority can be tacked with its existing authority in Sub-No. 823, paragraph 538 at points in Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont to serve those Ports of Entry between the United States and Canada located at or near Trout River, Alexandria Bay, Rooseveltown, Ogdensburg, and Champlain, N.Y.; Highgate Springs, Derby Line and Norton, Vt., restricted to the transportation of traffic destined to points in the province of Quebec, Canada. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 110563 (Sub-No. 125), filed December 26, 1973. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, Ohio Building, Sidney, Ohio 45365. Applicant's representative: Mr. John L. Maurer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Omaha, Nebr., Sioux City, Iowa, and Fargo, N. Dak., to points in Illinois, Indiana, Michigan, Ohio, and Wisconsin, restricted to traffic originating at the plantsites and warehouse facilities utilized by Flavorland Industries, Inc., at or near the above origin points.

NOTE.—Applicant states that the requested authority can be tacked (1) in the lead docket at Cleveland, Ohio, to serve points in Pennsylvania, New Jersey, and New York, (2) in Sub-No. 19, at Cleveland, Ohio, to serve Baltimore, Md., Washington, D.C., and points in Massachusetts and Rhode Island, and (3) in Sub-No. 38, at Chicago, Ill., to serve points in Massachusetts, Pennsylvania, New Jersey, New York, and Rhode Island, and Washington, D.C., and Baltimore, Md. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 111740 (Sub-No. 28) (Clarification), filed October 25, 1973, published in the FEDERAL REGISTER issue of January 4, 1974, and republished as clarified this issue. Applicant: OIL TRANSPORT COMPANY, a Corporation, East Highway 80, P.O. Drawer 2679, Abilene, Tex. 79604. Applicant's representative: Jerry Prestridge, P.O. Box 1148, Austin, Tex. 78767. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products*, in bulk, between points in Texas on and west of a line beginning at the junction of U.S. Highway 75 and the Texas-Oklahoma State Boundary line and extending along U.S. Highway 75 to intersection Interstate Highway 20 at Dallas, Tex., thence along Interstate Highway 20 to intersection Interstate Highway 35E at Dallas, Tex., thence along Interstate Highway 35E to intersection Interstate Highway 35, thence along Interstate Highway 35 to the International Boundary line between the United States and the Republic of Mexico at Laredo, Tex., New Mexico, and Oklahoma.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. The purpose of this republication is to indicate the tacking information. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at both Dallas, Tex., and Albuquerque, N. Mex.

No. MC 112223 (Sub-No. 93), filed January 8, 1974. Applicant: QUICKIE TRANSPORT CO., a Corporation, 501 11th Avenue South, Minneapolis, Minn. 55415. Applicant's representative: Earl Hacking, 503 11th Avenue South, Minneapolis, Minn. 55415. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Petroleum and petroleum products* (except anhydrous ammonia and liquefied petroleum gas, LPG) in bulk, in tank vehicles, from points in Hennepin, Ramsey, Dakota, Washington, and Scott Counties, Minn., to points in Iowa, North Dakota, South Dakota, Wisconsin, and the Upper Peninsula of Michigan, and (2) *petroleum and petroleum products*, in bulk, in tank vehicles, from ports of entry on the International Boundary between the United States and Canada, located in Minnesota, to points in Minnesota.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, the applicant requests it be held at either Minneapolis or St. Paul, Minn.

No. MC 112713 (Sub-No. 160), filed December 26, 1973. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, 10990 Roe Avenue, Shawnee Mission, Kans. 66207. Applicant's representative: John M. Records (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Waukesha, Wis., as an off-route point in connection with carrier's otherwise authorized regular route operations.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Milwaukee, Wis., or Chicago, Ill.

No. MC 112801 (Sub-No. 150), filed January 11, 1974. Applicant: TRANSPORT SERVICE CO., a Corporation, 2 Salt Creek Lane, Hinsdale, Ill. 60521. Applicant's representative: Gene Smith (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry chemicals*, in bulk, from the plantsite and storage facilities of Dow Chemical Company, located at Pevely, Mo., and Channahon Township (Will County), Ill., to points on and east of U.S. Highway 85, restricted to shipments originating at said plantsites and storage facilities.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 113267 (Sub-No. 310) (Clarification), filed November 12, 1973, published in the FEDERAL REGISTER issue of December 20, 1973, and republished as clarified this issue. Applicant: CENTRAL & SOUTHERN TRUCK LINES, INC., 3385 Airways Blvd., Suite 115, Memphis, Tenn. 38116. Applicant's representative: Lawrence A. Fischer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved food products*, (1) from Wilson, N.C., to points in Indiana, Kentucky, Louisiana, Michigan, Ohio, and Tennessee; and (2) from the plant site of Bruce Foods Corporation at or near New Iberia, La., to points in Illinois, Indiana, Ohio, and North Carolina, restricted to traffic originating at the named origins and destined to the named destination states.

NOTE.—The purpose of this republication is to clarify the origin points in (2) above to the plant site at or near New Iberia, La. Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn., or New Orleans, La.

No. MC 113855 (Sub-No. 289), filed January 10, 1974. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE, Rochester, Minn. 55901. Applicant's representative: Alan Foss, 502 First National Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tractors* (except those with vehicle beds, bed frames, and fifth wheels); (2) *equipment* designed for use in conjunction with tractors; (3) *agricultural, industrial, and construction machinery, and equipment;* (4) *trailers*, designed for the transportation of the above-described commodities (except those trailers designed to be drawn by passenger automobiles); (5) *attachments* for the above-described commodities; (6) *internal combustion engines*; (7) *parts* of the above-described commodities when moving in mixed loads with such commodities, and (8) *materials, equipment, and supplies* (except commodities in bulk) used in the manufacture and distribution of the commodities described in (1) through (7) above, between Lexington, Nebr., on the one hand, and, on the other, points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, and the ports of entry on the International Boundary line between the United States and Canada located in North Dakota, and Minnesota, restricted to the transportation of traffic (a) originating at Lexington, Nebr., and destined to points in the above-named States or (b) originating at points in the above-named States and destined to Lexington, Nebr., except that the restrictions in (a) and (b) shall not apply to traffic moving in foreign commerce.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 114004 (Sub-No. 138), filed December 14, 1973. Applicant: CHANDLER TRAILER CONVOY, INC., 8828 New Benton Highway, Little Rock, Ark. 72209. Applicant's representative: Harold G. Hernly, 118 North St. Asaph Street, Alexandria, Va. 22314. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, in initial movements, and *buildings*, in sections, mounted on wheeled undercarriages, from points in Bannock County, Idaho, to points in the United States, including Alaska but excluding Hawaii.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Pocatello, Idaho.

No. MC 114211 (Sub-No. 218), filed January 10, 1974. Applicant: WARREN TRANSPORT, INC., 324 Manhard Street, P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tractors* (except those with vehicle beds, bed frames, and fifth wheels), (2) *equipment*, designed for use in conjunction with tractors, (3) *agricultural, industrial, and construction machinery, and equipment*, (4) *trailers*, designed for the transportation of the above-described commodities (except those trailers designed to be drawn by passenger automobiles), (5) *attachments*, for the above-described commodities, (6) *internal combustion engines*, (7) *parts* of the above-described commodities when moving in mixed loads with such commodities, and (8) *materials, equipment, and supplies* (except commodities in bulk), used in the manufacture and distribution of the commodities described in (1) through (7) above, between Lexington, Nebr., on the one hand, and, on the other, points in North Dakota, South Dakota,

No. MC 114211 (Sub-No. 219), filed January 10, 1974. Applicant: WARREN TRANSPORT, INC., 324 Manhard Street, P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, millwork, forest products, and such commodities as are manufactured by lumber mill and lumber yards*, from the ports of entry on the International Boundary line between the United States and Canada, at or near Pembina, N. Dak., and Noyes, Minn., to points in the United States (except Alaska and Hawaii), restricted to the transportation of traffic in foreign commerce.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 114284 (Sub-No. 58), filed January 7, 1974. Applicant: FOX-SMYTHE TRANSPORTATION COMPANY, a Corporation, P.O. Box 82307, Stockyards Station, Oklahoma City, Okla. 73108. Applicant's representative: John E. Jandera, 641 Harrison Street, Topeka, Kans. 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the Amarillo, Tex., to points in Arizona, Arkansas, California, Colorado, New Mexico, Nevada, Oklahoma, Utah, Oregon, Washington, Iowa, Illinois, Kansas, Missouri, Nebraska, South Dakota and Minnesota, restricted to shipments originating at the plantsite and warehouse facilities utilized by John Morrell & Co., and destined to the above named states.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 114457 (Sub-No. 180), filed January 11, 1974. Applicant: DART TRANSIT CO., a Corporation, 780 N. Prior Avenue, St. Paul, Minn. 55104. Applicant's representative: Michael P. Zell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities utilized by Wilson and Company, Inc., at or near Albert Lea, Minn., to points in Indiana, Michigan, and Ohio, restricted to traffic originating at the above-named plantsite and storage facilities and destined to the above-named destination points.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either St. Paul, Minn., or Chicago, Ill.

No. MC 115841 (Sub-No. 464), filed January 2, 1974. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 1215 Bankhead Highway West, P.O. Box 10327, Birmingham, Ala. 35202. Applicant's representative: Roger M. Shaner (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat and meat products* (except commodities in bulk, and hides), from (1) St. Joseph, Mo., and Sioux City, Iowa, to points in Georgia, North Carolina, South Carolina, and Tennessee, and (2) from Omaha, Nebr., to Chattanooga, Knoxville, Nashville, Memphis, and Union City, Tenn., and points in Georgia, restricted to traffic originating at the plantsite and storage facilities of Armour & Company, and destined to the named points.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Phoenix, Ariz., Dallas, Tex., or Washington, D.C.

No. MC 116319 (Sub-No. 8), filed January 11, 1974. Applicant: WASHINGTON TRUCKING, INC., P.O. Box 107, Darrington, Wash. 98241. Applicant's representative: James T. Johnson, 1610 IBM Building, Seattle, Wash. 98101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement and pozzolan*, in bulk, between points in Washington.

NOTE.—Applicant states that it is presently performing the operations requested herein in MC 116319 (Sub-No. 1) with the restriction: "restricted to shipments having a prior movement by rail". The sole purpose of the instant application is removal of said restriction. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 116319 (Sub-No. 9), filed December 26, 1973. Applicant: WASHINGTON TRUCKING, INC., P.O. Box 107, Darrington, Wash. 98241. Applicant's representative: James T. Johnson, 1610 IBM Building, Seattle, Wash. 98101. Au-

thority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, shakes and shingles*, from Darrington, Wash., to points in Washington, including Ports of Entry on the International Boundary line between the United States and Canada located in Washington.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 117344 (Sub-No. 231), filed January 10, 1974. Applicant: The MAXWELL CO., a Corporation, 10380 Evendale Drive, Cincinnati, Ohio 45215. Applicant's representative: James R. Stiverson, 50 West Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry chemicals*, in bulk, from the Dow Chemical Company at Midland, Mich., Hanging Rock, Ohio, Pevely, Mo., and Channohan Township, (Will County), Ill., to points on and east of U.S. Highway 85, restricted to shipments originating at the plant site and storage facilities of the Dow Chemical Company.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 117765 (Sub-No. 171), filed January 7, 1974. Applicant: HAHN TRUCK LINE, INC., 5315 Northwest Fifth Street, Oklahoma City, Okla. 73107. Applicant's representative: R. E. Hagan (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Flour*, in bags, from Buhler and Inman, Kans., to points in Oklahoma and Texas; (2) *malt beverages*, in containers and related advertising material, from Fort Worth, Tex., to Altus, Okla.; and (3) *roofing and roofing materials* in rolls, containers or bundles in straight or mixed shipments, from the facilities of Allied Materials Corp., Stroud, Okla., to points in Kansas and Missouri.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Okla.

No. MC 117815 (Sub-No. 224), filed January 9, 1974. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. 20th Street, Des Moines, Iowa 50317. Applicant's representative: Larry D. Knox, 9th Floor, Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery*, from the facilities of E. J. Brach, Division of American Home Products Corp. located at or near Carol Stream, Ill., to points in Iowa and Nebraska.

NOTE.—Common control was approved in MC-F-11497. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 117815 (Sub-No. 226), filed January 9, 1974. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. 20th Street, Des Moines, Iowa 50317. Applicant's representative: Larry D. Knox, 9th Floor, Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Elk Grove Village, Ill., to points in Michigan and Indiana, restricted to traffic originating at the above-named origin and destined to the above-named destinations.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 117883 (Sub-No. 184), filed January 11, 1974. Applicant: SUBLER TRANSFER, INC., 791 East Main Street, Versailles, Ohio 45380. Applicant's representative: Edward J. Subler, P.O. Box 62, Versailles, Ohio 45380. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products* and products produced or distributed by manufacturers and converters of paper and paper products, from Dayton and West Carrollton, Ohio, to Clinton and Des Moines, Iowa; St. Louis, Mo.; and points in Illinois and Indiana on and north of U.S. Highway 40, restricted to traffic originating at the plantsite and storage facilities of the Oxford Paper Company, Howard Paper Mills, Inc., Bergstrom Paper Company, and the Specialty Paper Company at or near Dayton and West Carrollton, Ohio, and destined to the above named destinations.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 117883 (Sub-No. 185), filed January 6, 1974. Applicant: SUBLER TRANSFER, INC., 791 East Main Street, Versailles, Ohio 45380. Applicant's representative: Edward J. Subler, P.O. Box 62, Versailles, Ohio 45380. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass*, between the facilities of Fourco Glass Company float plant located at or near Jerry Run (Taylor County), W. Va., on the one hand, and, on the other, points in Illinois, Indiana, Michigan, and Wisconsin, restricted to the transportation of shipments originating at and destined to the above named origin and destination territory.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 117940 (Sub-No. 103), filed January 14, 1974. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Blain, Minn. 55359. Applicant's representative: Donald L. Stern, Suite 530 Univac Building, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities* as are dealt in by retail department stores (except foodstuffs and furniture), and (2) *Furniture*, as are dealt in by retail department stores when moving with commodities dealt in by retail department stores (except foodstuffs), (a) from New York, N.Y., Philadelphia, Pa., points in New Jersey, Massachusetts, and Connecticut, to Lansing and Grand Rapids, Mich., and Minneapolis-St. Paul and Minnetonka, Minn., and (b) from Chicago, Ill., to Minneapolis-St. Paul and Minnetonka, Minn., limited to traffic originating at the above named origin points and destined to the plant sites and storage facilities of Modern Merchandising, Inc. and its wholly owned subsidiaries.

NOTE.—Applicant holds contract authority in MC-114789 in Sub-No. 1 and Subs. thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at either Minneapolis or St. Paul, Minn.

No. MC 119654 (Sub-No. 26), filed January 7, 1974. Applicant: HI-WAY DISPATCH, INC., 1401 W. 26th Street, Marion, Ind. 46952. Applicant's representative: Alki E. Scopelitis, 815 Merchants Bank Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glass containers, caps, covers, and tops therefor, and paper cartons*, from Plainfield, Ill., to points in Ohio and Wisconsin; and and (2) *rejected shipments of glass containers, caps, covers, and tops therefor*, from points in Ohio and Wisconsin to Plainfield, Ill.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Chicago, Ill.

No. MC 119654 (Sub-No. 27), filed January 9, 1974. Applicant: HI-WAY DISPATCH, INC., 1401 W. 26th Street, Marion, Ind. 46952. Applicant's representative: Alki E. Scopelitis, 815 Merchants Bank Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic containers, and caps, and stoppers* therefor, from Gas City, Ind., to Milwaukee, Wis.; Covington and Louisville, Ky.; St. Louis, Joplin, St. Joseph, North Kansas City, and Kansas City, Mo.; and points in that part of Illinois on and north of U.S. Highway 36, those in that part of Ohio on and west of Ohio Highway 3, and those in Michigan on, south and east of Michigan Highway 46; and (2) *fiberboard boxes and sheets*, from Gas City, Ind., to Charlotte, Mich.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Chicago, Ill.

No. MC 119656 (Sub-No. 24), filed January 4, 1974. Applicant: NORTH EXPRESS, INC., 219 Main Street, Winamac, Ind. 46996. Applicant's representative: Donald W. Smith, Suite 2465, One Indiana Square, Indianapolis, Ind. 46204.

Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Metal tubing*, from Winamac, Ind., to points in Iowa, Kentucky, Minnesota, Missouri, New Jersey, New York, Pennsylvania, and Wisconsin; and (2) *materials* used in the manufacture of metal tubing, from the destination points named in (1) above, to Winamac, Ind.

NOTE.—Applicant states that the requested authority can be tacked within authority held in MC-F-11568 on iron and steel articles, at Winamac, Ind., to provide a through service between Chicago, Ill., and points within 75 miles thereof, on the one hand, and, on the other, the points in Iowa, Kentucky, Minnesota, Missouri, New Jersey, New York, Pennsylvania, and Wisconsin. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 119669 (Sub-No. 42), filed December 28, 1974. Applicant: TEMPCO TRANSPORTATION, INC., 546 South 31A, P.O. Box 886, Columbus, Ind. 47201. Applicant's representative: Jack H. Blanshan, 29 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in Section A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plant-sites and storage facilities of Wilson & Co., located at or near Albert Lea, Minn., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 119669 (Sub-No. 43), filed December 28, 1973. Applicant: TEMPCO TRANSPORTATION, INC., 546 South 31A, P.O. Box 886, Columbus, Ind. 47201. Applicant's representative: Jack H. Blanshan, 29 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plant-sites and storage facilities of Farmland Foods, Inc., located at or near Carroll, Denison, and Iowa Falls, Iowa, to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 119741 (Sub-No. 48), filed January 10, 1974. Applicant: GREEN FIELD TRANSPORT CO., INC., P.O. Box 1235, Fort Dodge, Iowa 50501. Applicant's representative: Donald L. Stern, Suite 530 Univac Building, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the storage facilities of Spencer Foods, Inc., at or near Fremont, Nebr., to points in Minnesota, Iowa, Kansas, Missouri, Wisconsin, and Illinois.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Omaha, Nebr.

No. MC 121060 (Sub-No. 30), filed January 9, 1974. Applicant: ARROW TRUCK LINES, INC., P.O. Box 5568, Birmingham, Ala. 35207. Applicant's representative: William P. Jackson, Jr., 919 18th Street NW., Suite 425, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials, equipment, and supplies* used in the manufacture and distribution of ceiling systems, lighting systems, and *parts and accessories* thereof, from points in the United States in and east of Minnesota, Iowa, Missouri, Kansas, Oklahoma, and Texas, to the facilities of Litecraft-Luminous Ceilings, Division of the Celotex Corporation located at or near Scottsboro, Ala., restricted to the transportation of shipments moving to or through the facilities of Litecraft-Luminous Ceilings Division of the Celotex Corporation located at or near Scottsboro, Ala.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Tampa, Fla., or Washington, D.C.

No. MC 134142 (Sub-No. 4), filed January 2, 1974. Applicant: BROWN REFRIGERATED EXPRESS, INC., P.O. Box 603, 21st and Sidney Streets, Fort Scott, Kans. 66701. Applicant's representative: Daniel B. Johnson, 716 Perpetual Building, 1111 E Street NW., Washington, D.C. 20004. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cheese, cheese foods, cheese spreads, and materials and supplies* used in the manufacturing and processing and packaging of cheese, cheese foods and cheese spreads, (1) between Green Bay, Wis., on the one hand, and, on the other, points in Iowa, Nebraska, Illinois, Kansas, Missouri, Colorado, New Mexico, and those in Texas on and north of a line beginning at the New Mexico-Texas State Boundary line and extending easterly over U.S. Highway 82 to its intersection with Texas Highway 283, thence northerly along Texas Highway 283 to the Texas-Oklahoma State Boundary line, thence westerly along the Texas-Oklahoma State Boundary line to the Oklahoma-New Mexico State Boundary line, thence extending southerly along the Oklahoma-New Mexico State Boundary line to the point of beginning; and (2) between Carthage, Mo., on the one hand, and, on the other, points in Wisconsin, Illinois, Kansas, Missouri, Nebraska, Colorado, New Mexico, Michigan, North Carolina, Georgia, Ohio, Arkansas, Alabama, Florida, Kentucky, Louisiana, Tennessee, South Carolina, Mississippi, and those in Texas in and north of a line beginning at the New Mexico-Texas State Boundary line and extending easterly over U.S. Highway 82 to its intersection with Texas Highway 283, thence northerly along Texas Highway 283 to the Texas-Oklahoma State Boundary line, thence westerly along the Texas-Oklahoma State Boundary line to the Oklahoma-New Mexico State Boundary line, thence southerly along the Oklahoma-New Mexico State Boundary line to the point of beginning, under a continuing contract or contracts with L. D. Shrieber Cheese Co. of Green Bay, Wis.

NOTE.—Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Green Bay, Wis.

No. MC 124078 (Sub-No. 576), filed January 10, 1974. Applicant: SCHWERMAN TRUCKING CO., a Corporation, 611 South 28th Street, Milwaukee, Wis. 53246. Applicant's representative: James R. Ziperski (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Nickel pellets*, in bulk, from ports of entry on the International Boundary line between United States and Canada, at Buffalo, N.Y., Detroit and Port Huron, Mich., to points in the United States (except Alaska and Hawaii).

NOTE.—Applicant holds contract carrier authority in MC 113832 Sub 68, therefore dual operations may be involved. Common control may also be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 124211 (Sub-No. 241), filed January 2, 1974. Applicant: HILT TRUCK LINE, INC., P.O. Box 988, Downtown Station, Omaha, Nebr. 68101. Applicant's representative: Thomas L. Hilt (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products, meat byproducts, dairy products and articles distributed by meat packinghouses*, as described in Sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank or hopper vehicles), from points in Madison County, Nebr., to points in Connecticut, Delaware, Maine,

Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia; and (2) *motor vehicle parts, accessories and supplies* (except commodities in bulk), from points in Madison County, Ind., and Montgomery County, Ohio, to points in Colfax, Cuming, Dodge, Platte, Washington, and Wayne Counties, Nebr., restricted to traffic originating at the named origins.

NOTE.—Common control was approved in MC-F-11887. Applicant states that the requested authority in (1) above, can be tacked with its existing authority at points in Madison County, Nebr., in Sub-No. 39 to provide a through service from Phelps City, Mo., to the destination points named herein, and in Sub-No. 129 to provide a through service from Liberal, Kans., to points in Delaware, Maryland, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia. If a hearing is deemed necessary, applicant requests it be held at Lincoln, Nebr.

No. MC 124692 (Sub-No. 130), filed January 7, 1974. Applicant: SAMMONS TRUCKING, a Corporation, P.O. Box 1447, Missoula, Mont. 59801. 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: *Farm machinery, parts, and attachments*, from Aberdeen, S. Dak., to points in California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming, restricted to traffic originating at the facilities of Farmhand, Inc.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn.

No. MC 127355 (Sub-No. 15), filed January 7, 1974. Applicant: M&N GRAIN COMPANY, a Corporation, P.O. Box P, Nevada, Mo. 64772. Applicant's representative: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, Mo. 64105. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Soybean meal*, from Des Moines, Eagle Grove, and Ft. Dodge, Iowa; Emporia, Fredonia, and Wichita, Kans.; Lincoln, Nebr.; and Mankato, Minn., to points in Idaho and Utah, under contract with The Pillsbury Company, Minneapolis, Minn.

NOTE.—Applicant holds common carrier authority in MC 138553, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo., or Minneapolis, Minn.

No. MC 127579 (Sub-No. 2), filed January 7, 1974. Applicant: PENN-MAR-VA TRANSPORTATION CORPORATION, P.O. Box 343, Stenersen Lane, Cockeysville, Md. 21030. Applicant's representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Beer and malt beverages*, from Williamsburg, Va., to Annapolis, Glyndon, Laurel, and Baltimore, Md., and (2) *empty used containers*, from Annapolis, Glyndon, Laurel, and Baltimore, Md., to Williamsburg, Va.

NOTE.—Common control may be involved. Applicant states that the requested authority can be tacked in the lead docket, at Baltimore, Md., with (1) above, to serve points in Maryland, Virginia, and West Virginia within 200 miles of Baltimore, Md., and points in Pennsylvania within 100 miles of Baltimore, Md. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 127726 (Sub-No. 3), filed January 9, 1974. Applicant: LEMAN KNIGHT, doing business as PETE KNIGHT TRUCKING COMPANY, R.F.D. 1, Detroit, Ala. 35552. Applicant's representative: Donald B. Morrison, 717 Deposit Guaranty Bank Building, P.O. Box 22628, Jackson, Miss. 39205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from the plantsite of the Leo Owsley Co. located at or near Millport, Ala., to points in Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, West Virginia, and Wisconsin, under contract or contracts with Leo Owsley and Johnny L. Owsley, doing business as Leo Owsley Co., at Millport, Ala.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Jackson, Miss.

No. MC 128030 (Sub-No. 55), filed November 12, 1973. Applicant: THE STOUT TRUCKING CO., INC., P.O. Box 177, Rural Route No. 1, Urbana, Ill. 61801. Applicant's representative: James F. Flanagan, 111 West Washington Street, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages* (1) from La Crosse and Sheboygan, Wis., to Danville, Decatur, Champaign, and Paris, Ill., (2) from Detroit, Mich., to Champaign, Ill., (3) from Milwaukee, Wis., to Decatur, Ill., (4) from Newport, Ky., Peoria, Ill., Detroit, Mich., St. Paul, Minn., St. Louis, Mo., Columbus, Ohio, and La Crosse, Milwaukee, and Sheboygan, Wis., to Attica, Ind., (5) from Fort Wayne, Ind., to Champaign, Ill., and (6) from St. Paul, Minn., to Urbana, Ill.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Springfield or Chicago, Ill.

No. MC 128030 (Sub-No. 57), filed December 12, 1973. Applicant: THE STOUT TRUCKING CO., INC., P.O. Box 177, Rural Route No. 1, Urbana, Ill. 61801. Applicant's representative: James F. Flanagan, 111 West Washington Street, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers and closures* thereof from the plantsite of Midland Glass Co. located at or near Terre Haute, Ind., to points in Illinois, Michigan, and Wisconsin.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Springfield or Chicago, Ill.

No. MC 128375 (Sub-No. 106), filed January 7, 1974. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, Nebr. 68501. Applicant's representative: Duane W. Acklie (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Household and personal care products and related items, and materials and supplies*, used in the manufacture and distribution thereof, between Atlanta, Ga., on the one hand, and, on the other, points in Mississippi, Alabama, Tennessee, Virginia, North Carolina, South Carolina, Florida, West Virginia, and Georgia, under a continuing contract with Amway Corporation.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Lincoln, Nebr.

No. MC 128383 (Sub-No. 48), filed January 11, 1974. Applicant: PINTO TRUCKING SERVICE, INC., 1414 Calcon Hook Road, Sharon Hill, Pa. 19079. Applicant's representative: Gerald K. Gimmel, 303 N. Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk, Classes A and B explosives, and motor vehicles requiring the use of special equipment), having a prior or subsequent movement by air or moving in a substitute for air service, between Kansas City International Airport and Fairfax Airport, Kans., Kansas City Municipal Airport, Mo., and points in Arizona, California, and Nevada, and those in New Mexico on and west of Interstate Highway 25 in nonradial movements.

NOTE.—Applicant states that the requested authority can be tacked with its pending authority at Kansas City International Airport to provide service between the sought territory, on the one hand, and, on the other, Chicago O'Hare International Airport, the Minneapolis-St. Paul International Airport, Cleveland-Hopkins International Airport, and John F. Kennedy International Airport at New York City, N.Y. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 133119 (Sub-No. 41), filed January 2, 1974. Applicant: HEYL TRUCK LINES, INC., 235 Mill Street, Akron, Iowa 51001. Applicant's representative: A. J. Swanson, P.O. Box 81849, 521 South 14th Street, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Potatoes*, frozen and *potato products*, from Clark, S. Dak., to points in Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisi-

ana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Wisconsin.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Sioux Falls, S. Dak., Sioux City, Iowa, or Omaha, Nebr.

No. MC 133119 (Sub-No. 44), filed January 14, 1974. Applicant: HEYL TRUCK LINES, INC., 235 Mill St., Akron, Iowa 51001. Applicant's representative: Roger Heyl (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except frozen potatoes and potato products), from Grand Forks, N. Dak., to points in Arkansas, Arizona, California, Colorado, Iowa, Kansas, Missouri, Nebraska, Nevada, New Mexico, Oklahoma, South Dakota, Texas, Utah, and Wyoming, restricted to traffic originating at Grand Forks, N, Dak.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at either Omaha, Nebr., or Grand Forks, N. Dak.

No. MC 133655 (Sub-No. 66), filed January 7, 1974. Applicant: TRANSNATIONAL TRUCK, INC., P.O. Box 4168, Amarillo, Tex. 79105. Applicant's representative: Charles W. Singer, Suite 1000, 327 South La Salle St., Chicago, Ill. 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Amarillo, Tex., to points in Mississippi, Kentucky, Louisiana, Tennessee, Michigan, Minnesota, Maine, Maryland, Massachusetts, Connecticut, Delaware, New Hampshire, New Jersey, Ohio, New York, Pennsylvania, Rhode Island, Vermont, the District of Columbia, and West Virginia, restricted to shipments originating at the plantsite and facilities utilized by John Morrell & Co.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 134405 (Sub-No. 17), filed January 10, 1974. Applicant: BACON TRANSPORT COMPANY, a Corporation, P.O. Box 1134, Ardmore, Okla. 73401. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Bldg., 3535 N.W. 58th, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and fertilizer ingredients*, from Houston, Tex., to points in Arkansas, Louisiana, Mississippi, and Tennessee.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Houston, Tex.

No. MC 134562 (Sub-No. 2), filed January 10, 1974. Applicant: BATTLE ENTERPRISES, INC., P.O. Box 211, Nichols, S.C. 29581. Applicant's representative: Frank A. Graham, Jr., 707 Security Federal Building, Columbia, S.C. 29201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer* in bag and bulk, from points in Columbus, Brunswick, and New Hanover Counties, N.C., to points in South Carolina.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbia, S.C., Charlotte, N.C., or Washington, D.C.

No. MC 134599 (Sub-No. 99), filed January 10, 1974. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 748, Salt Lake City, Utah 84110. Applicant's representative: Richard A. Peterson, P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic or rubber coated cloth or fabric, v belts, transmission belts, rubber compounds, sprockets, printed forms, pulpboard, paper and paper products, and raw materials and supplies* used in the manufacture and production of such commodities (except commodities in bulk or which, because of size or weight require special handling or special equipment), between Brownville, N.Y., and Philadelphia, Pa., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), under continuing contract with Uniroyal, Inc.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Lincoln, Nebr., or Salt Lake City, Utah.

No. MC 135858 (Sub-No. 3), filed January 14, 1974. Applicant: A. G. KNORR, ROBERT D. KNORR AND GENE A. KNORR, doing business as KNORR TRUCKING, Sawyer, N. Dak. 58781. Applicant's representative: Harris P. Kenner, 615 South Broadway, P.O. Box 36, Minot, N. Dak. 58701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers, toe hitches, raw steel and component parts for feed lot equipment*, from shipper's plantsite at Martin, N. Dak., to shipper's plantsite at Garden City, Kans.; and (2) *prefabricated steel and component parts for manufacturing trailers*, from shipper's plantsite at Garden City, Kans., to shipper's plantsite at Martin, N. Dak., under contract with Bocats, Inc., at Garden City, Kans.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at either Minot, or Fargo, N. Dak.

No. MC 135913 (Sub-No. 4), filed January 10, 1974. Applicant: BREEN TRUCKING, INC., 8459 Church Road, Grosse Ile, Mich. 48138. Applicant's representative: Theodore Polydoroff, 1250 Connecticut Avenue NW., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Coated foundry sand*, from the facilities of C–E Cast Products at or near Rockwood, Mich., to points in Alabama, Illinois, Indiana, Kentucky, Maryland, New York, Ohio, Pennsylvania, Virginia, West Virginia, and Wisconsin, under a continuing contract with C–E Cast Products and (2) *sand*, from points in Wisconsin and Illinois, to the facilities of C–E Cast Products at or near Rockwood, Mich., under a continuing contract with C–E Cast Products.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich.

No. MC 136553 (Sub-No. 24), filed January 14, 1974. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th Street, Dubuque, Iowa 52001. Applicant's representative: William L. Fairbank, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand, gravel, rock, stone, and crushed rock*, in dump vehicles, between points in Carroll, Jo Daviess, and Stephenson Counties, Ill., Crawford, Grant, Iowa, Green, and Lafayette Counties, Wis., and Clayton, Clinton, Dubuque, and Jackson Counties, Iowa.

NOTE.—Applicant states that the requested authority cannot be tacked with its exising auhority. If a hearing is deemed necessary, applicant requests it be held at either Chicago, Ill., or Milwaukee, Wis.

No. MC 136786 (Sub-No. 44), filed January 10, 1974. Applicant: ROBCO TRANSPORTATION, INC., Room 205, 3033 Excelsior Boulevard, Minneapolis, Minn. 55416. Applicant's representative: Val M. Higgins, 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packinghouses* (except hides and commodities in bulk), from Minneapolis, St. Paul, and Worthington, Minn.; Huron, S. Dak.; Omaha, Nebr.; Mason City and Sioux City, Iowa; and St. Joseph, Mo., to points in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee (except Memphis), restricted to traffic originating at the plantsite and storage facilities utilized by Armour & Co., at the named origins and destined to the named states.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or Minneapolis or St. Paul, Minn.

No. MC 136553 (Sub-No. 22), filed January 7, 1974. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th Street, Dubuque, Iowa 52001. Applicant's representative: William L. Fairbank, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and*

dry fertilizer materials, from Minnesota City, Minn., to points in Illinois and Iowa.

NOTE.—Applicant states that the requested authority can be tacked with its existing authority (1) at Dubuque, Iowa, to serve points in Wisconsin and Missouri; and (2) at Streator, Ill., to serve portions of Michigan and Indiana. Applicant indicates that other common points exist but does not specify them as tacking possibilities. If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn.

No. MC 138018 (Sub-No. 5), filed January 9, 1974. Applicant: REFRIGERATED FOODS, INC., 1420 33d Street, Denver, Colo. 80205. Applicant's representative: Arlyn L. Westergren, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the facilities of John Morrell & Co., Inc., at or near Amarillo, Tex., to points in Arizona, California, Nevada, Utah, Idaho, Montana, Oregon, Washington, Colorado, Nebraska, Kansas, Minnesota, Wisconsin, and Illinois, restricted to traffic originating at the named facilities and destined to the name of destinations.

NOTE.—Common control may be involved. Dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 138259 (Sub-No. 3), filed January 14, 1974. Applicant: NORTHWEST EXPRESS, INC., 3318 Third Avenue North, Billings, Mont. 59101. Applicant's representative: J. F. Meglen, P.O. Box 1581, Billings, Mont. 59103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, forest products, wood products, particle board and fiber board*, from points in Beaverhead, Flathead, Lake, Lincoln, Missoula, and Ravalli Counties, Mont., to points in Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin, and Wyoming.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, the applicant requests it be held at Kalispell, Missoula, or Billings, Mont.

No. MC 138304 (Sub-No. 8), filed January 10, 1974. Applicant: NATIONAL PACKERS EXPRESS, INC., 29 South La Salle Street, Chicago, Ill. 60603. Applicant's representative: Craig B. Sherman (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel nuts, bolts, screws, and metal fasteners*, from New York and Garden City, N.Y., Hoboken, Port Newark, Elizabeth, Jersey City, and Port Elizabeth, N.J., and Philadelphia, Pa., to points in Ohio, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, Missouri, and Michigan.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C., New York, N.Y., or Chicago, Ill.

No. MC 138313 (Sub-No. 5) (Amendment), filed June 17, 1973, published in the FEDERAL REGISTER issue of November 8, 1973, and republished as amended this issue. Applicant: MACK E. BURGESS, doing business as BUILDERS' TRANSPORT, 409 14th Street SW., Great Falls, Mont. 59404. Applicant's representative: Irene Warr, Judge Building, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lumber, millwork, and wood products*, from points in Idaho, Oregon, and Washington, to points in Montana; (2) *lumber, millwork, wooden poles, wooden posts, and wooden beams*, from points in Adams, Benewah, Boise, Gem, Idaho, Kootenai, Latah, Lemhi, Lewis, Nez Perce, and Washington Counties, Idaho; Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Deschutes, Douglas, Hood River, Jefferson, Klamath, Lane, Lincoln, Linn, Multnomah, Polk, Tillamook, Union, Wasco, Washington, and Yamhill Counties, Oreg.; and Chelan, Clark, Cowlitz, Grays Harbor, King, Klickitat, Lewis, Mason, Okanogan, Pend Oreille, Pierce, Skagit, Skamania, Snohomish, Spokane, Thurston, Whatcom, and Yakima Counties, Wash., to points in Montana; (3) *asbestos shingles, asbestos siding, asbestos roof coating, asbestos roofing, asphalt cement, rolled asphalt felts, asphalt primer, asphalt roof coating, rolled asphalt roofing, asphalt shingles, asphalt siding, asphalt and vinyl floor tile, and linoleum, tile and plastic cements and pastes*, from points in Pierce County, Wash., to points in Montana; and (4) *fencing wire, galvanized roofing and steel poles and posts*, from points in Multnomah and Washington Counties, Oreg., to points in Montana.

NOTE.—The purposes of this republication are (1) to amend the commodity description in (1) above, and (2) to add the authority described in (2) through (4) above. Applicant states it is presently performing the operations described herein. By this application, applicant seeks to convert its authorized contract carrier authority to common carrier authority. Applicant further states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at either Great Falls, Billings, or Missoula, Mont.

No. MC 138351 (Sub-No. 2), filed December 20, 1973. Applicant: DENIS & ROBERT TRANSPORT, INC., Rural Route No. 6, Granby Shefford Co. Province of Quebec, Canada. Applicant's representative: David M. Marshall, 135 State Street, Suite 200, Springfield, Mass. 01103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products and materials* used for packing, and *parts and supplies* used or useful for the maintenance and repair of packing machinery, between ports of entry on the International Boundary line between the United States and Canada located in Maine, New Hampshire, Vermont, New York, and Michigan, on the one hand, and, on the other, points in the United States north of Tennessee and North Carolina and east of Minnesota, Iowa, and Missouri, under a continuing contract with Denis & Robert Enrg. and (2) *paper and paper products, and supplies, materials, and equipment* used or useful in the printing of paper, between ports of entry on the International Boundary line between the United States and Canada located in Maine, New Hampshire, Vermont, New York, and Michigan, on the one hand, and, on the other, points in the United States north of Tennessee and North Carolina and east of Minnesota, Iowa, and Missouri, under a continuing contract with Imprimerie Montreal-Granby Press, Ltee.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Montpelier, Vt., Albany, N.Y., or Concord, N.H.

No. MC 138662 (Sub-No. 1), filed December 17, 1973. Applicant JERRY M. GREEN, doing business as PALACE TRANSFER AND STORAGE CO., 3200 W. Picacho, Las Cruces, N. Mex. 88001. Applicant's representative: Edwin E. Piper, Jr., 1115 Simms Building, Albuquerque, N. Mex. 87101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods, and unaccompanied baggage and personal effects*, between points in Dona Ana, Otero, Luna, Hidalgo, and Grant Counties, N. Mex., restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of a pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such traffic.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Albuquerque, N. Mex., or El Paso, Tex.

No. MC 138736 (Sub-No. 7), filed January 8, 1974. Applicant: F B M TRUCKING, INC., 310 East Lanier Avenue, Fayetteville, Ga. 30214. Applicant's representative: Virgil H. Smith, 1587 Phoenix Boulevard, Suite 12, Atlanta, Ga. 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lift trucks and lift trucks attachments*, (1) from New Orleans, La., and Savannah, Ga., to the plant site of C. Itoh & Co. (America), Inc., at or near Decatur, Ga., restricted to shipments having an immediate prior movement by water in foreign commerce, and (2) from the plant site of C. Itoh & Co. (America), Inc., at or near Decatur, Ga., to points in Alabama, Florida, Mississippi, North Carolina, South Carolina, and Tennessee.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, the applicant requests it be held at Atlanta, Ga.

No. MC 138869 (Sub-No. 4), filed January 7, 1974. Applicant: W. T. MYLES TRANSPORTATION COMPANY, a Corporation, 4481 Moreland Avenue, P.O. Box 321, Conley, Ga. 30027. Applicant's representative: Archie B. Culbreth, Suite 246, 1252 West Peachtree Street NW., Atlanta, Ga. 30309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Polypropylene waste* (except in bulk), from Hazlehurst, Nashville, and Bainbridge, Ga., to points in Cleveland, Ohio, and Ypsilanti, Mich., under contract with Patchogue-Plymouth Company, Hazlehurst, Ga., and Charles Pollock & Sons, Inc., Cleveland, Ohio.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 138984 (Sub-No. 2), filed January 14, 1974. Applicant: PARADIS TRANSFER AND STORAGE CO., INC., 922 Whitman, Medford, Oreg. 97501. Applicant's representative: Robert R. Hollis, 400 Pacific Building, Portland, Oreg. 97204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Beverages* (except alcoholic beverages), between Grants Pass, Medford, and Klamath Falls, Oreg., on the one hand, and, on the other, Redding, Calif., under a continuing contract or contracts with the Medford Coca-Cola Bottling Co., Inc.

NOTE.—Applicant holds common carrier authority in MC 64820 and subs thereunder, therefore dual operations may be involved. Common control may also be involved. If a hearing is deemed necessary, applicant requests it be held at Medford or Portland, Oreg.

No. MC 139068 (Sub-No. 1), filed January 7, 1974. Applicant: ROADRUNNER TRANSPORTATION, INC., 1024 Topaz Lane, Villa Rica, Ga. 30180. Applicant's representative: Virgil H. Smith, 1587 Phoenix Boulevard, Suite 12, Atlanta, Ga. 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric aluminum cable, cable clamps or joints, circuit breakers or switches, or parts, transformers and transformer parts, pulley blocks, capstans, winches, or windlasses, pole line construction material, and plastic products*, (1) from the plant site of Western Power Products, Inc. at Villa Rica, Ga., to points in the United States on and east of U.S. Highway 85 including points in New Mexico, North Dakota, South Dakota, and Oregon (Portland only) and (2) from the plant site of Western Power Products, Inc., at Portland, Oreg., to the plant site of Western Power Products, Inc., at Villa Rica, Ga., restricted against articles requiring heavy or specialized equipment.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 139226 (Sub-No. 1), filed January 8, 1974. Applicant: SENTRY TRANSPORT, INC., 5525 East 51st Street, Tulsa, Okla. 74135. Applicant's representative: William L. Peterson, Jr., 401 North Hudson, P.O. Box 917, Oklahoma City, Okla. 73101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mobile homes*, between points in Alabama, Arkansas, Florida, Georgia, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

NOTE.—Applicant has pending motor carrier contract authority in MC-139071, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Tulsa, Okla., or Oklahoma City, Okla.

No. MC 139231 (Sub-No. 2), filed January 9, 1974. Applicant: MOORE HORSE TRANSPORT LTD., 84 Thornlee Cr. NW., Calgary, Alberta, Canada. Applicant's representative: John R. Davidson, Room 805, Midland Bank Building, Billings, Mont. 59101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Race and show horses and equipment*, including tack, saddles, and race carts, from those Ports of Entry on the International Boundary line between the United States and Canada located in Montana, on the one hand, and, on the other, Phoenix, Ariz.; Los Angeles, Calif.; Coeur D'Alene, Idaho; Seattle, Wash.; Lexington, Ky.; Minneapolis, Minn.; Kalispell and Great Falls, Mont.; Reno, Nev.; Las Cruces, N. Mex.; Portland, Oreg.; Kingsville and El Paso, Tex.; and Salt Lake City, Utah.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Great Falls, Mont.

No. MC 139235 (Sub-No. 1), filed January 10, 1974. Applicant: MAYNARD NADLER, 113 W. Corning, Peotone, Ill. 60468. Applicant's representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, Ill. 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron, steel, and plastic containers, drums and pails, covers, caps, and handles*, from the plant site of Bennett Industries Division of Growth International Industries Corporation at Peotone, Ill., to points in Indiana; Lee, Des Moines, Louisa, Muscatine, Scott, Clinton, Jackson, and DuBuque Counties, Iowa; Louisville, Ky.; St. Louis, Mo.; Ohio; Dane, Green, Jefferson, Kenosha, Milwaukee, Racine, Rock, Walworth, and Waukesha Counties, Wis. and (2) *iron, steel, and plastic containers, drums and pails, covers, caps, and handles*, between the plant site of Bennett Industries Division, Growth International Industries Corp. at Peotone, Ill., on the one hand, and, on the other the plant sites of Bennett Industries Division, Growth International Industries Corp. at Englishtown, N.J., and Lithonia, Ga., under contract with Bennett Industries Division, Growth International Industries Corp.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or St. Louis, Mo.

No. MC 139238 (Sub-No. 1), filed January 9, 1974. Applicant: PAUL B. BETTERTON, Route 2, Box 194, Gretna, Va. 24557. Applicant's representative: Henry A. Davis, Jr., P.O. Box 827, Chatham, Va. 24531. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and ingredients*, for fertilizer manufacture, from Winston-Salem, N.C., to points in Franklin, Henry, and Pittsylvania Counties, Va., under contract with International Minerals and Chemical Corporation. If a hearing is deemed necessary, applicant does not specify location.

No. MC 139407 (Sub-No. 1), filed January 14, 1974. Applicant: AMERICAN PARCEL SERVICE, INC., 71 Genessee Avenue, Paterson, N.J. 07503. Applicant's representative: John B. M. Frohling, 744 Broad Street, Newark, N.J. 07102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Business records and memoranda, printed material and printing proofs, EDP material, business machines and spare parts* of small size not requiring special handling, between points in Passaic, Bergen, Essex, and Morris Counties, N.J., on the one hand, and, on the other, New York City, Long Island, points in Westchester and Orange Counties, N.Y.; Boston, Mass.; and Philadelphia, Pa.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Newark, N.J.

No. MC 139423 (Sub-No. 1), filed December 18, 1973. Applicant: PETERSON BROTHERS MFG. CO., a corporation, Carney, Mich. 49812. Applicant's representative: Mr. Eugene Peterson (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Forest products*, viz.: Wood chips, sawdust shavings, wood waste, and pulpwood, from Carney, Menominee County, Mich., to pulp mills and paper mills in Brown, Outagamie, Winnebago, Lincoln, Wood, Marathon, and Portage Counties, Wis., under a continuing contract with American Can Co.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Menominee, Mich., Marinette, Wis., or Green Bay, Wis.

No. MC 139435, filed December 21, 1973. Applicant: TERMINAL TRANSFER COMPANY, a corporation, 600 Sunshine Road, Kansas City, Kans. 66115. Applicant's representative: Lucy Kennard Bell, Suite 910 Fairfax Bldg., 101 West Eleventh Street, Kansas City, Mo. 64105. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs and pet foods* (except frozen foods and commodities in bulk), and (2) *advertising matter, displays, and premiums in mixed loads with foodstuffs and pet foods*, from the plantsite and warehouse facilities of the Quaker Oats Company, at or near St. Joseph, Mo., to the Kansas City, Mo.-Kans., Commercial Zone, as defined by the Commission, under contract with the Quaker Oats Company.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at either Kansas City, or Jefferson City, Mo.

No. MC 139436, December 17, 1973. Applicant: TRUCK AND BUS TOWING AND TIRE, 107 East 11th Street, Lockport, Ill. 60441. Applicant's representative: James J. Hammer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicles*, as replacements for vehicles which have been disabled, between points in Illinois, Indiana, Iowa, Wisconsin, and Michigan.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at either Joliet, or Chicago, Ill.

PASSENGER APPLICATION(S)

No. MC 3647 (Sub-No. 450), filed December 26, 1973. Applicant: TRANSPORT OF NEW JERSEY, 180 Boyden Avenue, Maplewood, N.J. 07040. Applicant's representative: John F. Ward (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in the same vehicle with passengers, in special round trip operations, beginning and ending at New York, N.Y., and points in Atlantic, Burlington, Camden, Cape May, Cumberland, Essex, Gloucester, Hudson, Morris, Middlesex, Passaic, Salem, and Union Counties, N.J., and extending to Liberty Bell Park Race Track, Bensalem Township, Pa., during the authorized racing season each year.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Newark, N.J.

No. MC 139210 (clarification), filed September 24, 1973, published in the Federal Register issue of December 13, 1973, and republished as clarified this issue. Applicant: WESLEE ENTERPRISES INC., doing business as ALASKA-YUKON MOTORCOACHES, 1440 Washington Building, 1325 Fourth Avenue, Seattle, Wash. 98101. Applicant's representative: Paul C. Gibbs (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, and express* in the same vehicle with passengers, in charter operations; (1) Between Fairbanks, Alaska and Valdez, Alaska: From Fairbanks over Alaska Highway 2 to junction Alaska Highway 4, thence over Alaska Highway 4 to Valdez, and return over the same route; (2) Between Anchorage, Alaska and Valdez, Alaska: From Anchorage over Alaska Highway 1 to junction Alaska Highway 4, thence over Alaska Highway 4 to Valdez, and return over the same route; (3) Between Anchorage, Alaska and the International Boundary line between the United States and Canada at the Yukon Territory: From Anchorage over Alaska Highway 1 to junction Alaska Highway 2, thence over Alaska Highway 2 to the International Boundary line between the United States and Canada at the Yukon Territory, and return over the same route; (4) Between the International Boundary line between the United States and Canada at British Columbia and Haines, Alaska: From British Columbia, over Alaska Highway 7 to Haines, also serving Porcupine, and return over the same route; and (5) Between Haines, Alaska and Skagway, Alaska: From Haines over the Alaska Marine Highway to Skagway, and return over the same route.

NOTE.—The purposes of this republication are (a) to delete special operations and (b) to clarify (5) to read over the Alaska Marine Highway which previously read "unnumbered highway." If a hearing is deemed necessary, applicant requests it be held at Anchorage or Fairbanks, Alaska.

No. MC 139451, filed December 17, 1973. Applicant: MEXICOACH, INC., 1050 Kettner Ave., San Diego, Calif. 92101. Applicant's representative: Frederick J. Kling, 1901 Avenue of the Stars, No. 1600, Los Angeles, Calif. 90067. Authority sought to operate as a *common carrier* by motor vehicle over regular routes transporting: *Passengers and their baggage*, between the Amtrak Depot, San Diego, and the Port of Entry on the International Boundary line between the United States and the Republic of New Mexico located at or near San Ysidro, Calif.; From the Amtrak Depot in San Diego at Broadway and Kettner east over Broadway to junction N. India Street, thence east over N. India Street to the southern approach to Interstate Highway 5 thence over Interstate Highway 5 to San Ysidro, Calif., and return over the same route, serving no intermediate points, restricted to the transportation of passengers and their baggage having a prior or subsequent transportation by rail only.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Los Angeles or San Diego, Calif.

BROKER APPLICATION(S)

No. MC 130226, filed January 8, 1974. Applicant: PENINSULA MOTOR CLUB, a Corporation, P.O. Box 22807, 1515 N. Westshore Blvd., Tampa, Fla. 33622. Applicant's representative: Morris J. Levin, 1620 Eye Street NW., Washington, D.C. 20006. Authority sought to engage in operation, in interstate or foreign commerce, as a *broker* at Bradenton, Fort Meyers, Gainesville, Holiday, Lakeland, Ocala, Pensacola, Sarasota, Tallahassee, Tampa, Panama City, and Naples, Fla., to sell or offer to sell the transportation of *individual passengers and groups of passengers and their baggage*, in special and charter operations, between points in the following Florida counties: Alachua, Bay, Bradford, Calhoun, Charlotte, Citrus, Collier, Columbia, De Soto, Dixie, Escambia, Franklin, Gadsden, Gilchrist, Glades, Bulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Okaloosa, Pasco, Polk, Santa Rosa, Sarasota, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, and Washington, on the one hand, and, on the other, points in the United States, including Alaska and Hawaii.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Tampa, Fla.

No. MC 130227, filed November 1, 1973. Applicant: LOWEDA H. LOVE, doing business as WESTERN TOUR AND TRAVEL, 1060 Washburn Avenue, Idaho Falls, Idaho 83401. Applicant's representative: John M. Ohman, Cambridge Law Center, P.O. Box 1841, 690 Cambridge Dr., Idaho Falls, Idaho 83401. Authority sought to engage in operation, in interstate or foreign commerce, as a *broker* at Idaho Falls, Idaho, to sell or offer to sell the transportation of *individual passengers and groups of passengers, with personal luggage*, in common carrier motor vehicles, between points in the United States (except Alaska and Hawaii). If a hearing is deemed necessary, the applicant requests it be held at Pocatello, Boise, Idaho, or Salt Lake City, Utah.

By the Commission.

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

[FR Doc.74-3572 Filed 2-13-74;8:45 am]

CUMULATIVE LIST OF PARTS AFFECTED—FEBRUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during February.

1 CFR — Page

305 — 4846
310 — 4846

3 CFR

PROCLAMATIONS:

1362 (Revoked in part by P.L.O. 5409) — 5488
4262 — 4061
4263 — 4659
4264 — 4865
4265 — 4867
4266 — 5173
4267 — 5175
4268 — 5177

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:

MEMORANDA:

Dec. 20, 1973 — 4463
Jan. 21, 1974 — 5179
Jan. 28, 1974 — 5181

4 CFR

PROPOSED RULES:

10 — 5201

5 CFR

213 — 4869, 5619
752 — 4063, 5183
930 — 4064

PROPOSED RULES:

890 — 5640

6 CFR

Rulings — 4665
150 — 4064, 4557, 5183, 5317, 5318
152 — 4065, 4557, 4558, 5317, 5318
155 — 4869

7 CFR

30 — 5299
68 — 4749
240 — 5481
250 — 5183
301 — 5481
401 — 5303
660 — 4749
723 — 4558
724 — 4560, 4563
726 — 4565
862 — 4750
907 — 4465, 4869
910 — 4870
928 — 5184
1421 — 4566, 5184
1427 — 5185
1475 — 4567
1800 — 5305, 5307
1823 — 4870

PROPOSED RULES:

26 — 4640
910 — 4067
927 — 5320
980 — 4580
1001 — 5642
1002 — 5642
1004 — 5642

7 CFR—Continued — Page

PROPOSED RULES—Continued

1011 — 4483
1013 — 4925
1015 — 5642
1033 — 5642
1036 — 5642
1040 — 5642
1049 — 5642

9 CFR

71 — 4465
73 — 5186
76 — 5186, 5620
78 — 4465
123 — 5307
381 — 4568
381 — 4466
335 — 4067
381 — 4568

PROPOSED RULES:

201 — 4667
381 — 4113

10 CFR

11 — 5620
50 — 4871
140 — 5310
210 — 4466, 5311
211 — 4450, 4466, 4871, 5272
212 — 4450, 4466, 4784
Rulings — 5310

PROPOSED RULES:

2 — 4582
31 — 4583
32 — 4583
50 — 4582
70 — 4930
150 — 4930
211 — 4592

12 CFR

4 — 5187
208 — 5482
339 — 4756
522 — 5620

PROPOSED RULES:

206 — 4487
545 — 4594, 5199, 5324
563 — 5200, 5325
563b — 4594
571 — 5325

13 CFR

101 — 4468
121 — 5620

14 CFR

39 — 4074, 4075, 4756, 4757 5483
71 — 4075, 4570, 5187, 5484, 5627
97 — 4075, 5485
232 — 4469

PROPOSED RULES:

39 — 4927, 4928, 5639
61 — 5502
67 — 5502
71 — 4485, 4581, 4667, 4928, 5503, 5640
73 — 5503
121 — 5502
127 — 5502

14 CFR—Continued — Page

PROPOSED RULES—Continued

183 — 5502
207 — 4670
208 — 4670
212 — 4670
214 — 4670
244 — 4930

15 CFR

377 — 5311
1000 — 4871

16 CFR

4 — 4661
13 — 4469, 4758, 4873–4876
302 — 4852
1500 — 4469

PROPOSED RULES:

302 — 4855
502 — 4887
1700 — 5197

17 CFR

PROPOSED RULES:

240 — 5204
249 — 5204
270 — 5209, 5506
274 — 5506
275 — 5209

18 CFR

141 — 4473
154 — 5312
260 — 4473

PROPOSED RULES:

Ch. I — 4671
141 — 5200
260 — 5200

19 CFR

1 — 4876, 5312
4 — 4876
19 — 4876

PROPOSED RULES:

1 — 4580
6 — 5320

20 CFR

405 — 4661

PROPOSED RULES:

146 — 4785
405 — 5324
416 — 4115, 4483, 4785

21 CFR

1 — 5627
15 — 5188
17 — 5188
19 — 4076, 4760
121 — 4077, 5313, 5628
125 — 5313
130 — 4078
135b — 4475, 4759
135c — 4759, 5190
135e — 4475
135f — 4475
141e — 4570
148e — 4570

21 CFR—Continued Page

PROPOSED RULES:

55 5643
121 5197
128 5197
128c 4113
133 5197
600 4113
610 4113
640 4113

23 CFR

765 4078

24 CFR

0 4089
203 4089
207 4089
220 4089
300 4661
1914 4090, 4091, 4877–4879
1915 4092, 4093, 5496
1931 4094

PROPOSED RULES:

1272 4484
1276 5723

25 CFR

221 5638

26 CFR

12 4476
301 4476

PROPOSED RULES:

1 4482
301 4482

27 CFR

47 4760

28 CFR

0 4080
19 4736

PROPOSED RULES:

20 5636

29 CFR

102 4080
520 4478
570 4478, 4760
1928 4925
1952 4661
1953 5629

PROPOSED RULES:

601 5329
613 5329
657 5329
673 5329
675 5329
678 5329
690 5329
699 5329
720 5329
727 5329
728 5329
729 5329
1928 4536
1953 5328
2201 4674, 5204

30 CFR

PROPOSED RULES:

260 4108

31 CFR Page

315 5313
341 4661

32 CFR

872 5485
888d 4477
1466 4571
1472 4571

32A CFR

Ch. VI:
DPS Reg. 1 4478

PROPOSED RULES:

Ch. X 5193, 5639

33 CFR

110 4478, 5314
117 4479, 5314
177 5488

35 CFR

5 4880

PROPOSED RULES:

133 4931

38 CFR

3 5314
21 5315

PROPOSED RULES:

2 5211
3 4673
17 5211
110 4484
117 4485

39 CFR

122 5488
447 4081

40 CFR

35 5252
52 4081, 4082, 4662, 4880, 4882, 4883
87 4884
180 4663
401 4532
412 5704
426 4760, 5712

PROPOSED RULES:

52 4116, 4485, 5198, 5324, 5503, 5504
120 4485
180 4486, 4487
401 4487
402 4487
405 4117
408 4708
410 4628
412 5709
426 5720

41 CFR Page

8–12 5315
15–60 4670
60–2 5630
60–60 5630
101–18 4663

PROPOSED RULES:

8–2 5326
8–7 5327
8–18 5326
101–17 4888
101–18 4894
101–19 4905
101–20 4912
101–21 4922

41 CFR—Continued Page

PROPOSED RULES—Continued

101–22 4924
101–23 4924
101–24 4924

42 CFR

50 4730, 5315
57 4770, 4775, 4778

43 CFR

421 4755
1820 5633

PUBLIC LAND ORDERS

924 (revoked in part by P.L.O. 5409) 5488
5408 5316
5409 5488
5410 5488
5411 5632

PROPOSED RULES:

3300 4105
4112 5193
5400 5502
5420 5502

45 CFR

205 4733, 5316
233 5316
248 5552
249 5552
602 4664

PROPOSED RULES:

118 5321
233 4114
234 5323
250 5324
401 5248

47 CFR

0 4571
73 4571, 4574, 4885, 5585
81 5488
83 4578, 5488
87 5316

PROPOSED RULES:

2 4931
73 4117, 4586, 4592, 4670, 4671, 5641
89 4931
15–60 4760

49 CFR

1 4082
85 4083, 5190
555 5489
571 4087, 4578, 4664, 5190, 5489
573 4578
574 5190
575 4087
1033 4087, 4088, 4479, 4579, 4665, 4781, 4783, 5489
1085 4784

PROPOSED RULES:

174 4668
230 4929
571 4116, 4670
575 4116
1057 4488, 4787
1310 4787

50 CFR

28 4665, 5316, 5634
29 5490
33 4886, 5317, 5634
216 5635
240 5635
245 5491

FEDERAL REGISTER PAGES AND DATES—FEBRUARY

Pages	*Date*
4055–4455	Feb. 1
4457–4549	4
4551–4649	5
4661–4741	6
4743–4857	7
4859–5166	8
5167–5292	11
5293–5471	12
5473–5578	13
5579–5740	14

federal register

THURSDAY, FEBRUARY 14, 1974

WASHINGTON, D.C.

Volume 39 ■ Number 32

PART II

ENVIRONMENTAL PROTECTION AGENCY

■

FEEDLOTS POINT SOURCE CATEGORY

Effluent Guidelines and Standards

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

PART 412—FEEDLOTS POINT SOURCE CATEGORY

Effluent Limitations Guidelines

On September 7, 1973, notice was published in the FEDERAL REGISTER (38 FR 24466) that the Environmental Protection Agency (EPA or Agency) was proposing effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources within the duck subcategories, and all subcategories except ducks of the feedlots category of point sources.

The purpose of this notice is to establish final effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources in the feedlots category of point sources, by amending 40 CFR Chapter I, Subchapter N, to add a new Part 412. This final rulemaking is promulgated pursuant to sections 301, 304(b) and (c), 306(b) and (c) and 307(c) of the Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314(b) and (c), 1316(b) and (c) and 1317(c); 86 Stat. 816 et seq.; Pub. L. 92-500. Regulations regarding cooling water intake structures for all categories of point sources under section 316(b) of the Act will be promulgated in 40 CFR Part 402.

In addition, the EPA is simultaneously proposing a separate provision which appears in the proposed rules section of the FEDERAL REGISTER, stating the application of the limitations and standards set forth below to users of publicly owned treatment works which are subject to pretreatment standards under section 307 (b) of the Act. The basis of that proposed regulation is set forth in the associated notice of proposed rulemaking.

The legal basis, methodology and factual conclusions which support promulgation of this regulation were set forth in substantial detail in the notice of public review procedures published August 6, 1973 (38 FR 21202) and in the notice of proposed rulemaking for all subcategories except ducks and the ducks subcategory. In addition, the regulations as proposed were supported by two other documents: (1) The document entitled "Development Document for Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Feedlots Point Source Category" (August 1973) and (2) the document entitled "Economic Analysis of Proposed Effluent Guidelines, Feedlots" (August 1973). Both of these documents were made available to the public and circulated to interested persons at approximately the time of publication of the notice of proposed rulemaking.

Interested persons were invited to participate in the rulemaking by submitting written comments within 30 days from the date of publication. Prior public participation in the form of solicited comments and responses from the States, Federal agencies, and other interested parties were described in the preamble to the proposed regulation. The EPA has considered carefully all of the comments received and a discussion of these comments with the Agency's response thereto follows.

The regulation as promulgated contains important changes from the proposed regulation. The following discussion outlines the reasons why these changes were made and why other suggested changes were not implemented.

(a) Summary of comments.

The following responded to the request for written comments contained in the preamble to the proposed regulation: Five Federal agencies including the U.S. Department of Commerce and the U.S. Department of Agriculture; sixty-four national, state and local trade associations including the National Livestock Feeders Association, American National Cattlemen's Association, National Milk Producers Federation, National Pork Producers Council, and the National Broiler Council; eight public interest groups including the Natural Resources Defense Council and the Lake Gage-Lime Lake Association; twenty-one universities and colleges including Iowa State University, Kansas State University, University of Minnesota, University of Wisconsin, Texas A and M University, Oklahoma State University and Oregon State University; twenty state and local governmental agencies including the Missouri Clean Water Commission, Wisconsin Department of Natural Resources, Minnesota Pollution Control Agency, Illinois Environmental Protection Agency, State of Indiana, Suffolk County (N.Y.) Environmental Control Commission; approximately one hundred inquiries from members of the United States Congress; and several hundred private citizens and interested individuals.

Each of the comments received was reviewed and analyzed carefully. The following is a summary of the significant comments and the Agency's response to those comments.

(1) It was suggested that the definition of a feedlot and certain synonyms or common designations describing various types of livestock operations be clarified as to the specific nature of crop growth in a non-feedlot condition and specific operations covered.

The proposed definition of a feedlot provided that if crop production could be or was sustained in the area where livestock were housed or penned, the livestock holding area would not constitute a feedlot. The definition in the final regulation has been modified to show that if either crop or forage growth or production is sustained, the operation would not constitute a feedlot. Therefore, when conditions exist where the density of livestock in any given area precluded the growth or production of crops or forage, and the other elements of the definition were met, those conditions would describe a feedlot. Substantial numbers of operations which may constitute a feedlot in the strict sense, particularly smaller facilities, may consider management options which dispersed or decentralized livestock in order to provide crop or forage growth. Under the latter circumstances the combined effect of soil and vegetative assimilation of manure and the lower rate of manure deposition per unit area could reasonably be expected to preclude any significant pollution problem.

Certain generic words or descriptive terminology such as "dry lot", "hard" surface, or others frequently used to designate livestock operations but not included in the proposed regulation have been incorporated in the final regulation.

(2) Comments and suggestions were made regarding the differences between, and impact of, chronic rainfall upon any runoff control facility. The primary point was that a series of rainfall events with or without coincident snowmelt were the major cause of a discharge and that controlling a given storm event would not necessarily preclude a discharge from chronic precipitation even if all possible means of prevention were used.

Several suggestions were that it was inappropriate for the regulations to refer only to controlling discharges from a given storm event, in that a series of rainfall events or snowmelt were the major causes of discharges from feedlots.

These comments are generally valid to the extent that chronic rainfall or snowmelt are the primary cause of discharges in many areas. The final regulations make it clear that exceptions to the "no discharge" standard are not limited to those occasioned by a given storm event, but include discharges attributable to the cumulative effect of rainfall or snowmelt over a period of time.

(3) A number of comments requested clarification of whether the proposed regulation prescribed performance standards or design criteria to the extent that it contained exceptions for excessive rainfall.

The exceptions in §§ 412.12(b), 412.13 (b), 412.15(b) and 412.23(b) provided recognition of the fact that the basic technology for preventing discharges from feedlots requires containment facilities. Containment facilities have physical limitations on their capacity to compensate for unusual rainfall, resulting in occasional unavoidable overflows.

It is not the intent of EPA in this regulation to establish a design standard for control facilities for feedlots. The regulation promulgated below is a performance standard of "no discharge" subject to an exception for discharges attributable to unusual rainfall events. There are numerous types of control facilities which can be utilized to qualify for the exception (e.g., impoundment ponds, diversion ditches, terraces etc.) and operators have broad flexibility to select their control facility in the light of local hydrologic data, soil conditions, weather conditions, waste utilization plans and other information.

Similarly, EPA does not intend to establish operating criteria for feedlot waste control facilities. Rather, this regulation establishes a performance standard with an exception and, to qualify for this exception, the operator is free to choose any method of operation, providing the method of operation causes the facility to contain process generated waste waters and usual rainfall events. Such methods may normally include removal of the stored waste waters for purposes of irrigation or other land utilization of the waste in accordance with accepted agricultural practices which prevent discharge to navigable waters, and maintain the facility in a state of availability to contain runoff from recurring or subsequent rainfalls.

(4) The point was made that the 25 year, 24 hour storm requirement as a basis for the limitation under best available technology was unnecessary and unwarranted.

The technology is the same for controlling precipitation runoff, regardless of the nature of the precipitation period. In the feedlots industry, a variable degree of effluent control is already manifest. Whereas several States and areas have implemented controls on the basis of a 10 year, 24 hour storm, many areas already require or recommend somewhat higher control levels: For example a 25 year, 24 hour storm or long-term (60 days or more) precipitation and runoff storage serve as the basic control requirement in many areas. The increased control requirements are found in arid or semi arid areas such as the State of Texas and in humid areas such as the States of Minnesota, Illinois, and Indiana. In some instances where the 10 year storm criteria prevails, site conditions or management decisions impact upon higher degree of control (for example, the desire to minimize impoundment dewatering requirements by increasing design capacities).

As a result, it is clear that the higher control requirements are in place, available and economically achievable for the feedlots industry. Furthermore, existing facilities will generally be able to expand present waste water control systems in the future to account for increased control levels without undue difficulty.

(5) The vast majority of comments and subsequent discussions within the agency centered on the issue that small farms, which included small feedlots, should be excluded from the requirements of the proposed regulation.

From available information, there is substantial evidence that large feedlots can institute process waste water controls relating to the runoff from a 10 year, 24 hour storm and other process discharges such as the flushing of pens or manure pits without any undue economic hardship. For the present, the thurst of the final regulations is therefore directed at those operations as large or larger than the specified sizes, i.e., 1000 beef cattle, 2500 swine, 700 dairy cattle, and others as indicated. With respect to operations smaller than these, the Agency is now reviewing a substantial amount of information submitted during the public comment period to ascertain detailed economic impact information and possible further segmentation of the industry on the basis of size. Subsequent to the completion of this analysis, effluent limitations applicable to smaller operations will be proposed for public comment.

(6) It was suggested that dewatering periods (or frequency for emptying impoundments or other storage facilities) be specifically indicated with regard to runoff control.

As is discussed in the Development Document, the variability in state and local requirements, individual site conditions, and choice of runoff control procedures make detailed specification of dewatering requirements untenable. In addition to problems of reliability in predicting the probability of a discharge, with or without any assumption on dewatering, the fact is that runoff controls may be overdesigned to preclude all but the most infrequent dewatering activities. On the other hand, dewatering of runoff control impoundments can often be successfully related to crop or soil moisture needs and not on the sole basis of keeping the impoundment "pumped down" or empty purely for pollution control. However, as is discussed in comment (3), any process waste water control facility is to be operated in a manner to help assure that discharges from recurring runoff are minimized. The conditions and management options for any given site must be used to ascertain whether the chosen runoff controls are "small" with frequent dewatering: "large" with infrequent or no dewatering; require an emergency pump-out capability or other option. Assigning specific dewatering requirements unnecessarily and often incorrectly restricts the flexibility required to properly control runoff for the vast variety of sites which exist throughout the country.

(7) The point was raised that so-called "order-buyer" operations (which involve short term holding of feeder cattle for subsequent transfer to long term feeding at feedlots) auction yards, stockyards or related facilities were not specifically covered by the regulation.

Within the definition of a feedlot in the proposed regulation and final regulation, criteria such as concentration of animals, crop or forage growth or production being sustained, and feeding at the place of confinement (no time frame is stipulated) are clearly satisfied by the types of operations in question. For the most part these operations are open lots or partially covered lots which often handle a mixture of animal types; consequently, they may be affected by either the size requirements for individual animal types or the combination criteria stipulated in the final regulation.

(8) Suggestions with respect to the duck growing subcategories related to the proposed regulation requiring operations to achieve zero discharge by 1983 and the propriety of meeting this requirement or even achieving zero discharge (subject to the storm overflow exemptions discussed in comment (2) above) as early as 1977.

As is discussed in the Development Document and the preamble to the proposed regulations, the duck growing subcategories are already accomplishing rather successful effluent control using biological treatment. The treatment systems are used primarily for the "wet" lot operations, but "dry" lots also use treatment. The latter type of production facility generally utilizes water only for drinking and thus eliminates swimming areas (wet lots) from the production process. Nevertheless, the drinking water is usually contaminated to some degree and treatment is required. For the dry lot operations, only one is known to achieve no discharge (using irrigation) and one is planning to install a similar system soon. As a consequence, best practicable technology may be defined only on the basis of the efficient biological treatment systems. Also, the process changes required to shift from wet lot to dry lot operations fall only within the scope of best available technology for existing sources and best available demonstrated technology for new sources. Therefore, in the opinion of EPA, the proposed regulations for duck operations were defined appropriately from the available data and these regulations are set forth in final form.

(b) Revision of the proposed regulation prior to promulgation.

As a result of public comments and continuing review and evaluation of the proposed regulations by the EPA, the following changes have been made in the regulation.

(1) The applicability of limitations for existing sources and standards of performance for new sources for Subpart A, § 412.10 has been clarified to reflect that specific sizes of operations for each animal type are affected by the limitations: (as large or larger than) 1000 slaughter steers and heifers, 700 mature dairy cattle; 2500 swine; and other sizes as defined.

(2) The applicability of limitations for existing sources and standards of performance for new sources for Subpart B, § 412.20 has been clarified to reflect applicability to the duck subcategories of sizes of 5000 or more ducks.

(3) The definition of a feedlot in Subparts A and B has been slightly amplified to recognize that either crop or forage growth or production are to be sustained in an area of confined or concentrated animal housing if that area is not to be classified as a feedlot.

(4) Several specialized definitions common to both Subparts A and B, §§ 412.11 and 412.21 respectively, have been clarified, and changed or have been added to help explain the meaning and intent of the limitations.

Definitions for "process waste water" and certain subcategory designations have been modified; definitions for "process generated waste water" and "10 year, 24 hour or 25 year, 24 hour" rainfall events have been added.

(5) Even though the specific reference to rainfall event (whether 10 year, 24 hour or 25 year, 24 hour) has not been changed, the language of the limitations for existing sources and standards of performance for new sources has been substantially rewritten to show that (i) the expected level of performance is no discharge of process waste water pollutants to navigable waters, and (ii) the overflow from those systems caused by excessive chronic or catastrophic precipitation may be discharged without regard to pollutants in, or volume of, the overflow.

(6) Section 304(b)(1)(B) of the Act provides for "guidelines" to implement the uniform national standards of section 301(b)(1)(A). Thus Congress recognized that some flexibility was necessary in order to take into account the complexity of the industrial world with respect to the practicability of pollution control technology. In conformity with the Congressional intent and in recognition of the possible failure of these regulations to account for all factors bearing on the practicability of control technology, it was concluded that some provision was needed to authorize flexibility in the strict application of the limitations contained in the regulation where required by special circumstances applicable to individual dischargers. Accordingly, a provision allowing flexibility in the application of the limitations representing best practicable control technology currently available has been added to each subpart, to account for special circumstances that may not have been adequately accounted for when these regulations were developed.

(c) Economic impact.

Even though the proposed regulations affected all sizes of operations, the above listed changes will not significantly affect the conclusions of the economic study of the proposed regulations. The larger feedlots to which the final regulations apply are the least impacted segment regarding costs of treatment alternatives described in the Development Document and the proposed regulations. With respect to operations of smaller capacities than stipulated in the regulation, data submitted during the comment period is being incorporated into further analyses of economic impact of the limitations upon these sizes. Pending results of these analyses, effluent limitations affecting smaller operations will be proposed for public comment at a later date.

(d) Cost-benefit analysis.

The detrimental effects of the constituents of waste waters now discharged by point sources within the feedlots point source category are discussed in Section VI of the report entitled "Development Document for Effluent Limitations Guidelines for the Feedlots Point Source Category" (January 1974). It is not feasible to quantify in economic terms, particularly on a national basis, the costs resulting from the discharge of these pollutants to our Nation's waterways. Nevertheless, as indicated in section VI, the pollutants discharged have substantial and damaging impacts on the quality of water and therefore on its capacity to support healthy populations of wildlife, fish and other aquatic wildlife and on its suitability for industrial, recreational and drinking water supply uses.

The total cost of implementing the effluent limitations guidelines includes the direct capital and operating costs of the pollution control technology employed to achieve compliance and the indirect economic and environmental costs identified in section VIII and in the supplementary report entitled "Economic Analysis of Proposed Effluent Guidelines FEEDLOTS INDUSTRY" (August 1973). Implementing the effluent limitations guidelines will substantially reduce the environmental harm which would otherwise be attributable to the continued discharge of polluted waste waters from existing and newly constructed facilities in the feedlots industry. The Agency believes that the benefits of thus reducing the pollutants discharged justify the associated costs which, though substantial in absolute terms, represent a relatively small percentage of the total capital investment in the industry.

(e) Publication of information on processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants.

In conformance with the requirements of Section 304(c), a manual entitled, "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Feedlots Point Source Category," has been published and is available for purchase from the Government Printing Office, Washington, D.C. 20401 for a nominal fee.

(f) Final rulemaking.

In consideration of the foregoing, 40 CFR Chapter I, Subchapter N is hereby amended by adding a new Part 412, Feedlots Point Source Category, to read as set forth below. This final regulation is promulgated as set forth below and shall be effective April 15, 1974.

Dated: January 31, 1974.

JOHN QUARLES,
Acting Administrator.

Subpart A—All Subcategories Except Ducks

Sec.
412.10 Applicability; description of all subcategories except ducks.
412.11 Specialized definitions.
412.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
412.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
412.14 Reserved.
412.15 Standards of performance for new sources.
412.16 Pretreatment standards for new sources.

Subpart B—Ducks Subcategory

Sec.
412.20 Applicability; description of the duck subcategory.
412.21 Specialized definitions.
412.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
412.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
412.24 Reserved.
412.25 Standards of performance for new sources.
412.26 Pretreatment standards for new sources.

Subpart A—All Subcategories Except Ducks

§ 412.10 Applicability; description of all subcategories except ducks.

The provisions of this subpart are applicable to discharges of pollutants resulting from feedlots in the following subcategories: Beef cattle—open lots; beef cattle—housed lots; dairy cattle—stall barn (with milk room); dairy—free stall barn (with milking center); dairy—cowyards (with milking center); swine—open dirt or pasture lots; swine—housed, slotted floor; swine—solid concrete floor, open or housed lot; sheep—open lots; sheep—housed lots; horses—stables (race tracks); chickens—broilers, housed; chickens—layers (egg production), housed; chickens—layer breeding or replacement stock; housed; turkeys—open lots; turkeys—housed; and for those feedlot operations within these subcategories as large or larger than the capacities given below:

1,000 slaughter steers and heifers; 700 mature dairy cattle (whether milkers or dry cows); 2,500 swine weighing over 55 pounds; 10,000 sheep; 55,000 turkeys; 100,000 laying hens or broilers when facility has unlimited continuous flow watering systems; 30,000 laying hens or broilers when facility has liquid manure handling system; 500 horses; and 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep.

§ 412.11 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "feedlot" shall mean a concentrated, confined animal or poultry growing operation for meat, milk or egg production, or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage growth or production is not sustained in the area of confinement.

(c) The term "process waste water" shall mean any process generated waste water and any precipitation (rain or snow) which comes into contact with any manure, litter or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g. milk, eggs).

(d) The term "process generated waste water" shall mean water directly or indirectly used in the operation of a feedlot for any or all of the following: Spillage or overflow from animal or poultry

watering systems; washing, cleaning or flushing pens, barns, manure pits or other feedlot facilities; direct contact swimming, washing or spray cooling of animals; and dust control.

(e) The terms "10 year, 24 hour rainfall event" and "25 year, 24 hour rainfall event" shall mean a rainfall event with a probable recurrence interval of once in ten years or twenty-five years, respectively, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

(f) The term "open lot" shall mean pens or similar confinement areas with dirt, or concrete (or paved or hard) surfaces wherein animals or poultry are substantially or entirely exposed to the outside environment except for possible small portions affording some protection by windbreaks, small shed-type shade areas. For the purposes hereof the term "open lot" is synonymous with the terms "cowyard" (dairy cattle), "pasture lot" (swine), and "dirt lot" (swine, sheep or turkeys), "dry lot" (swine, cattle, sheep, or turkeys) which are terms widely used in the industry.

(g) The term "housed lot" shall mean totally roofed buildings which may be open or completely enclosed on the sides wherein animals or poultry are housed over solid concrete or dirt floors, slotted (partially open) floors over pits or manure collection areas in pens, stalls or cages, with or without bedding materials and mechanical ventilation. For the purposes hereof, the term "housed lot" is synonymous with the terms "slotted floor" buildings (swine, beef), "barn" (dairy cattle) or "stable" (horses), "houses" (turkeys, chickens), which are terms widely used in the industry.

(h) The term "stall barn" shall mean specialized facilities wherein producing cows and replacement cows are milked and fed in a fixed location.

(i) The term "free stall barn" shall mean specialized facilities wherein producing cows are permitted free movement between resting and feeding areas.

(j) The term "milkroom" shall mean milk storage and cooling rooms normally used for stall barn dairies.

(k) The term "milking center" shall mean a separate milking area with storage and cooling facilities adjacent to a free stall barn or cowyard dairy operation.

§ 412.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharge effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) Subject to the provisions of paragraph (b) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available: There shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 10 year, 24 hour rainfall event for the location of the point source.

§ 412.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) Subject to the provisions of paragraph (b) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable: There shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25 year, 24 hour rainfall event for the location of the point source.

§ 412.14 [Reserved]

§ 412.15 Standards of performance for new sources.

(a) Subject to the provisions of paragraph (b) of this section, the following standards of performance establish the quantity or quality of pollutants or pollutant properties which may be discharged by a source subject to the provisions of this subpart: There shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25 year, 24 hour rainfall event for the location of the point source.

§ 412.16 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within all subcategories except ducks which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR Part 128, except that, for the purpose of this section, § 128.133 of this title shall be amended to read as follows:

"In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 412.15; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standards providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant."

Subpart B—Ducks Subcategory

§ 412.20 Applicability; description of the ducks subcategory.

The provisions of this subpart are applicable to discharges of pollutants resulting from feedlots for the following subcategories: ducks—dry lot; ducks—wet lot; and for those feedlot operations within these subcategories as large or larger than the capacities given below:

5,000 ducks

§ 412.21 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "feedlot" shall mean a concentrated, confined animal or poultry growing operation for meat, milk or egg production, or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage production or growth is not sustained in the area of confinement.

(c) The term "process waste water" shall mean any process generated waste water and any precipitation (rain or snow) which comes into contact with any manure, litter or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animal or poultry or direct products (e.g. milk, eggs).

(d) The term "process generated waste water" shall mean water directly or indirectly used in the operation of a feedlot for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning or flushing pens, barns, manure pits or other feedlot facilities; direct contact swimming, washing or spray cooling of animals; and dust control.

(e) The terms "10 year, 24 hour rainfall event" and "25 year, 24 hour rainfall event" shall mean a rainfall event with a probable recurrence interval of once in ten years or twenty-five years, respectively, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

(f) The term "dry lot" shall mean a confinement facility for growing ducks in confinement with a dry litter floor cover and no access to swimming areas.

(g) The term "wet lot" shall mean a confinement facility for raising ducks which is open to the environment with a small portion of shelter area, and with open water runs and swimming areas to which ducks have free access.

§ 412.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (kg/1,000 ducks)		
BOD5	1.66	0.91
Fecal coliform	Not to exceed mpn of 400/100 ml at any time.	
English units (lb/1,000 ducks)		
BOD5	3.66	2.00
Fecal coliform	See above (not typically expressed in English units).	

§ 412.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) Subject to the provisions of paragraph (b) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable: there shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25 year, 24 hour rainfall event for the location of the point source.

§ 412.24 [Reserved]

§ 412.25 Standards of performance for new sources.

(a) Subject to the provisions of paragraph (b) of this section, the following standards of performance establish the quantity or quality of pollutants or pollutant properties which may be discharged by a source subject to the provisions of this subpart: there shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25 year, 24 hour rainfall event for the location of the point source.

§ 412.26 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the ducks subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR Part 128, except that, for the purpose of this section, § 128.133 of this title shall be amended to read as follows:

"In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 412.15; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standard providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant."

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ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 412]

APPLICATION OF EFFLUENT LIMITATIONS GUIDELINES FOR EXISTING SOURCES TO PRETREATMENT STANDARDS FOR INCOMPATIBLE POLLUTANTS FOR THE FEEDLOTS POINT SOURCE CATEGORY

Notice of Proposed Rulemaking

Notice is hereby given pursuant to sections 301, 304 and 307(b) of the Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314 and 1317(b); 86 Stat. 816 et seq.; Pub. L. 92-500, that the proposed regulation set forth below concerns the application of effluent limitations guidelines for existing sources to pretreatment standards for incompatible pollutants. The proposal will amend 40 CFR Part 412—Feedlots Point Source Category, establishing for each subcategory therein the extent of application of effluent limitations guidelines to existing sources which discharge to publicly owned treatment works. The regulation is intended to be complementary to the general regulation for pretreatment standards set forth at 40 CFR Part 128. The general regulation was proposed July 19, 1973 (38 FR 19236), and published in final form on November 8, 1973 (38 FR 30982).

The proposed regulation is also intended to supplement a final regulation being simultaneously promulgated by the Environmental Protection Agency (EPA or Agency) which provides effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources within all subcategories except ducks and the ducks subcategory of the feedlots point source category. The latter regulation applies to the portion of a discharge which is directed to the navigable waters. The regulation proposed below applies to users of publicly owned treatment works which fall within the description of the point source category to which the guidelines and standards (40 CFR Part 412) promulgated simultaneously apply. However, the proposed regulation applies to the introduction of incompatible pollutants which are directed into a publicly owned treatment works, rather than to discharges of pollutants to navigable waters.

The general pretreatment standard divides pollutants discharged by users of publicly owned treatment works into two broad categories: "compatible" and "incompatible." Compatible pollutants are generally not subject to pretreatment standards. (See 40 CFR 128.110 (State or local law) and 40 CFR 128.131 (Prohibited wastes) for requirements which may be applicable to compatible pollutants.) Incompatible pollutants are subject to pretreatment standards as provided in 40 CFR 128.133, which provides as follows:

"In addition to the prohibitions set forth in Section 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry not subject to Section 307(c) of the Act shall be, for sources within the corresponding industrial or commercial category, that established by a promulgated effluent limitations guidelines defining best practicable control technology currently available pursuant to Sections 301 (b) and 304(b) of the Act; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant; and provided further that *when the effluent limitations guidelines for each industry is promulgated, a separate provision will be proposed concerning the application of such guidelines to pretreatment.*" (Italics added).

The regulation proposed below is intended to implement that portion of § 128.133, above, requiring that a separate provision be made stating the application to pretreatment standards of effluent limitations guidelines based upon best practicable control technology currently available.

Questions were raised during the public comment period on the proposed general pretreatment standard (40 CFR Part 128) about the propriety of applying a standard based upon best practicable control technology currently available to all plants subject to pretreatment standards. In general, EPA believes the analysis suporting the effluent limitations guidelines is adequate to make a determination regarding the application of those standards to users of publicly owned treatment works. However, to ensure that those standards are appropriate in all cases, EPA now seeks additional comments focusing upon the application of effluent limitations guidelines to users of publicly owned treatment works.

Sections 412.15 and 412.26 of the proposed regulation for point sources within all subcategories except ducks and ducks subcategory (September 1973; 38 FR 24467), contained the proposed pretreatment standard for new sources. The regulation promulgated simultaneously herewith contains §§ 412.16 and 412.26 which state the applicability of standards of performance for purposes of pretreatment standard for new sources.

A preliminary Development Document was made available to the public at approximately the time of publication of the notice of proposed rulemaking and the final Development Document is now being published. The economic analysis report was made available at the time of proposal. Copies of the final Development Document and economic analysis report will continue to be maintained for inspection and copying during the comment period at the EPA Information Center, Room 227, West Tower, Waterside Mall, 401 M Street, SW, Washington, D.C. Copies will also be available for inspection at EPA regional offices and at State water pollution control agency offices. Copies of the Development Document may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies of the economic analysis report will be available for purchase through the National Technical Information Service, Springfield, Virginia 22151.

On June 14, 1973, the Agency published procedures designed to insure that, when certain major standards, regulations, and guidelines are proposed, an explanation of their basis, purpose and environmental effects is made available to the public. (38 FR 15653) The procedures are applicable to major standards, regulations and guidelines which are proposed on or after December 31, 1973, and which either prescribe national standards of environmental quality or require national emission, effluent or performance standards or limitations.

The Agency determined to implement these procedures in order to insure that the public was provided with background information to assist it in commenting on the merits of a proposed action. In brief, the procedures call for the Agency to make public the information available to it delineating the major environmental effects of a proposed action, to discuss the pertinent nonenvironmental factors affecting the decision, and to explain the viable options available to it and the reasons for the option selected.

The procedures contemplate publication of this information in the FEDERAL REGISTER, where this is practicable. They provide, however, that where such publication is impracticable because of the length of these materials, the material may be made available in an alternate format.

The Development Document referred to above contains information available to the Agency concerning the major environmental effects of the regulation proposed below. The information includes: (1) The identification of pollutants present in waste waters resulting from the production of livestock and direct products such as milk and eggs, the characteristics of these pollutants, and the degree of pollutant reduction obtainable through implementation of the proposed standard; and (2) the anticipated effects on other aspects of the environment (including air, subsurface waters, solid waste disposal and land use, and noise) of the treatment technologies available to meet the standard proposed.

The Development Document and the economic analysis report referred to above also contain information available to the Agency regarding the estimated cost and energy consumption implications of those treatment technologies and the potential effects of those costs on the price and production of livestock and direct products. The two reports exceed, in the aggregate, 100 pages in length and contain a substantial number of charts, diagrams and tables. It is clearly impracticable to publish the material contained in these documents in the FEDERAL REGISTER. To the extent possible, significant aspects of the material have been presented in summary form in the preamble to the proposed regulation containing effluent

limitations guidelines, new source performance standards and pretreatment standards for new sources within the feedlots point source category (38 FR 24467; September 7, 1973). Additional discussion is contained in the analysis of public comments on the proposed regulation and the Agency's response to those comments. This discussion appears in the preamble to the promulgated regulation (40 CFR Part 412) which currently is being published in the rules and regulations section of the FEDERAL REGISTER.

The options available to the Agency in establishing the level of pollutant reduction obtainable through the best practicable control technology currently available, and the reasons for the particular level of reduction selected are discussed in the documents described above. In applying the effluent limitations guidelines to pretreatment standards for the introduction of incompatible pollutants into municipal systems by existing sources in all subcategories except ducks and the ducks subcategory, the Agency has, essentially, three options. The first is to declare that the guidelines do not apply. The second is to apply the guidelines unchanged. The third is to modify the guidelines to reflect: (1) Differences between direct dischargers and plants utilizing municipal systems which affect the practicability of the latter employing the technology available to achieve the effluent limitations guidelines; or (2) characteristics of the relevant pollutants which require higher levels of reduction (or permit less stringent levels) in order to insure that the pollutants do not interfere with the treatment works or pass through them untreated.

As described in the Development Document, the process waste waters from all subcategories except ducks contain solids, organic materials and nutrients. In rare instances, feedlot operations in these subcategories such as milk or egg producers, or stockyards, may be so located as to have a storm runoff discharge or a discharge from livestock watering systems to publicly owned treatment works. Such discharges may be expected to contain high concentrations of the above pollutants in the runoff and low concentrations in discharges from watering systems. In the opinion of the EPA, suitable design and capacity can be provided for the treatment works to account for the intermittent concentrated storm discharges or continuous low concentration livestock drinking water overflows. Accordingly, the first option should be applicable and the guidelines would not apply to operations in all subcategories except ducks which discharge to publicly owned treatment works.

This first option should also apply to operations in the ducks subcategories. While these operations contain solids, organic materials and nutrients, information described in the Development Document shows that the concentration of the pollutants is relatively low and the discharge is considerably diluted in duck growing processes (swimming areas). Very low concentrations may be encountered if drinking water systems provide the only discharge. In both instances, the pollutants are amenable to treatment in publicly owned treatment works and should therefore be discharged to such works without requirements for pretreatment.

Interested persons may participate in this rulemaking by submitting written comments in triplicate to the EPA Information Center, Environmental Protection Agency, Washington, D.C. 20460, Attention: Mr. Philip B. Wisman. Comments on all aspects of the proposed regulations are solicited. In the event comments are in the nature of criticisms as to the adequacy of data which is available, or which may be relied upon by the Agency, comments should identify and, if possible, provide any additional data which may be available and should indicate why such data is essential to the development of the regulations. In the event comments address the approach taken by the Agency in establishing pretreatment standards for existing sources, EPA solicits suggestions as to what alternative approach should be taken and why and how this alternative better satisfies the detailed requirements of sections 301, 304 and 307(b) of the Act.

A copy of all public comments will be available for inspection and copying at the EPA Information Center, Room 227, West Tower, Waterside Mall, 401 M Street SW., Washington, D.C. 20460. The EPA information regulation, 40 CFR Part 2, provides that a reasonable fee may be charged for copying.

In consideration of the foregoing, it is hereby proposed that 40 CFR Part 412 be amended to add §§ 412.14 and 412.24. All comments received on or before March 18, 1974 will be considered.

Dated: January 31, 1974.

JOHN QUARLES,
Acting Administrator.

40 CFR Part 412 is proposed to be amended as follows:

Subpart A is amended by adding § 412.14 as follows:

§ 412.14 Pretreatment Standards for Existing Sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines set forth in 40 CFR 412.12 above shall not apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may be introduced into a publicly owned treatment works.

Subpart B is amended by adding § 412.24 as follows:

§ 412.24 Pretreatment Standards for Existing Sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines set forth in 40 CFR 412.22 above shall not apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may be introduced into a publicly owned treatment works.

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PART III

ENVIRONMENTAL PROTECTION AGENCY

■

GLASS MANUFACTURING POINT SOURCE CATEGORIES

Effluent Guidelines and Standards

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

PART 426—GLASS MANUFACTURING POINT SOURCE CATEGORY

Effluent Limitations Guidelines

On October 17, 1973 notice was published in the FEDERAL REGISTER, (38 FR 28902) that the Environmental Protection Agency (EPA or Agency) was proposing effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources within the sheet glass manufacturing, rolled glass manufacturing, plate glass manufacturing, float glass manufacturing, automotive glass tempering and automotive glass laminating subcategories of the glass manufacturing category of point sources. The purpose of this notice is to establish final effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources in the glass manufacturing category of point sources, by amending 40 CFR Chapter I, Subchapter N, Part 426 to add new subparts B, C, D, E, F and G. This final rulemaking is promulgated pursuant to sections 301, 304 (b) and (c), 306 (b) and (c) and 307(c) of the Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c) and 1317(c); 86 Stat. 816 et seq.; Pub. L. 92-500. Regulations regarding cooling water intake structures for all categories of point sources under section 316(b) of the Act will be promulgated in 40 CFR Part 402.

In addition, the EPA is simultaneously proposing a separate provision which appears in the proposed rules section of the FEDERAL REGISTER, stating the application of the limitations and standards set forth below to users of publicly owned treatment works which are subject to pretreatment standards under section 307(b) of the Act. The basis of that proposed regulation is set forth in the associated notice of proposed rulemaking.

The legal basis, methodology and factual conclusions which support promulgation of this regulation were set forth in substantial detail in the notice of public review procedures published August 6, 1973 (38 FR 21202) and in the notice of proposed rulemaking for the sheet glass manufacturing, rolled glass manufacturing, plate glass manufacturing, float glass manufacturing, automotive glass tempering and automotive glass laminating subcategories. In addition, the regulations as proposed were supported by two other documents: (1) the document entitled "Development Document for Proposed Effluent Limitations Guidelines and New Source Performance Standards for the FLAT GLASS Segment of the Glass Manufacturing Point Source Category" (October 1973) and (2) the document entitled "Economic Analysis of Proposed Effluent Guidelines, FLAT GLASS INDUSTRY" (August 1973). Both of these documents were made available to the public and circulated to interested persons at approximately the time of publication of the notice of proposed rulemaking.

Interested persons were invited to participate in the rulemaking by submitting written comments within 30 days from the date of publication. Prior public participation in the form of solicited comments and responses from the States, Federal agencies, and other interested parties was described in the preamble to the proposed regulation. The EPA has considered carefully all of the comments received and a discussion of these comments with the Agency's response thereto follows.

(a) Summary of comments.

The following responded to the request for comments which was made in the preamble to the proposed regulation: PPG Industries, Inc.: U.S. Water Resources Council; County Sanitation Districts of Los Angeles County; Ford Motor Company; Libbey-Owens-Ford Company; Colorado Department of Natural Resources; and U.S. Department of Health, Education, and Welfare.

Each of the comments received was carefully reviewed and analyzed. The following is a summary of the significant comments and EPA's response to those comments.

(1) Comments were received questioning the applicability of diatomaceous earth filters for suspended solids and oil removal as best available technology. Claims were made that this treatment device is untested and unproven in the subcategories covered, and that the estimated effluent concentrations of less than 5 mg/l are overly optimistic.

EPA has found many applications of this filtration device in other industries and also in a few cases in the glass industry. Sufficient data exists on the operation of diatomaceous earth filters to show that such a device can routinely achieve less than 5 mg/l of suspended solids and oil. In the glass container industry a diatomaceous earth filter is being used at one plant to remove machine oil, and emulsified cutting oils similar to those used in the flat glass industry. Also, it has recently come to light that one plant producing windshields has installed a diatomaceous earth filter on its lamination wash water systems on a pilot basis.

EPA, therefore, finds that the "best available" limitations on the automotive glass tempering and automotive glass laminating subcategories are reasonable and justified based on the proven technology.

(2) Comments have been received that the no discharge limitation for float glass cannot be accomplished for two reasons: (1) No additional water can be added to the batch make-up as suggested by EPA, and (2) a number of factors mitigate against the disposal of float wash water to cooling towers. EPA has not included limitations of noncontact cooling water, either for once-through cooling water, or for cooling tower blowdown from recycled systems. If float wash water is added to cooling water systems, the pollutants will be eventually discharged to the environment untreated. The first objection was based on the fact that soda ash is in short supply and liquid caustic must be substituted. All the water needed for dust suppression is thus supplied by the liquid caustic. Moreover, the suggestion by EPA that dry caustic could be substituted is not practical because it would present severe handling and storage problems.

EPA has confirmed the accuracy of these statements. The recommended recycle of wash water to cooling towers would not be appropriate because effluent limitations have not yet been developed for noncontact cooling water. EPA has also determined that the use of dry caustic to allow recycle of waste water to the batch make-up does present the problems mentioned above. Therefore, a new limitation for the float glass subcategory representing the best available technology economically achievable has been established. These limitations can be attained by the use of diatomaceous earth filters as described in the Development Document.

(3) A question was raised in the comment period about the setting of a COD limitation on plate glass manufacturing. The Development Document stated that data on COD was insufficient to determine an accurate COD loading for a typical plant.

The statement above is only correct as it applies to data on the raw waste load. Industry-supplied data, verified by EPA's contractor, was sufficient to establish a COD effluent loading. However, further consideration of the COD limitation by EPA has determined that the removal of suspended solids is sufficient to control wastes from the plate process. The source of COD in plate waste water is the polishing operation and can be attributed to the organic fibers from the polishing pads. No other significant source is known. Since the treatment technology is designed to control suspended solids, these organic fibers should be removed to the same high level as inorganic suspended solids. The new regulations, therefore, do not contain a COD limitation, for the plate glass subcategory.

(4) Commenters were concerned that the limitations would be interpreted as absolute values without consideration of pollutants in incoming waters.

There is evidence to show that COD and BOD5 values of intake waters are significant when compared to the allowable effluent loadings in the proposed effluent limitations for some parameters. Moreover, in the case of the float glass, automotive glass tempering, and automotive glass laminating subcategories, the COD and BOD5 parameters can be attributed to the oil present as described in the Development Document.

EPA has decided that with the concentrations of organics normally present in intake waters, plants would find difficulty in meeting the absolute limitations for BOD5 and COD. Since the organics are essentially oil, the BOD5 and COD

limitations have been dropped from the proposed limitations for the flat glass industry.

(5) The comments above also apply to the phosphorus limitations in the float glass and automotive glass subcategories. Phosphorus limitations will be difficult to meet if the numbers are considered absolute values and not net over incoming waters.

EPA has decided that the phosphorus limitations for float glass should be retained. These limitations make allowance for phosphorus present in incoming waters and analytical error. During the course of the guidelines development EPA determined that the use of phosphate based detergents was not necessary in float glass washing. The present limitation, therefore, can be met if such detergents are not used.

In the automotive glass lamination subcategory, EPA recognizes that the low concentration of phosphate required by the proposed limitations would be difficult for a plant to achieve if the intake waters are not taken into account. Therefore, an additional allowance has been made in the best practicable and best available limitations to account for any background phosphate. This allowance is approximately 0.5 mg/l for a typical plant.

(6) Comments were received that claimed that an API separator on the rinse water in the laminating subcategory was insufficient to remove oil.

EPA found in the study of the industry that API separators can indeed reach the levels required by the "best practicable" limitations. Difficulties can arise where excess water is used in the rinse operations. However, with the recommended hot water pre-rinse which is totally recycled, water usage will be minimized and the required oil levels achieved in the effluent.

(7) Commentors pointed out that the term "oil" needs a more specific and common definition, and that a previous test procedure published in the FEDERAL REGISTER (38 FR 28758, October 16, 1973) used freon to extract oil from a sample.

To clarify this issue, this promulgated regulation refers to the above FEDERAL REGISTER document and the definition of oil contained therein.

(8) Other comments pointed out that the limitations would require a typical plant to reduce its oil to 5 mg/l in the effluent. It was pointed out that the present analytical method is only accurate to 10 mg/l.

EPA finds the comments to be valid. The limitations in this document have been raised where necessary to an effluent loading that would represent 10 mg/l for a typical plant flow.

(b) Revision of the proposed regulations prior to promulgation.

As a result of public comments, continuing review and evaluation of the proposed regulation by EPA, the following changes have been made in the regulation.

(1) Sections 426.21, 426.31, 426.41, 426.51, 426.61 and 426.71 entitled "Specialized Definitions," now include references to general definitions, abbreviations, and methods of analysis in 40 CFR Part 401 which reduce the need for some specialized definitions in this regulation.

(2) An important change was made in the "best available" limitations for the float glass subcategory. The proposed no discharge limitation has been changed to permit a discharge. The pollutant levels, however, were determined to be less than that allowed by the "best practicable" limitations, and are attainable by the application of the best available technology economically achievable, use of diatomaceous earth filter.

Originally, EPA was of the opinion that the relatively clean float wash water could be entirely recycled to the batch make-up for dust suppression and to the cooling towers as make-up water. Comments submitted to EPA have shown that in many cases this waste water can not be recycled for sound technical reasons. EPA also reconsidered the recommended recycle of wash water to cooling towers because effluent limitations have not yet been developed for non-contact cooling water and it would not be appropriate to dispose of float wash water in the cooling water system before such limitations are established.

(3) In the plate glass subcategory, the COD limitations have been eliminated but the limitations on TSS remain. EPA has determined that the technology for controlling TSS is more than adequate to control the waste water discharge from the plate process. The COD is contributed by the organic fibers in the polishing pads. These fibers are measured in the TSS analysis, and, therefore, little benefit is to be derived from the setting of a separate COD limitation. As mentioned previously, there is also some question about the lack of COD data in the raw waste from the plate process which further supports the decision to remove COD from the list of effluent limitations for the plate glass subcategory.

(4) The BOD5 and COD limitations in the float glass, automotive glass tempering and automotive glass laminating subcategories have been eliminated. This was done for two reasons: (1) The limitations do not give any credit for these pollutant parameters in incoming waters. These pollutants are frequently present in intake water concentrations equal to the proposed limitations and could preclude many plants from meeting the limitations. (2) The BOD5 and COD added by the process is almost entirely oil. The oil limitations in these regulations are sufficient to control this pollutant with proper monitoring.

(5) In the automotives glass laminating subcategory, the phosphorus limitations have been raised to allow for phosphate in intake waters. The low effluent concentrations required by the proposed limitations would be difficult to meet if applied on an absolute basis. The allowable effluent concentrations for a typical plant were thus raised from 5.6 to 6.1 mg/l for the "best practicable" limitations and from 1.0 to 1.5 mg/l for the "best available" limitations.

(6) Valid questions were raised during the comment period about the limits of detection for oil. The proposed limitations were based on a concentration of 5 mg/l for a typical plant. Comments have showed that 10 mg/l of oil is the enforceable limit and the limitations in each of the subcategories containing oil as a parameter (float glass manufacturing, automotive glass tempering and automotive glass laminating) have been raised to reflect this consideration.

(7) Section 304(b)(1)(B) of the Act provides for "guidelines" to implement the uniform national standards of Section 301(b)(1)(A). Thus Congress recognized that some flexibility was necessary in order to take into account the complexity of the industrial world with respect to the practicability of pollution control technology. In conformity with the Congressional intent and in recognition of the possible failure of these regulations to account for all factors bearing on the practicability of control technology, it was concluded that some provision was needed to authorize flexibility in the strict application of the limitations contained in the regulation where required by special circumstances applicable to individual dischargers. Accordingly, a provision allowing flexibility in the application of the limitations representing best practicable control technology currently available has been added to each subpart, to account for special circumstances that may not have been adequately accounted for when these regulations were developed.

(c) Economic impact.

The changes to the regulations will not affect the results of the economic analysis prepared for the proposed regulation.

(d) Cost-benefit analysis.

The detrimental effects of the constituents of waste water now discharged by point sources within the flat glass segment of the glass manufacturing point source category are discussed in Section VI of the report entitled "Development Document for Effluent Limitations Guidelines for the FLAT GLASS Segment Manufacturing Point Source Category" (February, 1974). It is not feasible to quantify in economic terms, particularly on a national basis, the costs resulting from the discharge of these pollutants to our Nation's waterways. Nevertheless, as indicated in Section VI, the pollutants discharged have substantial and damaging impacts on the quality of water and therefore on its capacity to support healthy populations of wildlife, fish and other aquatic wildlife and on its suitability for industrial, recreational and drinking water supply uses.

The total cost of implementing the effluent limitations guidelines includes the direct capital and operating costs of the pollution control technology employed to achieve compliance and the indirect economic and environmental costs identified in Section VIII and in the supplementary report entitled "Economic

Analysis of Proposed Effluent Guidelines, FLAT GLASS INDUSTRY" (September, 1973). Implementing the effluent limitations guidelines will substantially reduce the environmental harm which would otherwise be attributable to the continued discharge of polluted waste waters from existing and newly constructed plants in the flat glass industry. The Agency believes that the benefits of thus reducing the pollutants discharged justify the associated costs which, though substantial in absolute terms, represent a relatively small percentage of the total capital investment in the industry.

(e) Publication of information on processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants.

In conformance with the requirements of section 304(c) of the Act, a manual entitled, "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the FLAT GLASS Segment of the Glass Manufacturing Point Source Category," has been published and is available for purchase from the Government Printing Office, Washington, D.C. 20401 for a nominal fee.

(f) Final rulemaking.

In consideration of the foregoing, 40 CFR Chapter I, Subchapter N, Part 426 is hereby amended by adding Subparts B through G to read as set forth below. This final regulation is promulgated as set forth below and shall be effective April 15, 1974.

Dated: January 31, 1974.

JOHN QUARLES,
Acting Administrator.

Subpart B—Sheet Glass Manufacturing Subcategory

Sec.
426.20 Applicability; description of the sheet glass manufacturing subcategory.
426.21 Specialized definitions.
426.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
426.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
426.24 Reserved.
426.25 Standards of performance for new sources.
426.26 Pretreatment standards for new sources.

Subpart C—Rolled Glass Manufacturing Subcategory

426.30 Applicability; description of the rolled glass manufacturing subcategory.
426.31 Specialized definitions.
426.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
426.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
426.34 Reserved.
426.35 Standards of performance for new sources.
426.36 Pretreatment standards for new sources.

Subpart D—Plate Glass Manufacturing Subcategory

426.40 Applicability; description of the plate glass manufacturing subcategory.
426.41 Specialized definitions.
426.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
426.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
426.44 Reserved.
426.45 Standards of performance for new sources.
426.46 Pretreatment standards for new sources.

Subpart E—Float Glass Manufacturing Subcategory

426.50 Applicability; description of the float glass manufacturing subcategory.
426.51 Specialized definitions.
426.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
426.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
426.54 Reserved.
426.55 Standards of performance for new sources.
426.56 Pretreatment standards for new sources.

Subpart F—Automotive Glass Tempering Subcategory

426.60 Applicability; description of the automotive glass tempering subcategory.
426.61 Specialized definitions.
426.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
426.63 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
426.64 Reserved.
426.65 Standards of performance for new sources.
426.66 Pretreatment standards for new sources.

Subpart G—Automotive Glass Laminating Subcategory

426.70 Applicability; description of the automotive glass laminating subcategory.
426.71 Specialized definitions.
426.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
426.73 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
426.74 Reserved.
426.75 Standards of performance for new sources.
426.76 Pretreatment standards for new sources.

Subpart B—Sheet Glass Manufacturing Subcategory

§ 426.20 Applicability; description of the sheet glass manufacturing subcategory.

The provisions of this subpart are applicable to discharges of pollutants resulting from the process in which several mineral ingredients (sand, soda ash, limestone, dolomite, cullen and other ingredients) are mixed, melted in a furnace, and drawn vertically from a melting tank to form sheet glass.

§ 426.21 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "cullet" shall mean any broken glass generated in the manufacturing process.

§ 426.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove

such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available: there shall be no discharge of process waste water pollutants to navigable waters.

§ 426.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable: there shall be no discharge of process waste water pollutants to navigable waters.

§ 426.24 [Reserved]

§ 426.25 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties which may be discharged by a new source subject to the provisions of this subpart: There shall be no discharge of process waste water pollutants to navigable waters.

§ 426.26 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the sheet glass manufacturing subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR Part 128, except that, for the purpose of this section, 40 CFR 128.133 shall be amended to read as follows:

In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 426.25; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standards providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant.

Subpart C—Rolled Glass Manufacturing Subcategory

§ 426.30 Applicability; description of the rolled glass manufacturing subcategory.

The provisions of this subpart are applicable to discharges of pollutants resulting from the process in which several mineral ingredients (sand, soda ash, limestone, dolomite, cullet, and other ingredients) are mixed, melted in a furnace, and cooled by rollers to form rolled glass.

§ 426.31 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "cullet" shall mean any broken glass generated in the manufacturing process.

§ 426.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available: There shall be no discharge of process waste water pollutants to navigable waters.

§ 426.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable: there shall be no discharge of process waste water pollutants to navigable waters.

§ 426.34 [Reserved]

§ 426.35 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties which may be discharged by a new source subject to the provisions of this subpart: there shall be no discharge of process waste water pollutants to navigable waters.

§ 426.36 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the rolled glass manufacturing subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR 128, except that, for the purpose of this section, 40 CFR 128.133 shall be amended to read as follows:

"In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 426.35; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standards providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant."

Subpart D—Plate Glass Manufacturing Subcategory

§ 426.40 Applicability; description of the plate glass manufacturing subcategory.

The provisions of this subpart are applicable to discharges of pollutants resulting from the process in which several mineral ingredients (sand, soda ash, limestone, dolomite, cullet and other ingredients) are melted in a furnace, pressed between rollers, and finally ground and polished to form plate glass.

§ 426.41 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "cullet" shall mean any broken glass generated in the manufacturing process.

§ 426.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would effect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for the facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (kg/kkg of product)		
TSS	2.76	1.38
pH	Within the range 6.0 to 9.0.	
English units (lb/ton of product)		
TSS	5.52	2.76
pH	Within the range 6.0 to 9.0.	

§ 426.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (kg/kkg of product)		
TSS	0.045	0.045
pH	Within the range 6.0 to 9.0.	
English units (lb/ton of product)		
TSS	0.090	0.090
pH	Within the range 6.0 to 9.0.	

§ 426.44 [Reserved]

§ 426.45 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties which may be discharged by a new source subject to the provisions of this subpart: there shall be no discharge of process waste water pollutants to navigable waters.

§ 426.46 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the plate glass manufacturing subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR Part 128, except that, for the purpose of this section, 40 CFR 128.133 shall be amended to read as follows:

In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 426.45; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standards providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant.

Subpart E—Float Glass Manufacturing Subcategory

§ 426.50 Applicability; description of the float glass manufacturing subcategory.

The provisions of this subpart are applicable to discharges of pollutants resulting from the process in which several mineral ingredients (sand, soda ash, limestone, dolomite, cullet, and other ingredients) are mixed, melted in a furnance, and floated on a molten tin bath to produce float glass.

§ 426.51 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 426.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (q/kkg of product)		
TSS	2.00	2.00
Oil	1.40	1.40
Phosphorus	.05	.05
pH	Within the range 6.0 to 9.0.	
English units (lb/ton of product)		
TSS	0.0040	0.0040
Oil	.0028	.0028
Phosphorus	.0001	.0001
pH	Within the range 6.0 to 9.0.	

§ 426.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (g/kkg of product)		
TSS	0.70	0.70
Oil	1.40	1.40
Phosphorus	.05	.05
pH	Within the range 6.0 to 9.0.	
English units (lb/ton of product)		
TSS	0.0014	0.0014
Oil	.0028	.0028
Phosphorus	.0001	.0001
pH	Within the range 6.0 to 9.0.	

§ 426.54 [Reserved]

§ 426.55 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (g/kkg of product)		
TSS	0.70	0.70
Oil	1.40	1.40
Phosphorus	.05	.05
pH	Within the range 6.0 to 9.0.	
English units (lb/ton of product)		
TSS	0.0014	0.0014
Oil	.0028	.0028
Phosphorus	.0001	.0001
pH	Within the range 6.0 to 9.0.	

§ 426.56 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the float glass manufacturing subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR Part 128, except that, for the purpose of this section, 40 CFR 128.133 shall be amended to read as follows:

"In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 426.55 provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standards providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant."

Subpart F—Automotive Glass Tempering Subcategory

§ 426.60 Applicability; description of the automotive glass tempering subcategory.

The provisions of this subpart are applicable to discharges of pollutants resulting from the processes in which glass is cut and then passed through a series of processes that grind and polish the edges, bend the glass, and then temper the glass to produce side and back windows for automobiles.

§ 426.61 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "tempering" shall mean the process whereby glass is heated near the melting point and then rapidly cooled to increase its mechanical and thermal endurance.

§ 426.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) In establishing the limitation set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (q/sq m of product)		
TSS	1.95	1.22
Oil	.64	.64
pH	Within the range 6.0 to 9.0.	
English units (lb/1,000 sq ft of product)		
TSS	0.40	0.25
Oil	.13	.13
pH	Within the range 6.0 to 9.0.	

§ 426.63 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (g/sq m of product)		
TSS	0.24	0.24
Oil	.49	.49
pH	Within the range 6.0 to 9.0.	
English units (lb/1,000 sq ft of product)		
TSS	0.05	0.05
Oil	.10	.10
pH	Within the range 6.0 to 9.0.	

§ 426.64 [Reserved]

§ 426.65 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (q/sq m of product)		
TSS	0.24	0.24
Oil	.49	.49
pH	Within the range 6.0 to 9.0.	
English units (lb/1,000 sq ft of product)		
TSS	0.05	0.05
Oil	.10	.10
pH	Within the range 6.0 to 9.0.	

§ 426.66 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the automotive glass tempering subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR Part 128, except that, for the purpose of this section, 40 CFR 128.133 shall be amended to read as follows:

"In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 426.65; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standards providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant."

Subpart G—Automotive Glass Laminating Subcategory

§ 426.70 Applicability; description of the automotive glass laminating subcategory.

The provisions of this subpart are applicable to discharges of pollutants resulting from the processes which laminate a plastic sheet between two layers of glass, and which prepare the glass for lamination such as cutting, bending and washing, to produce automobile windshields.

§ 426.71 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 426.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (q/sq m of product)		
TSS	4.40	4.40
Oil	1.76	1.76
Phosphorus	1.07	1.07
pH	Within the range 6.0 to 9.0.	
English units (lb/1,000 sq ft of product)		
TSS	0.90	0.90
Oil	.36	.36
Phosphorus	.22	.22
pH	Within the range 6.0 to 9.0.	

§ 426.73 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (q/sq m of products)		
TSS	0.88	0.88
Oil	1.76	1.76
Phosphorus	.30	.30
pH	Within the range 6.0 to 9.0.	
English units (lb/1,000 sq ft of product)		
TSS	0.18	0.18
Oil	.36	.36
Phosphorus	.06	.06
pH	Within the range 6.0 to 9.0.	

§ 426.74 [Reserved]

§ 426.75 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new point source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (q/sq m of product)		
TSS	0.88	0.88
Oil	1.76	1.76
Phosphorus	.30	.30
pH	Within the range 6.0 to 9.0.	
English units (lb/1,000 lb of product)		
TSS	0.18	0.18
Oil	.36	.36
Phosphorus	.06	.06
pH	Within the range 6.0 to 9.0.	

§ 426.76 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the automotive glass laminating subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR Part 128, except that, for the purpose of this section, 40 CFR 128.133 shall be amended to read as follows:

In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard

for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 426.75; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standards providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant.

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ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 426]

APPLICATION OF EFFLUENT LIMITATIONS GUIDELINES FOR EXISTING SOURCES TO PRETREATMENT STANDARDS FOR INCOMPATIBLE POLLUTANTS FOR THE GLASS MANUFACTURING POINT SOURCE CATEGORY

Notice of Proposed Rulemaking

Notice is hereby given pursuant to sections 301, 304 and 307(b) of the Federal Water Pollution Control Act, as amended (the Act) 33 U.S.C. 1251, 1311, 1314 and 1317(b); 86 Stat. 816 et seq.; Pub. L. 92–500, that the proposed regulation set forth below concerns the application of effluent limitations guidelines for existing sources to pretreatment standards for incompatible pollutants. The proposal will amend 40 CFR Part 426—Glass Manufacturing Point Source Category, establishing for subparts B through G therein the extent of application of effluent limitations guidelines to existing sources which discharge to publicly owned treatment works. The regulation is intended to be complementary to the general regulation for pretreatment standards set forth at 40 CFR Part 128. The general regulation was proposed July 19, 1973 (38 FR 19236), and published in final form on November 8, 1973 (38 FR 30982).

The proposed regulation is also intended to supplement a final regulation being simultaneously promulgated by the Environmental Protection Agency (EPA or Agency) which provides effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources within the sheet glass manufacturing, rolled glass manufacturing, plate glass manufacturing, float glass manufacturing, automotive glass tempering and automotive glass laminating subcategories of the glass manufacturing point source category. The latter regulation applies to the portion of a discharge which is directed to the navigable waters. The regulation proposed below applies to users of publicly owned treatment works which fall within the description of the point source category to which the guidelines and standards (40 CFR Part 426) promulgated simultaneously apply. However, the proposed regulation applies to the introduction of incompatible pollutants which are directed into a publicly owned treatment works, rather than to discharges of pollutants to navigable waters.

The general pretreatment standard divides pollutants discharged by users of publicly owned treatment works into two broad categories: "compatible" and "incompatible." Compatible pollutants are generally not subject to pretreatment standards. (See 40 CFR 128.110 (State or local law) and 40 CFR 128.131 (Prohibited wastes) for requirements which may be applicable to compatible pollutants). Incompatible pollutants are subject to pretreatment standards as provided in 40 CFR 128.133, which provides as follows:

"In addition to the prohibitions set forth in Section 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry not subject to Section 307(c) of the Act shall be, for sources within the corresponding industrial or commercial category, that established by a promulgated effluent limitations guidelines defining best practicable control technology currently available pursuant to Sections 301(b) and 304(b) of the Act; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant; and provided further that *when the effluent limitations guidelines for each industry are promulgated, a separate provision will be proposed concerning the application of such guidelines to pretreatment.*" (Italics added.)

The regulation proposed below is intended to implement that portion of section 128.133, above, requiring that a separate provision be made stating the application to pretreatment standards of effluent limitations guidelines based upon best practicable control technology currently available.

Questions were raised during the public comment period on the proposed general pretreatment standard (40 CFR Part 128) about the propriety of applying a standard based upon best practicable control technology currently available to all plants subject to pretreatment standards. In general, EPA believes the analysis supporting the effluent limitations guidelines is adequate to make a determination regarding the application of those standards to users of publicly owned treatment works. However, to ensure that those standards are appropriate in all cases, EPA now seeks additional comments focusing upon the application of effluent limitations guidelines to users of publicly owned treatment works.

Sections 426.15, 426.25, 426.35, 426.45, 426.55, and 426.65 of the proposed regulation for point sources within the sheet glass manufacturing, rolled glass manufacturing, plate glass manufacturing, float glass manufacturing, automotive glass tempering, and automotive glass laminating subcategories (October 1973; 38 FR 28902), contained the proposed pretreatment standard for new sources. The regulation promulgated simultaneously herewith contains §§ 426.26, 426.36, 426.46, 426.56, 426.66, and 426.76 which state the applicability of standards of performance for purposes of pretreatment standard for new sources.

A preliminary Development Document was made available to the public at approximately the time of publication of the notice of proposed rulemaking and the final Development Document entitled "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the FLAT GLASS Segment of the Glass Manufacturing Point Source Category" is now being published. The economic analysis report entitled "Economic Analysis of Proposed Effluent Guidelines, FLAT GLASS INDUSTRY" (September, 1973), was made available at the time of proposal. Copies of the final Development Document and economic analysis report will continue to be maintained for inspection and copying during the comment period at the EPA Information Center, Room 227, West Tower, Waterside Mall, 401 M Street SW., Washington, D.C. Copies will also be available for inspection at EPA regional offices and at State water pollution control agency offices. Copies of the Development Document may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies of the economic analysis report will be available for purchase through the National Technical Information Service, Springfield, Virginia 22151.

On June 14, 1973, the Agency published procedures designed to insure that, when certain major standards, regulations, and guidelines are proposed, an explanation of their basis, purpose and environmental effects is made available to the public. (38 FR 15653) The procedures are applicable to major standards, regulations and guidelines which are proposed on or after December 31, 1973, and which either prescribe national standards of environmental quality or require national emission, effluent or performance standards or limitations.

The Agency determined to implement these procedures in order to insure that the public was provided with background information to assist it in commenting on the merits of a proposed action. In brief, the procedures call for the Agency to make public the information available to it delineating the major environmental effects of a proposed action, to discuss the pertinent nonenvironmental factors affecting the decision, and to explain the viable options available to it and the reasons for the option selected.

The procedures contemplate publication of this information in the FEDERAL REGISTER, where this is practicable. They provide, however, that where such publication is impracticable because of the length of these materials, the material may be made available in an alternate format.

The Development Document referred to above contains information available to the Agency concerning the major environmental effects of the regulation proposed below. The information includes: (1) The identification of pollutants present in waste waters resulting from the manufacture of flat glass, and automotive glass, the characteristics of these pollutants, and the degree of pollutant reduction obtainable through implementation of the proposed standard; and (2) the anticipated effects on other aspects of the environment (including air, subsurface waters, solid waste disposal and land use, and noise) of the treatment technologies available to meet the standard proposed.

The Development Document and the economic analysis report referred to above also contain information available

to the Agency regarding the estimated cost and energy consumption implications of those treatment technologies and the potential effects of those costs on the price and production of flat glass and automotive glass. The two reports exceed, in the aggregate, 100 pages in length and contain a substantial number of charts, diagrams and tables. It is clearly impracticable to publish the material contained in these documents in the FEDERAL REGISTER. To the extent possible, significant aspects of the material have been presented in summary form in the preamble to the proposed regulation containing effluent limitations guidelines, new source performance standards and pretreatment standards for new sources within the Glass category (38 FR 28902; October 17, 1973). Additional discussion is contained in the analysis of public comments on the proposed regulation and the Agency's response to those comments. This discussion appears in the preamble to the promulgated regulation (40 CFR Part 426) which currently is being published in the rules and regulations section of the FEDERAL REGISTER.

The options available to the Agency in establishing the level of pollutant reduction obtainable through the best practicable control technology currently available, and the reasons for the particular level of reduction selected are discussed in the documents described above. In applying the effluent limitations guidelines to pretreatment standards for the introduction of incompatible pollutants into municipal systems by existing sources in the sheet glass manufacturing, rolled glass manufacturing, plate glass manufacturing, float glass manufacturing, automotive glass tempering, and automotive glass laminating subcategories, the Agency has, essentially, three options. The first is to declare that the guidelines do not apply. The second is to apply the guidelines unchanged. The third is to modify the guidelines to reflect: (1) Differences between direct dischargers and plants utilizing municipal systems which affect the practicability of the latter employing the technology available to achieve the effluent limitations guidelines; or (2) characteristics of the relevant pollutants which require higher levels of reduction (or permit less stringent levels) in order to insure that the pollutants do not interfere with the treatment works or pass through them untreated.

Most of the subcategories of the flat glass segment of the glass manufacturing point source category produce waste waters containing pollutants compatible with publicly owned treatment works. The only exception is the automotive laminating subcategory which produces a waste water with a high concentration of oil as reported in the Development Document. The raw waste water from the laminating process typically contains 1700 mg/l of oil. The regulation proposed below requires the treatment of this waste to the levels attainable by the application of the best practicable control technology currently available. This is justified on the basis of the known detrimental effect on high concentrations of oil on biological treatment systems, and the inability of such systems to adequately remove oil.

The other subcategories either produce no waste waters, as is the case with the rolled glass and sheet glass subcategories, or produce waste waters containing pollutants at sufficiently low concentrations so as not to interfere with the operation of publicly owned treatment works, pass through such works untreated or inadequately treated, or otherwise be incompatible with such treatment works. This is the case with the plate glass, float glass, and automotive glass tempering subcategories.

Interested persons may participate in this rulemaking by submitting written comments in triplicate to the EPA Information Center, Environmental Protection Agency, Washington, D.C. 20460, Attention: Mr. Philip B. Wisman. Comments on all aspects of the proposed regulations are solicited. In the event comments are in the nature of criticisms as to the adequacy of data which is available, or which may be relied upon by the Agency, comments should identify and, if possible, provide any additional data which may be available and should indicate why such data is essential to the development of the regulations. In the event comments address the approach taken by the Agency in establishing pretreatment standards for existing sources, EPA solicits suggestions as to what alternative approach should be taken and why and how this alternative better satisfies the detailed requirements of sections 301, 304 and 307(b) of the Act.

A copy of all public comments will be available for inspection and copying at the EPA Information Center, Room 227, West Tower, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. The EPA information regulation, 40 CFR 2, provides that a reasonable fee may be charged for copying.

In consideration of the foregoing, it is hereby proposed that 40 CFR Part 426 be amended to add §§ 426.24, 426.34, 426.44, 426.54, 426.64, and 426.74.

All comments received on or before March 18, 1974 will be considered.

Dated: January 31, 1974.

JOHN QUARLES,
Acting Administrator.

Part 426 is proposed to be amended as follows:

Subpart B is amended by adding § 426.24 as follows:

§ 426.24 Pretreatment Standards for Existing Sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines set forth in 40 CFR 426.22 above shall not apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may be introduced into a publicly owned treatment works.

Subpart C is amended by adding § 426.34 as follows:

§ 426.34 Pretreatment Standards for Existing Sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines set forth in 40 CFR 426.32 above shall not apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may be introduced into a publicly owned treatment works.

Subpart D is amended by adding § 426.44 as follows:

§ 426.44 Pretreatment Standards for Existing Sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines set forth in 40 CFR 426.42 above shall not apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may be introduced into a publicly owned treatment works.

Subpart E is amended by adding § 426.54 as follows:

§ 426.54 Pretreatment Standards for Existing Sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines set forth in 40 CFR 426.52 above shall not apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may be introduced into a publicly owned treatment works.

Subpart F is amended by adding § 426.64 as follows:

§ 426.64 Pretreatment Standards for Existing Sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines set forth in 40 CFR 426.62 above shall not apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may be introduced into a publicly owned treatment works.

Subpart G is amended by adding § 426.74 as follows:

§ 426.74 Pretreatment Standards for Existing Sources.

For the purposes of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines for oil set forth in 40 CFR 426.72 above shall apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may not be introduced into a publicly owned treatment works, except in compliance with such limitations.

[FR Doc.74-3501 Filed 2-13-74;8:45 am]

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PART IV

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Low Rent Public Housing

■

HOUSING ASSISTANCE PAYMENTS PROGRAM— SUBSTANTIAL REHABILITATION

Proposed Rules

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Low Rent Public Housing

[24 CFR Part 1276]

[Docket No. R-74-251]

SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM—SUBSTANTIAL REHABILITATION

Notice of Proposed Rulemaking

Notice is hereby given that the Department of Housing and Urban Development proposes to amend 24 CFR Chapter VIII by adding a new Part 1276. The proposed amendment sets forth the essential elements of the section 23 Housing Assistance Payments Program—Substantial Rehabilitation and includes, among other things, the roles and responsibilities of the Department, the local housing authority, the rehabilitator or owner, and the eligible low-income family; the steps in applying for the section 23 Housing Assistance Payments Program; the basis for determining the amount of housing assistance payments; and the prescribed forms of contracts, lease provisions and other documents.

Interested parties are invited to submit written comments, suggestions and objections regarding the proposed amendment by March 20, 1974, addressed to the Rules Docket Clerk, Office of the General Counsel, Room 10256, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. All relevant material will be considered before adoption of a final rule. A copy of each communication will be available for public inspection during regular business hours at the above address.

It is therefore proposed to amend Title 24 by adding Part 1276 as set forth below.

PART 1276—SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM—SUBSTANTIAL REHABILITATION

Subpart A—Applicability, Scope, and Basic Policies

Sec.

1276.1 Applicability and scope.
1276.2 Definitions.
1276.3 Basic policies.
1276.4 Separate project requirements.
1276.5 Allowance for preliminary costs of administration and for security and utility deposits.

Subpart B—Project Developments

1276.101 Preapplication.
1276.102 LHA submission of application.
1276.103 HUD review and approval of application.
1276.104 Invitation for proposals.
1276.105 Submission of proposals.
1276.106 Proposal contents.
1276.107 Site and neighborhood standards.
1276.108 Evaluation of proposals.
1276.109 Notification of selection.
1276.110 Execution of annual contributions contract and agreement.
1276.111 Agreement to enter into housing assistance payments contract.
1276.112 Completion of rehabilitation.
1276.113 HUD review of contract compliance.

APPENDICES

I. Notification of Selection.
II. Annual Contributions Contract.
III. Agreement to Enter Into Housing Assistance Payments Contract.
IV. Housing Assistance Payments Contract.
V. Certificate of Family Eligibility. Attachment 1—Lease Provisions Required for Participation in the Housing Assistance Payments Program.
VI. Owner's Offer to Lease Dwelling Unit.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 10(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1410(b)); sec. 23 of the U.S. Housing Act of 1937 (42 U.S.C. 1421(b)).

Subpart A—Applicability, Scope, and Basic Policies

§ 1276.1 Applicability and scope.

(a) The policies and procedures contained herein are applicable to the making of housing assistance payments on behalf of eligible low-income families leasing housing which has been substantially rehabilitated pursuant to the provisions of section 23 of the U.S. Housing Act of 1937.

(b) For the purposes of this Part, "substantially rehabilitated housing" shall mean existing housing for which, prior to the start of rehabilitation: (1) An Annual Contributions Contract is executed between the Department of Housing and Urban Development (HUD) and the local housing authority (LHA); and (2) an Agreement to Enter Into Housing Assistance Payments Contract ("Agreement") is executed between the LHA and the owner. Unless specific approval is obtained from HUD, the policies and procedures contained herein shall apply to all projects of leased existing housing with substantial rehabilitation for which agreements to lease have not yet been entered into. With respect to projects for which agreements to lease have been entered into prior to the effective date of this Part, HUD may apply these standards to the extent it determines it is practicable to do so.

(c) This Part (1) covers policies and procedures relating to the roles and responsibilities of HUD, the LHA and the owner; the application process; the project development format; the determination of the amount of annual contributions; and HUD processing procedures; and (2) contains prescribed contracts, agreements, and other documents.

§ 1276.2 Definitions.

(a) *Decent, Safe, and Sanitary Housing.* For the purposes of this program, housing is considered to be decent, safe, and sanitary if a certificate of occupancy or other certification, as required by law, has been issued by the authorized governmental official as to compliance with all applicable codes and ordinances, and if the following minimum standards are met:

(1) The housing has been determined by the LHA to be decent, safe, and sanitary within the meaning of the U.S. Housing Act based upon all pertinent factors, including, but not limited to, the following:

(i) The condition of the exterior and interior of the structure and the housing unit;

(ii) Adequacy and operating condition of sanitary facilities, which must be private, and adequacy of solid and liquid waste disposal facilities;

(iii) Adequacy and operating condition of kitchen facilities, which must (A) contain a range and refrigerator (except in localities where it is normal practice that tenants provide these items), a sink, space for storage of food and for storage of utensils and dishes, and (B) be private except where authorized as congregate housing meeting the HUD requirements for such housing.

(iv) Adequacy and operating condition of heating, lighting and ventilating equipment and/or facilities;

(v) Size, number of rooms, and furnishability to accommodate adequately the size and type of family to be housed.

(2) The owner shall provide either (i) a certification from the authorized local government official or a qualified laboratory that exposed interior and exterior surfaces are free of le d based paint hazards, or (ii) a certification by the owner that these surfaces have been adequately treated or covered, all in accordance with the applicable HUD regulations issued pursuant to the Lead Based Paint Poisoning Prevention Act, 42 USC 4801.

(3) The location shall meet the site and neighborhood standards set forth in § 1276.107.

(b) *Substantial Rehabilitation.* A property will be considered substantially rehabilitated when its condition is improved from a substantially substandard condition to a decent, safe, and sanitary condition, which, with normal maintenance and repair, will remain in such condition at least 5 years. Substantially substandard condition means that the housing, while structurally sound, is not only below decent, safe, and sanitary condition, but also has one or more critical defects, or a combination of potential defects in sufficient number or extent to require considerable repair or rebuilding. The defects are either so critical or so widespread that the structures should be extensively repaired. Such defects may include, but not be limited to: holes or open cracks, rotted, deteriorated, loose, or missing material over a large area of the outside walls, roof, chimney, inside walls, floors, or ceilings; substantial sagging of floors, walls, or roof; extensive damage by storm, fire, or flood; inadequate or potentially hazardous utility systems and equipment; and lack of hot or cold running water, flush toilet, or tub or shower.

(c) *Fair Market Rent and Gross Rent.* The fair market rent for substantially rehabilitated housing shall be equal to the gross rent (including utilities, ranges and refrigerators, and all maintenance and management services) for dwelling units of varying size (number of bedrooms) and structure type, which is determined at least annually by HUD as the fair market rent for newly constructed rental housing of modest (nonluxury) nature in the housing market area. Gross rent includes all utilities (except telephone) whether or not paid

directly to the utility company by the family.

(d) *Gross Family Contribution.* The portion of the rent to owner payable by a family plus the allowance established by the LHA for any utilities (except telephone) payable directly by the family.

(e) *Annual Contributions Contract.* A written agreement between HUD and an LHA to provide annual contributions to the LHA for participation in the Housing Assistance Payments Program. (See Appendix II.)

(f) *Agreement to Enter into Housing Assistance Payments Contract ("Agreement").* A written agreement between an LHA and an owner that upon satisfactory completion of substantial rehabilitation of the housing by the owner pursuant to agreed upon plans, specifications and other requirements as set forth in the Agreement, the LHA will enter into a Housing Assistance Payments Contract with the owner. (See Appendix III.)

(g) *Housing Assistance Payments Contract ("Contract").* A HUD-approved written Contract between the LHA and an owner for the purpose of providing housing assistance payments on behalf of eligible families. (See Appendix IV.)

(h) *Eligible Families.* Those families determined by the LHA to meet the requirements for admission into, and continued occupancy of, housing assisted hereunder.

(i) *Certificate of Family Eligibility.* The certificate issued by an LHA to an applicant family declaring it to be eligible and stating the terms and conditions of such eligibility. (See Appendix V.)

(j) *Owner's Offer to Lease Dwelling Unit.* A written offer by an owner to lease a dwelling unit to an eligible family under the Housing Assistance Payments Program. (See Appendix VI.)

(k) *Lease.* An LHA-approved written agreement between a private owner and an eligible family for the leasing of an existing, decent, safe, and sanitary dwelling unit. The lease shall contain the provisions specified in the Contract.

§ 1276.3 Basic policies.

(a) *Limitation on Use of Substantially Rehabilitated Housing.* Substantial rehabilitation projects shall be permitted: (1) In those localities where HUD determines that there is not, and there is not likely soon to be, an adequate supply of existing housing not requiring rehabilitation which, with housing assistance payments, can meet the housing needs of low-income families, or (2) in certain areas in which the proposed rehabilitation is required and such projects are specifically approved by HUD in accordance with priorities established from time to time by the Secretary.

(b) *Development Process.* Under the Section 23 substantial rehabilitation program, any person or entity who owns or has evidence of control of housing ("owner") which may be made suitable for occupancy by eligible families through substantial rehabilitation, may submit a proposal to provide housing opportunities for low-income families in such housing. A proposal shall be responsive to an invitation for proposals published by the LHA. If the proposal is acceptable to HUD and the LHA, the LHA will send the owner a Notification of Selection (see Appendix I) and enter into an Agreement with him.

(c) *Annual contributions.* The maximum total annual contribution that may be contracted for in the Annual Contributions Contract for a project shall be: (1) The total of the HUD-approved maximum rents to owner plus an allowance for the cost of utilities payable directly by families (see paragraph (e) of this section) for all the units in the project plus (2) An allowance for the cost of administration. The allowance for the preliminary costs of administration and for security and utility deposits (see § 1276.5) shall be payable out of this total.

(d) *Housing Assistance Payments.* (1) The housing assistance payments will pay the owner the difference between the rent chargeable by the owner as specified in the Contract and that portion of said rent payable by the family. Families shall not be eligible for such Federal financial assistance when the LHA determines that 25 percent of adjusted family income equals or exceeds the gross rent for the unit leased.

(2) Housing assistance payments shall be paid to owners only for those units under lease by eligible families. If a family vacates its unit in violation of the provisions of its lease, the owner may continue to receive housing assistance payments with respect to such unit in accordance with the terms of the Contract, not beyond the termination of the lease (in accordance with its terms), but only if the owner (i) has promptly (within 30 days) notified the LHA of the vacancy and (ii) has not rejected, except for good cause acceptable to the LHA, any substitute family provided by the LHA.

(e) *Maximum Rents to Owners.* The rents to owners that may be contracted for pursuant to the HUD-approved Housing Assistance Payments Contract ("Contract") between the LHA and the owner shall not exceed the HUD-established fair market rents for newly constructed rental housing for the locality or localities in which the units are located, less any allowance for utilities payable directly by families. These fair market rents may be exceeded by up to 10 percent in establishing the initial Contract rents for a project if HUD determines that higher rents are justified and necessary.

(f) *Term of Housing Assistance Payments Contract.* The LHA and owner may enter into a Contract for a maximum initial term of five years, with an option in the owner to renew for an additional term(s) of not more than five years each, *Provided,* That the total Contract term, including renewals, shall not exceed fifteen years. However, the LHA may notify the owner that it will not agree to renew if it determines that the owner is in default under the terms of the Contract.

(g) *Rent Adjustments.* The payment of increased housing assistance payments as a result of rent adjustments under this paragraph shall be subject to the provisions contained in paragraph (g) (3) of this section.

(1) *Automatic Annual Adjustments.* (i) The monthly rents to the owner as set forth in the Contract shall be adjusted automatically on the date of execution of this Contract and on each annual anniversary date of the Contract. The adjustment(s) shall be based upon the HUD-determined adjustment factor, as defined in paragraph (g) (1) (ii) of this section.

(ii) The adjustment factor shall be the HUD-determined percentage change in the fair market rent for existing housing for the market area in which the project is located.

(iii) The amount of each automatic annual adjustment shall be computed by applying the adjustment factor in effect at the time of the adjustment (provided that the adjustment factor determination is not more than one year old) to the latest rents shown in the Contract.

(iv) In no case may an annual adjustment result in Contract rents which, together with any allowance for utilities payable directly by families, would exceed the fair market rents in effect for the market area at the time of adjustment. For the first four annual adjustments the fair market rents shall be those which apply to newly constructed housing plus the percentage, if any, by which the original Schedule "A" Contract rents exceeded the then applicable fair market rents as approved pursuant to paragraph (e) of this section. For all subsequent adjustments, the fair market rents shall be those which apply to existing housing.

(v) Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted rents be less than the original rents set forth in the Contract.

(2) *Renegotiations.* The rents contained in the Contract may be renegotiated to become effective at the beginning of the sixth and eleventh years of the Contract (if the Contract is renewed for that length of time), whether or not such effective date of renegotiation coincides with the beginning of a renewal term. However, such renegotiations may not result in rents in excess of the fair market rents for existing housing for the housing market area in effect at the time of renegotiation.

(3) *Limitation.* The LHA will make housing assistance payments in increased amounts commensurate with upward rent adjustments under this paragraph, but only to the extent possible within the limits of the maximum total amount of annual contributions payable under the Annual Contributions Contract in respect to the project. No commitment is made by the LHA or HUD that the maximum total amount of annual contributions payable in respect to the project, as

specified in the Annual Contributions Contract, will be increased by reason of any such rent adjustments. Accordingly, to enable the owner to receive sufficient income from rents, the owner shall have the right to select, and the LHA shall be obligated to approve as promptly as possible, families whose average rent payments will result in receipts commensurate with the adjusted rents.

(h) *Eligible Agencies.* (1) All legally constituted local housing authorities created pursuant to State housing authorities laws are eligible to participate in this program. In addition, under the terms of the U.S. Housing Act, a "public housing agency" may include any State, county, municipality or other governmental entity or public body which is authorized by State law to engage in the development or administration of low-income housing or slum clearance and may, therefore, be eligible to participate in this program. The abbreviations "LHA" or "LHAs" as used herein include any governmental entity or public body as described in this paragraph.

(2) LHAs may, by agreement, cooperate with each other in carrying out their respective functions, and State laws typically provide that a locality which has no LHA can invite another LHA within the State to function within its borders. In addition to the few states that have created statewide LHAs, many more have state departments or agencies authorized to administer housing and urban development legislation which qualifies them as public housing agencies under the U.S. Housing Act and authorizes them to carry out this function or to act through LHAs or other entities.

(i) *Local Governing Body Approval.* HUD cannot approve an application for a section 23 substantial rehabilitation program unless the governing body of the locality in which the units are to be located has, by resolution, approved the application of the provisions of section 23 to the locality. Once such a resolution has been enacted, it may satisfy this approval requirement for all subsequent section 23 programs. The terms of the resolution as enacted must be examined by the LHA and HUD to determine whether it contains any restrictive language (e.g., limits the number of dwelling units, or limits the program to locations which would have the effect of denying equal housing opportunities) which would require that a new resolution be passed to enable HUD to approve the proposed project.

(j) *Types of Housing to be Substantially Rehabilitated.* Existing structures of various types may be appropriate for this program, including apartment hotels, multifamily projects, row and duplex houses, and free-standing single dwellings. Hotels or office buildings may be suitable for conversion under this program to housing suitable for use as congregate or single-room occupancy (SRO) housing. (See HUD requirements applicable to congregate and SRO housing.) High rise elevator projects for families with children may not be utilized unless HUD determines that there is no practical alternative. Mobile homes may not be utilized in this program.

(k) *Limitation on Number of Units in Single Structure.* (1) Section 23(c) of the U.S. Housing Act provides that no more than 10 percent of the units in any single structure shall be assisted unless the LHA, because of the limited number of units in the structure or for any other reason, determines that such limit should not be applied. Where the LHA determines that the 10 percent limitation should not be applied, a record of its determination shall be maintained in the LHA's permanent file, and the LHA shall notify HUD of its action.

(2) However, in approving applications for housing assistance payments programs involving multifamily (five or more units) structures, HUD will give priority to those applications which would provide assistance for 20 percent or less of the units in a single multifamily structure or complex.

(l) *Relocation Requirements.* No Agreement shall be executed with respect to occupied units which involve substantial rehabilitation requiring that the units be vacated to accomplish the necessary work unless the owner voluntarily undertakes liability for and provides for the funding of all relocation costs. (See section 6 of the Agreement.)

(m) *Equal Opportunity and Other Requirements.* Participation in the section 23 Housing Assistance Payments Program—Substantial Rehabilitation requires compliance by all participants with (1) Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the National Environmental Policies Act; and (2) all rules, regulations, and requirements issued pursuant thereto.

(n) *Methods of Finance.* (1) Projects may be financed by means of a conventional loan from a commercial bank, savings bank, savings and loan association, pension fund, insurance company or other financial institution. Financing by State Housing Finance Agencies and by market rate FHA-insured mortgage loans available for rehabilitation may also be utilized.

(2) Section 167(k) of the Internal Revenue Code provides significant income tax benefits for owners who undertake substantial rehabilitation in connection with low-income rental housing. Under this Section, an owner is permitted to compute depreciation for rehabilitation expenditures incurred in connection with low-income rental housing using a five-year useful life under the straight-line method and disregarding any salvage value. Rehabilitation expenditures must be between $3,000 and $15,000 per unit expended over a period of two consecutive years between July 25, 1969, and December 31, 1974.

(o) *Availability of Funds for Security Deposits.* In hardship cases where families are unable to obtain funds from community agencies or other sources for payment of security deposits to landlords or utility companies (except telephone), the LHA may pay the owner and/or the utility companies the funds necessary in an amount not to exceed one month's rent plus utility deposits (excluding telephone). This amount shall be recovered by the LHA from the family over a one-year period.

(p) *Responsibilities of the Owner.* The owner shall be responsible for the complete and total management, maintenance and operation of the housing. These responsibilities shall include but not be limited to the payment of utilities (unless paid directly by the family), insurance and taxes; performance of all ordinary and extraordinary maintenance; performance of all management functions including the taking of applications and selection of families (with the exception of determination and verification of eligibility for the particular dwelling unit involved, which shall be the function of the LHA); collection of rents; risk of loss from vacancies and nonpayment of rent by tenant families; and preparation and furnishing of information required by the LHA under the Contract. This does not preclude the owner from contracting with the LHA for the management of the project under a separate contract, for a prescribed fee, upon a determination by HUD that such services are not otherwise available in the locality, provided, however, that such contract shall not shift to the LHA any of the owner's responsibilities and obligations. Any such contract shall be approved by HUD.

(q) *Responsibilities of the LHA.* The LHA shall be responsible for review of applications submitted by families to determine eligibility for assistance; determination of amounts of housing assistance payments; issuance of Certificates of Family Eligibility to eligible families and approval of Owners' Offers to Lease Dwelling Units and related leases in accordance with the procedures for such actions contained in Part 1274, Subpart B, section 23 Housing Assistance Payments Program—Existing Housing Handbook; making of housing assistance payments on behalf of eligible families; reexamination of family eligibility as prescribed by HUD regulations; inspections prior to leasing and inspections at least annually to determine that the units are maintained in decent, safe, and sanitary condition (failure to do so shall constitute a Substantial Default by the LHA under the Annual Contributions Contract); and authorization of evictions. The LHA may provide advice and guidance to eligible families in finding suitable housing, including advice and guidance to families experiencing discrimination.

(r) *Responsibilities of the Family.* A family receiving housing assistance under this program shall be responsible for fulfilling all its obligations under both the lease with the owner and the Certificate of Family Eligibility issued to it by the LHA.

§ 1276.4 Separate project requirements.

A section 23 substantial rehabilitation project may not include any other type of leasing, shall be processed with a separate Annual Contributions Contract List and a separate Annual Contributions Contract Part I and shall be assigned a separate project number. All section 23 substantial rehabilitation units to be placed under a single Housing Assistance Payments Contract shall comprise a separate project. A single unit under a Housing Assistance Payments Contract shall comprise a separate project. However, HUD may designate as a single project the units to be covered by two or more such Contracts for substantial rehabilitation projects where:

(a) The units are placed under Annual Contributions Contract on the same date; and

(b) Such consolidation is necessary in the interest of administrative efficiency.

§ 1276.5 Allowance for preliminary costs of administration and for security and utility deposits.

An allowance may be provided for preliminary costs of administration incurred by the LHA in conducting surveys, listings and inspections prior to the execution of the Annual Contributions Contract, and for security and utility deposits. An estimate of these costs should be included by the LHA in its first Operating Budget which is to be submitted for approval when the Annual Contributions Contract is executed.

Subpart B—Project Development

§ 1276.101 Preapplication.

The LHA shall determine whether there is a need for housing assistance for low-income families within its operating jurisdiction. If it determines that there is such a need, the LHA shall survey the housing market of the locality to determine whether there is a sufficient supply of units that are suitable or may be made suitable to meet all or part of this need. In determining the adequacy of the housing supply, the LHA shall estimate realistically the number and size (number of bedrooms) of units that may be available, the condition of such units, and the rents at which the units may be leased. In order to receive approval for a section 23 substantial rehabilitation program, the LHA must demonstrate that the conditions of § 1276.3(a) are met.

§ 1276.102 LHA submission of application.

(a) *Submission of Application.* (1) An application for a section 23 substantial rehabilitation program to be submitted by the LHA to HUD shall be in a form prescribed by HUD and shall:

(i) Describe the results of the LHA's survey of the housing market in terms of the number, size (number of bedrooms), condition, and rents of units which may be available;

(ii) Substantiate that there is not, and there is not likely soon to be, an adequate supply of existing housing not requiring rehabilitation which, with housing assistance payments, can meet the housing needs of low-income families;

(iii) Document the need for housing assistance in terms of family incomes, housing conditions, and rent to income ratios;

(iv) Indicate the number of units, by unit size (number of bedrooms), which are to be leased, including a separate indication of the number of units to be leased by elderly families;

(v) Include an estimate of the cost of administration attributable to the proposed project, and provide a basis for such estimate;

(vi) Provide an estimate of the average gross family contribution to be paid by families (not to exceed 25 percent of estimated adjusted family income);

(vii) Indicate whether the LHA intends to meet the unit limitation described in § 1276.3(k)(2);

(viii) Indicate whether the LHA has adopted and implemented an approved tenant selection and assignment plan in compliance with Title VI of the Civil Rights Act of 1964.

(2) The LHA shall submit an Affirmative Marketing Plan with regard to invitations of applications for and issuance of Certificates of Family Eligibility.

(3) HUD regulation, Project Selection Criteria (§ 200.700 of this title), is not applicable; however, see § 1276.107 for required site and neighborhood standards.

(4) Advice and assistance in the preparation of the application are available from HUD.

(b) *Income Limits and Rent Schedules.* (1) LHAs not having previously approved income limits and rent schedules shall submit income limits and rent schedules, in accordance with HUD requirements for approval with their applications for a substantial rehabilitation project.

(2) It is the incomes from families to be housed under the proposed Housing Assistance Payments Program, not the income limits that is more significant in enabling HUD to determine assistance requirements. The LHA shall, therefore, provide accurate estimates of anticipated family income and achievable per unit rents to be paid by the families expected to be assisted. In making this estimate, the LHA shall utilize such information as incomes, after deductions and exemptions, of families on updated, current waiting lists, and rents being paid by tenants in other leased and non-leased units operated by the LHA, as well as incomes of families expected to be housed under the income limits established for the Housing Assistance Payments Program.

§ 1276.103 HUD Review and Approval of Application.

(a) *Review of Application.* HUD shall review the application to determine that: there is need for assistance for the number of units applied for; the necessary conditions for approval of a substantial rehabilitation program are met; the estimate of the cost of administration is realistic and allowable by HUD; the anticipated average gross family contribution is realistic; and the LHA is in compliance with all Equal Opportunity requirements. If deemed appropriate, HUD shall make adjustments in size of program, bedroom distribution, allowance for the cost of administration, or family contribution. Such adjustments shall be accepted by the LHA in order to receive application approval. Where the LHA is found to be in noncompliance with any Equal Opportunity requirements, appropriate action to effectuate compliance shall be taken. In determining whether or not to approve an application, HUD shall give priority to those applications meeting the unit limitation described in § 1276.3(k)(2).

(b) *Approval or Disapproval of Application.* Upon completion of its review, HUD shall notify the LHA by letter that the application is approved, can be approved if the LHA adopts, within 30 days, the changes required by HUD, or is disapproved. If the application is disapproved, the letter shall indicate in detail the reasons for disapproval. If the application is approved, the letter (in the form prescribed by HUD) shall indicate the amount of annual contributions reserved for the program and instruct the LHA to prepare an invitation for proposals to be submitted to HUD for approval.

§ 1276.104 Invitation for Proposals.

(a) *Contents of Invitation for Proposals.* The invitation for proposals shall:

(1) Include the following information as to the housing required:

(i) The neighborhoods in which proposals for substantially rehabilitated housing will be considered, or the type of location desired with reference to physical environment and accessibility to public and commercial facilities;

(ii) The total number of units, the number of units by bedroom size, and any limitation on the number of units which will be assisted in any single structure;

(iii) The number of units for elderly and non-elderly occupancy;

(iv) Structural type (e.g., elevator, apartment, row house, detached);

(2) Include statements as to:

(i) The necessity to comply with all site selection and neighborhood standards set forth in this Part;

(ii) The fact that management, ordinary and extraordinary maintenance, utilities (except where paid directly by tenants), taxes, and insurance are to be the responsibility of the owner;

(iii) Maximum gross rents (including all utilities, ranges and refrigerators), by number of bedrooms per unit, that the LHA will consider, and a statement to the effect that, if families are to pay directly for some or all utilities, the maximum rents will be adjusted downward by a utility allowance covering such utilities;

(iv) The fact that the LHA shall be responsible only for its portion of the rent payable to the owner and only for

those units under lease by eligible families.

(v) The fact that detailed guidelines, standards, and procedures are contained in a Rehabilitation Program Packet which may be obtained by interested parties from the LHA;

(vi) The number of copies of the proposal to be submitted to the LHA and HUD;

(vii) The latest date by which proposals must be received by the LHA and HUD and the fact that there exists no obligation to select any of the proposals received.

(b) *Rehabilitation Program Packet.* HUD shall prepare a Packet for use by the LHA containing copies of the following:

(1) The HUD section 23 Substantial Rehabilitation Handbook;

(2) "Minimum Design Standards for Rehabilitation for Residential Properties" (HUD Handbook 4940.4), supplemented, where appropriate, by the Minimum Property Standards (MPS) for Multifamily Housing (FHA 2600), MPS for One and Two Living Units (FHA 300), and MPS for Elderly with Special Consideration for the Handicapped (HUD-PG-46). (These standards specify minimum acceptability and constitute a floor for design and planning. They do not prohibit utilizing higher standards. Proposed rehabilitation should also comply with special requirements due to local climatic, topographic or environmental conditions.);

(3) Where applicable, HUD planning and design criteria for accessibility by the physically handicapped:

(4) Relocation requirements set forth in appropriate HUD issuances;

(5) Equal Opportunity requirements, which include the submission of an Affirmative Marketing Plan, and compliance with Title VI of the Civil Rights Act of 1964 and Executive Order 11063, Title VIII of the Civil Rights Act of 1968, including regulations and guidelines pursuant thereto, and Executive Order 11246;

(6) HUD regulations implementing the requirements of section 3 of the Housing and Urban Development Act of 1968 that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project to be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project. These regulations require submission of an affirmative action plan for utilization of project area businesses;

(7) National Environmental Policy Act requirements as set forth in appropriate HUD issuances;

(8) The prescribed form of Agreement to Enter Into Housing Assistance Payments Contract and the prescribed form of such Contract (see Appendices III and IV, respectively).

(c) *Authorization to Publish.* HUD shall review the invitation to determine that it is consistent with the requirements of this part and the information provided by the LHA in its application. After approving the invitation, HUD shall transmit (1) a letter to the LHA indicating approval of the invitation and authorizing its publication immediately upon recept of such letter, and (2) copies of all HUD standards, regulations and forms which are to be included in Rehabilitation Program Packets.

(d) *Publication of Invitation for Proposals.* The LHA shall publish the invitation for proposals at least weekly for two consecutive weeks in a newspaper of general circulation within the locality. The LHA shall also notify the appropriate business concerns included in HUD's registry of section 3 businesses for the applicable political jurisdiction. To the extent feasible, the LHA should also use other media and publish the invitation in trade association journals and local minority group newspapers.

(e) *Deadline Date for Receipt of Proposals.* The deadline date for receipt of proposals by the LHA shall be no earlier than 28 days after the date of the last publication in the newspaper of general circulation.

(f) *Copies of Published Invitation.* Prior to the deadline date for receipt of proposals, the LHA shall provide HUD with two certified copies of each published invitation and a statement of other publicity methods used. One copy of the invitation shall be available in the LHA's office for public inspection.

(g) *Nondisclosure of information.* In order to provide all interested parties with an equal opportunity to prepare proposals, the contents of the invitation for proposals shall not be disclosed prior to publication.

§ 1276.105 Submission of Proposals.

(a) Owners shall be required to submit sealed copies of their complete proposals to the LHA, before the published deadline, and simultaneously submit copies to HUD, in the number of copies specified in the invitation for proposals. Proposal documents shall be sealed in an envelope or package which shall be clearly marked with a label contained in the Rehabilitation Program Packet. The label shall be clearly and distinctively marked "Section 23 Housing Assistance Payments Program—Substantial Rehabilitation Proposal," shall show the name of the LHA and project designation, and shall be addressed to the LHA or HUD, respectively. The label on the inner envelope shall be marked "Sealed Proposal—Open on (date and time)."

(b) Submission of proposals shall be by hand delivery or certified mail. Any proposal received by the LHA after the deadline shall not be accepted by the LHA but shall be returned unopened. No proposal shall be opened by the LHA or HUD until after the deadline. To assure that HUD has received copies of all proposals, the LHA shall advise HUD by letter immediately after the deadline for receipt of proposals as to the number of proposals received and the names of the proposers. This letter shall provide no comments as to evaluation or preference.

§ 1276.106 Proposal Contents.

(a) Each proposal shall include the following:

(1) The number of units, by unit size (number of bedrooms), proposed to be rehabilitated and made available for leasing by eligible families;

(2) The address(es) of the housing proposed to be rehabilitated and photos of exterior(s) and interior(s);

(3) A map showing the location of the housing;

(4) Sketches showing present layout and interior dimensions of the unit or of the different unit sizes, and, if changes are proposed, floor plans showing layout and interior dimensions after rehabilitation;

(5) A description of the rehabilitation proposed, in sufficient detail, including plans, drawings and specifications to the extent necessary, so that a determination can be made by the LHA and HUD that the proposal meets the requirements of the invitation for proposals, including the Rehabilitation Program Packet, and will provide sufficient basis for a subsequent determination by the LHA and HUD that the rehabilitated housing will meet such requirements; and if this requires the services of a registered architect, such architect shall certify that the plans, drawings and specifications will result in rehabilitated housing in conformance with said requirements;

(6) The anticipated date for completion of the rehabilitation;

(7) The gross rents required by unit size, the portion of such rents attributable to each utility, and which utilities, if any, are to be paid directly by the families;

(8) A copy of evidence of ownership or other effective control of the property to be rehabilitated;

(9) A completed HUD environmental information form;

(10) A statement as to whether the proposed project is expected to displace site occupants and, if so, the number of families, individuals, and business concerns to be displaced (identified by race or minority).

(b) In addition, each proposal shall indicate or include:

(1) Who the rehabilitator/prime contractor and the owner (lessor) will be; the qualifications and experience of each; and the names of officials and principal members, shareholders and investors, and other parties having substantial interest, using prescribed HUD forms;

(2) Evidence of management capability;

(3) That the proposed rehabilitation would be permissible under applicable zoning, building, housing or other codes;

(4) Submission of an Affirmative Marketing Plan, signed assurances of compliance with Title VI of the Civil Rights Act of 1964, Executive Order 11063, and Title VIII of the Civil Rights Act of 1968 and, in bid condition areas, certifications required pursuant to Executive Order 11246;

(5) Submission of an affirmative action plan for utilization of project area businesses pursuant to section 3 of the Housing and Urban Development Act of 1968, and regulations issued pursuant thereto;

(6) A statement that the owner and/or rehabilitator recognizes the relocation requirements that apply if the proposed project will cause displacement and will assume full responsibility for the funding of all costs incurred in providing to displaced persons the full relocation payments and services authorized by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

§ 1276.107 Site and Neighborhood Standards.

(a) Proposed locations for substantially rehabilitated housing must be approved by HUD as meeting the following standards:

(1) The sites and neighborhoods shall be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 (and of Executive Order 11063 with respect to creed), and HUD regulations issued pursuant thereto.

(2) The site shall be free from adverse environmental conditions or, if such conditions exist, there is evidence that they will be corrected by the time of completion of the rehabilitation.

(b) The housing shall be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unsubsidized, standard rental housing of similar market rents.

(c) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower income workers, is not excessive.

(d) If the housing to be rehabilitated has occupants, the owner and/or rehabilitator of the housing must voluntarily undertake liability for and provide for the funding of all relocation costs. (See section 6 of the Agreement.)

§ 1276.108 Evaluation of Proposals.

(a) Each proposal received shall be evaluated on the basis of all pertinent factors including, but not limited to: location, potential for rehabilitation, rents to owner, owner and rehabilitator/contractor qualifications, and compliance with Equal Opportunity requirements, requirements for provision of employment and training and business opportunities in the project area, and the National Environmental Policy Act.

(b) HUD will provide the LHA with an analysis of each proposal received which will indicate the proposal or proposals found approvable.

(c) The HUD analysis of all proposals shall be held available for public inspection in the LHA office for at least three years following the notification of proposal selection.

§ 1276.109 Notification of Selection.

The LHA shall review the HUD analyses, and may only select a proposal or proposals from among those found approvable by HUD. The LHA shall notify the owner(s) of his (their) selection using the prescribed form of letter (Notification of Selection) attached hereto as Appendix I. Upon acceptance of the Notification by the Owner, the LHA shall immediately transmit a copy to HUD together with a copy of the LHA resolution selecting the proposal. If the owner does not accept the Notification by the date specified the LHA may rescind the Notification.

§ 1276.110 Execution of Annual Contributions Contract and Agreement.

After receipt of a copy of the accepted Notification, HUD shall prepare (a) The Annual Contributions Contract which shall conform to the prescribed form shown as Appendix II of this part, and (b) The Agreement, which shall conform to the prescribed form shown as Appendix III of this part. The Annual Contributions Contract shall be transmitted by HUD to the LHA for execution and return to HUD. After receipt of the executed Annual Contributions Contract from the LHA, HUD shall execute it and transmit the Agreement to the LHA for execution by the LHA and the owner. A copy of the executed Agreement shall be sent to HUD by the LHA.

§ 1276.111 Agreement To Enter Into Housing Assistance Payments Contract.

As prescribed in Appendix III, the Agreement shall include, but not be limited to, the following:

(a) A description of the property and the rehabilitation to be accomplished;

(b) An attachment of the proposed Contract, complete in all respects except for execution, which shall specify the amount of rent to owner, and shall conform to the prescribed form shown as Appendix I:

(c) Rehabilitation initiation and completion dates;

(d) How completion of the rehabilitation shall be evidenced (see § 2276.111 (a));

(e) A provision that the owner may not:

(1) Make any sale, assignment, or conveyance or transfer in any other form of his interests in the Agreement except:

(a) With the prior consent of the LHA and HUD; or

(b) To a financial institution for the purpose of obtaining financing;

(2) Change to a different rehabilitator/contractor from the one named in the Agreement without prior consent of the LHA and HUD;

(f) A provision that the owner shall comply with relocation requirements as set forth in applicable HUD issuances, HUD Equal Opportunity (including equal employment opportunity) requirements, and the requirements of section 3 of the Housing and Urban Development Act of 1968 and regulations issued pursuant thereto in regard to providing opportunities for training and employment to lower income residents of the project area and in regard to awarding contracts to business concerns located in, or owned in substantial part by residents of, the project area.

§ 1276.112 Completion of Rehabilitation.

(a) *Evidence of Completion.* Completion of the rehabilitation shall be evidenced by the following, which must be furnished to the LHA:

(1) A certificate of occupancy and/or other official approvals necessary for occupancy;

(2) Separate certifications by a registered architect[1] and the owner that:

(i) There are no defects or deficiencies in the project;

(ii) All work has been completed in accordance with the requirements of the Agreement; and

(iii) The project is in good and tenantable condition.

(b) *HUD Inspection.* (1) The LHA shall notify HUD when the project is completed. Upon receipt of such notification, HUD shall inspect the project and the evidence of completion listed in paragraph (a) of this section. HUD shall make a written determination as to whether or not the project has been satisfactorily completed. If the determination is in the affirmative, HUD will authorize the execution of the Contract. If the LHA or the owner disagrees with the HUD determination, the matter may be appealed to the Secretary of Housing and Urban Development as if it were a dispute under section 9b of the Agreement.

(2) If the owner, after furnishing the LHA with all the items in paragraph (a) of this section, believes that the LHA has unreasonably withheld or delayed notification to HUD of project completion, the owner may make a written request to HUD to determine if the project is completed and take action as provided in paragraph b(1) of this section.

§ 1276.113 HUD Review of Contract Compliance.

No later than six months after execution of the Housing Assistance Payments Contract for the project, HUD shall review project operations to ensure that the owner and the LHA are in full compliance with the terms and conditions of the Contract. Subsequent reviews shall be scheduled as necessary.

APPENDIX I—NOTIFICATION OF SELECTION

Date: _____

Gentlemen: This will notify you of selection of your proposal, dated _____, to provide _____[1] units of substanti-

[1] If working drawings and specifications were prepared and certified to by a registered architect, the same architect shall furnish the certification required in this paragraph.

[1] Insert total number of units to be substantially rehabilitated.

ally rehabilitated housing at _____[1], of which _____[2] units are to be the subject of a contract by this Authority for the making of housing assistance payments on behalf of eligible low-income families leasing such units. The number, size and rents of units to be contracted for are as follows:

Unit size (number of bedrooms)	Number of units		Rents
	Total	Elderly	

This selection has been approved by the Department of Housing and Urban Development (HUD) and this Authority.

Should you decide to proceed with this undertaking, you will be expected to complete the rehabilitation, in a manner acceptable to this Authority and HUD, in compliance with: (a) The requirements of the invitation for proposals published by this Authority, the Rehabilitation Program Packet, and your proposal; (b) all applicable State and local laws, codes, ordinances, and regulations as modified by any waivers obtained from the appropriate officials; and (c) the appropriate HUD Minimum Property Standards and the applicable HUD planning and design criteria.

If you accept this Notification, an Annual Contributions Contract will be executed by this Authority and HUD. Following such execution, an "Agreement to Enter Into Housing Assistance Payments Contract" (Agreement) will be executed by you and this Authority, which Agreement shall be in accordance with the form of Agreement attached hereto.

Your acceptance of this Notification constitutes a certification and agreement that there will not be made any assignment, conveyance, or any other form of transfer of the property, or any interest therein, without the prior written consent of the Authority and HUD, except to a financial institution for the purpose of obtaining financing, nor shall an owner and/or rehabilitator other than those named in the proposal be substituted without the written consent of the Authority and HUD.

Please indicate your acceptance of this Notification by signing in the space provided and returning two copies to this office within ten days of the date of this Notification. Failure to submit your acceptance within this time period may result in withdrawal of this Notification.

Yours truly,

_____
Housing Authority

By _____

Accepted: _____

_____
Title

_____
Date

APPENDIX II—ANNUAL CONTRIBUTIONS CONTRACT

This Contract is entered into as of the _____day of_____, 19__, by and between the United States of America (herein called the "Government"), pursuant to the United States Housing Act of 1937 (42 U.S.C. 1401, et seq., which Act as amended to the date of this Contract is herein called the "Act") and the Department of Housing and Urban Development Act (42 U.S.C. 3521), and _____(herein called the "Local Authority"), which is organized and existing under the laws of the State of _____ and is a "public housing agency" as defined in the Act. In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

0.1 *Project or Projects.* The Local Authority is undertaking to provide decent, safe, and sanitary housing for families of low income (further defined as "Family" or "Families" in section 2.2) in privately owned accommodations pursuant to section 23 of the Act by means of Housing Assistance Payments Contracts ("Contracts") with the persons or entities having the legal right to lease or sublease such housing ("Owners"). Such undertaking may involve an agreement for the use of housing to be constructed ("New Construction"), an agreement for the use of existing housing to be substantially rehabilitated ("Substantial Rehabilitation"), or the use of existing housing without substantial rehabilitation ("Existing Housing"). In each instance, the type of housing and the number and sizes of dwelling units with respect to which a certain maximum Annual Contributions commitment is made, shall constitute a Project hereunder and shall be identified by a stated Project Number.

0.2 *Part I and Part II of this Contract.* (a) Certain provisions of this Contract, principally those which are specifically applicable to a designated Project, are contained in Part I. Separate forms of Part I are used for different types of Projects (i.e., New Construction, Substantial Rehabilitation, and Existing Housing). A separate Part I, on the applicable form thereof, has been executed with respect to each Project hereunder, and each such Part I, so executed, constitutes a part of this Contract.

(b) The remaining provisions of this Contract, which are applicable to all Projects hereunder, are contained in Part II, which, although not separately executed, constitutes a part of this Contract.

0.3 *Fiscal Year.* Except for the first Fiscal Year of each Project, there shall be one Fiscal Year for all Projects hereunder. Such established Fiscal Year shall be the 12-month period ending _____ of each calendar year. The first Fiscal Year for each Project shall be as provided in the Part I applicable to such Project.

Local Authority, by:

_____

The Government, by:

_____

PART I

SUBSTANTIAL REHABILITATION PROJECT NO. ———

1.1 *The Project.* The Local Authority proposes to enter into a Housing Assistance Payments Contract ("Contract") with respect to substantially rehabilitated dwelling units pursuant to an agreement to enter into such Contract ("Agreement") executed prior to the commencement of such rehabilitation. It is contemplated that the numbers and sizes of units will be as follows:

Size of Unit	Number of Units

The Local Authority shall, to the maximum extent feasible, enter into an Agreement and Contract in accordance with the numbers and sizes of units specified above, but the Local Authority shall not enter into any Agreement or Contract or take any other action which will result in a claim for a total Annual Contribution in respect to the Project in excess of the maximum amount stated in section 1.3(b).

1.2 *Authorization of Actions by Local Authority.*

(a) In order to carry out the Project, the Local Authority is authorized to (i) enter into an Agreement, (ii) enter into a Contract, (iii) make housing assistance payments on behalf of Families, and (iv) take all other necessary actions, all in accordance with the forms, conditions, and requirements prescribed or approved by the Government; Provided, however, that neither the Local Authority nor the Government shall assume any obligation beyond that provided in the Government-prescribed form of Agreement and in the Contract approved by the Government.

(b) The Contract shall bear the written approval of the Government.

(c) The Contract shall be for an initial term of not more than five years with provision for renewal for subsequent terms of not more than five years each, but in no event shall the term of any such Contract exceed 15 years.

(d) The Contract may provide for periodic adjustments in the rents chargeable by the Owner; Provided, however, that any such provision shall specify that such adjustments are subject to the following clause:

Limitation. The LHA will make housing assistance payments in increased amounts commensurate with upward rent adjustments under this Section, but only to the extent possible within the limits of the maximum total amount of Annual Contributions payable under the Annual Contributions Contract in respect to the Project. No commitment is made by the LHA or the Government that the maximum total amount of Annual Contributions payable in respect to the Project, as specified in Part I of said Contract, will be increased by reason of any such rent adjustments. Accordingly, to enable the Owner to receive sufficient income from rents, the Owner shall have the right to select, and the LHA shall be obligated to approve as promptly as possible, Families whose average rent payments will result in receipts commensurate with the adjusted rents.

1.3 *Annual Contributions.* (a) Subject to the maximum dollar limitation in paragraph (b) of this Section and the other provisions of this Contract, the Government shall pay Annual Contributions to the Local Authority in respect to the Project in an amount equal to the sum of the following:

(1) The amount of housing assistance payments payable during the Fiscal Year (see section 1.4) by the Local Authority pursuant to the Contract, as authorized in section 1.2.

(2) The allowance, in the amount approved by the Government for preliminary costs of administration and for security and utility deposits.

(3) The allowance for the cost of administration, in the amount approved by the Government.

(b) Notwithstanding any other provisions of this Contract or any provisions of any other Contract between the Government and the Local Authority, the Government shall not be obligated to make any Annual Contributions or any other payment in respect to the Project in excess of $_____.

(c) The Government will make periodic payments on account of the Annual Contributions upon requisition therefor by the Local Authority in the form prescribed by the Government. Following the end of each Fiscal Year, the Local Authority shall promptly pay to the Government, unless other disposition is approved by the Government, the amount, if any, by which the total amount of periodic payments during the Fiscal Year exceeds the total amount of the Annual Contributions for such Fiscal Year

[1] Insert location of units. If units are to be rehabilitated and leased at more than one location, all such locations should be listed and the units and rent summaries prepared for each such location. If any unit(s) is (are) to be covered by a separate Housing Assistance Payments Contract, such unit(s) and rent summaries with respect thereto, shall be listed separately. (See § 1276.4).

[2] Insert number of units to be assisted by the LHA on behalf of eligible low-income families occupying such units.

computed in accordance with paragraph (a) of this Section.

1.4 *Fiscal Year.* The Fiscal Year for the Project shall be the Fiscal Year established by section 0.3 of this Contract; Provided, however, that the first Fiscal Year for the Project shall be the period beginning with the commencement of leasing (i.e., the first day of the month in which the first unit is leased by an eligible Family) and ending on the last day of said established Fiscal Year which is not less than 12 months after commencement of such leasing. If the first Fiscal Year exceeds 12 months, the maximum Annual Contribution in Section 1.3(b) may be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

1.5 *Term of this Contract.* This Contract shall remain in effect so long as the Housing Payments Contract is in effect; Provided, however, that not more than 15 Annual Contributions shall be payable with respect to the Project.

1.6 *Federal and Local Government Approvals.*

(a) The making of this Contract and the undertaking by the Government of the Annual Contributions as herein provided has been duly approved on List No. ------ for Annual Contributions Contracts.

(b) The Governing Body of the locality in which the dwelling units are to be located has approved the application of Section 23 of the Act to the locality, by resolution or ordinance duly adopted on ----------, 19--.

1.7 *Separate Accounts and Records.* The books of account and records of the Local Authority shall be maintained for the Project as separate and distinct from all other Projects and undertakings of the Local Authority.

1.8 *Affirmative Fair Housing Marketing Regulation.* The Local Authority shall require the Owner to comply with the Affirmative Fair Housing Marketing Regulation, including the submission for Government approval of an Affirmative Marketing Plan and compliance with such approved Plan, as if the Owner were expressly subject to such Regulation.

1.9 *Equal Employment Opportunity.* (a) The Local Authority shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is to be performed pursuant to this Contract, the following Equal Opportunity clause:

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Local Authority setting forth the provisions of this Equal Opportunity clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Local Authority advising the said labor union or workers' representative of the contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Government and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) The Local Authority agrees that it will assist and cooperate actively with the Government and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Government and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the Government in the discharge of the Government's primary responsibility for securing compliance.

(c) The Local Authority further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the Government or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

1.10 *Expeditious Carrying Out of Project.* The Local Authority shall proceed expeditiously with the Project. If the Local Authority fails to proceed expeditiously, and no Agreement with the Owner has yet been entered into, the Government, by notice to the Local Authority, may terminate or reduce its obligation hereunder with respect to the Project. If an Agreement has been entered into, and the Local Authority or the Owner is not proceeding expeditiously with the Project, the Government will take appropriate action, including the Governmental action provided for in the Agreement.

1.11 *Failure of Local Authority to Comply with Contract.* (a) In the event of failure of the Local Authority to comply with the Contract with the Owner, or if such Contract is held to be void, voidable or ultra vires, or if the power or right of the Local Authority to enter into such Contract is drawn into question in any legal proceeding, or if the Local Authority asserts or claims that such Contract is not binding upon the Local Authority for any such reason, the occurrence of any such event, if the Owner is not in default, shall constitute a Substantial Default hereunder. In such case, the Government will assume the Local Authority's rights and obligations under such Contract, and the Government shall, for the duration of such Contract, continue to pay Annual Contributions for the purpose of making housing assistance payments with respect to dwelling units under such Contract, shall perform the obligations and enforce the rights of the Local Authority, and shall exercise such other powers as the Government may have to cure the Default.

(b) All rights and obligations of the Local Authority assumed by the Government will be returned as constituted at the time of such return (i) when the Government is satisfied that all defaults have been cured and that the Contract will thereafter be administered in accordance with its terms and the terms of this Annual Contributions Contract, or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

(c) The provisions of this section 1.11 are made with, and for the benefit of, the Owner or his assignees who will have been specifically approved by the Government prior to such assignment. To enforce the performance of this provision the Owner and such assignees, as well as the Local Authority, shall have the right to proceed against the Government by suit at law or in equity.

PART II

2.1. *Low-Income Housing Use.* The Local Authority shall use the Annual Contributions solely for the purpose of providing decent, safe, and sanitary dwellings for families of low income, hereinafter further defined as "Families."

2.2. *Definitions*—(a) *Families; Elderly Families; and Displaced Families.*

(1) The term "Families" means families of low income, includes Families consisting of a single person in the case of Elderly Families and Displaced Families, and includes the remaining member of a tenant Family.

(2) The term "Elderly Families" means Families whose heads (or their spouses), or whose sole members, have attained the age at which an individual may elect to receive an old-age benefit under Title II of the

Social Security Act (42 U.S.C. 301, et seq.); or are under a disability as defined in section 223 of that Act, or are handicapped within the meaning of section 202 (12 U.S.C. 1701q) of the Housing Act of 1959, as amended.

(3) The term "Displaced Families" means Families displaced by urban renewal or other governmental action, or Families whose present or former dwellings are situated in areas as determined by the Government to have been affected by a natural disaster, and which have been extensively damaged or destroyed as the result of such disaster.

(b) *Project Receipts and Project Expenditures.* (1) "Project Receipts" with respect to each Project shall mean the Annual Contributions payable hereunder and all other receipts, if any, accruing to the Local Authority from, out of, or in connection with such Project.

(2) "Project Expenditures" with respect to each Project shall mean all costs allowable under section 1.3, Part I of this Contract with respect to such Project.

(c) *Substantial Default.* For the purpose of this Contract a Substantial Default is defined to be the occurrence of any of the following events:

(1) If the Local Authority shall default in the observance or performance of the provisions of section 2.7; or

(2) If the Local Authority shall default in the observance or performance of the provisions of any Housing Assistance Payments Contract; or

(3) If the Local Authority shall fail or refuse to honor any duly issued Certificate of Family Eligibility in accordance with its terms; or

(4) Failure of the Local Authority to comply with the requirements of sections 2.8, 2.9, 2.10, or 2.11; or

(5) If there is any default by the Local Authority in the performance or observance of any term, covenant, or condition of this Contract other than the defaults enumerated in subsections (1) through (4) of this paragraph (c) and if such default has not been remedied within a reasonable time, not to exceed thirty days, after the Government has notified the Local Authority thereof.

2.3. *Maximum Income Limits and Rents.* (a) Subject to the approval of the Government, the Local Authority shall fix income limits for eligibility and rents after taking into consideration:

(1) The Family size, composition, age, physical handicaps, and other factors which might affect the rent-paying ability of the family, and

(2) The economic factors which affect the financial stability and solvency of the Projects.

(b) Income limits shall restrict eligibility to Families (as defined in section 2.2) and shall assure the financial solvency of the Projects. Income limits and rents as fixed by the Local Authority shall meet the requirements of applicable local law.

(c) The Local Authority shall submit to the Government for its approval a schedule or schedules of income limits and rents, together with such supporting data and documents as the Government may require.

(d) The Local Authority may at any time review and revise such schedules, and shall review and revise such schedules if the Government determines that changed conditions in the locality make such revisions necessary in achieving the purposes of the Act.

2.4. *Admission Policies.* (a) The Local Authority shall duly adopt and promulgate, by publication or posting in a conspicuous place for examination by prospective tenants, regulations establishing its policies for the issuance of Certificates of Family Eligibility. Such regulations must be reasonable and give full consideration to its public responsibility for rehousing Displaced Families, to the applicant's status as a serviceman or veteran or relationship to a serviceman or veteran or to a disabled serviceman or veteran and to the applicant's age or disability, housing conditions, urgency of housing need, and source of income, and shall accord to Families consisting of two or more persons such priority over Families consisting of single persons as the Local Authority determines to be necessary to avoid undue hardship.

(b) The Local Authority shall promptly notify any applicant determined to be ineligible for housing assistance payments of the basis for such determination and provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination. Any applicant determined to be eligible for housing assistance payments shall be given a Certificate of Family Eligibility or shall be notified of the date when such Certificate will be issued, insofar as such date can be reasonably determined.

2.5. *Continued Eligibility.* (a) The Local Authority shall periodically reexamine the incomes of Families for whom housing assistance payments are being made; Provided, however, that the length of time between the issuance of a Certificate of Family Eligibility to a Family subject to yearly reexamination and the first reexamination of such Family may be extended by not more than six months if necessary to fit a reexamination schedule established by the Local Authority.

(b) If, upon such reexamination, it is found that Family income or composition has changed, the portion of rent payable by the Family and the amount of housing assistance payment shall be adjusted accordingly.

(c) If, upon such reexamination, it is found that the income of a Family increased beyond the approved income limits for the Project, housing assistance payments for such Family shall terminate.

2.6 *Applications and Certifications.* (a) Prior to the issuance of a Certificate of Family Eligibility to each Family and thereafter on the date established by the Local Authority for each examination of the status of such Family, the Local Authority shall obtain a written application, signed by a responsible member of such Family, which application shall set forth all data and information necessary to enable the Local Authority to determine whether the Family meets the conditions of eligibility for housing assistance payments.

(b) The Local Authority shall establish policies governing the nature and extent of investigations to be made of applicants' and tenants' statements relating to their eligibility.

(c) A duly authorized official of the Local Authority shall, at times prescribed by the Government, make written certifications to the Government that each Certificate of Family Eligibility issued during the period covered by the certification was issued in accordance with its duly adopted regulations and approved income limits.

2.7. *Maintenance and Inspections.* (a) The Local Authority shall require as a condition for the making of housing assistance payments, that the Owner at all times maintain the Project in decent, safe, and sanitary condition.

(b) The Local Authority shall make inspections of dwelling units prior to commencement of occupancy by Families, and of grounds, facilities, and areas for their benefit and use, and shall make subsequent inspections, adequate to assure that decent, safe, and sanitary housing accommodations are being provided.

2.8. *Nondiscrimination in Housing.* (a) The Local Authority shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, § 1.1, et seq.; the requirements of said Department pursuant to said regulations; and Executive Order 11063 to the end that, in accordance with that Act and the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the ground of race, color, creed, religion, or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program or be otherwise subjected to discrimination. The Local Authority shall, by contractual requirement, covenant, or other binding commitment, assure the same compliance on the part of any subgrantee, contractor, subcontractor, transferee, successor in interest, or other participant in the program or activity, such commitment to include the following clause:

This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part 1, § 1.1, et seq.; issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the [contractor or other] to comply therewith inures to the benefit of the United States, the said Department and the Local Authority any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by the [contractor or other.]

(b) The Local Authority shall not, on account of creed or sex, discriminate in the sale, leasing, rental, or other disposition of housing or related facilities (including land) included in any Project or in the use or occupancy thereof, nor deny to any family the opportunity to apply for such housing, nor deny to any eligible applicant the opportunity to lease or rent any dwelling in any such housing suitable to its needs. In determining the eligibility of any family for admission, no family shall be automatically excluded because of membership in a class such as unmarried mothers or families having police records or poor rent-paying habits, etc.

2.9. *Affirmative Fair Housing Market Regulation.* In connection with invitations of applications for and issuance of Certificates of Family Eligibility, the Local Authority shall comply with the Affirmative Fair Housing Marketing Regulations, including the submission for Government approval of an Affirmative Marketing Plan and compliance with such approved Plan, as if the Local Authority were expressly subject to said Regulation.

2.10. *Equal Employment Opportunity.* The Local Authority shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The Local Authority shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, creed, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

2.11. *Employment of Project Area Residents and Contractors.* The Local Authority shall comply and shall require each of its contractors and subcontractors employed in the performance of this Contract to comply with

section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations and requirements of the Government thereunder, requiring that to the greatest extent feasible opportunities for training and employment be given lower income residents of the Project area and that contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.

2.12. *Insurance and Fidelity Bond Coverage.* (a) For purposes of protection against hazards arising out of or in connection with the administrative activities of the Local Authority in carrying out the Project, the Local Authority shall carry adequate (1) comprehensive general liability insurance, (2) workmen's compensation coverage (statutory or voluntary), and (3) automobile liability insurance against property damage and bodily injury (owned and non-owned).

(b) The Local Authority shall obtain or provide for the obtaining of adequate fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

(c) Each insurance policy or bond shall be written to become effective at the time the Local Authority becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Local authority is subject to such risk or hazard. Such insurance and bonds shall (1) be payable in such manner, (2) be in such form, and (3) be for such amounts, all as may be determined by the Local Authority and approved by the Government, and shall be obtained from financially sound and responsible insurance companies.

(d) In connection with each policy, including renewals, for comprehensive general liability insurance the Local Authority shall give full opportunity for open and competitive bidding. The Local Authority shall give such publicity to advertisements for bids as will assure adequate competition and shall afford an opportunity to bid to all insurers who have indicated in writing to the Local Authority their desire to submit a bid and who are licensed to do business in the State. Such insurance shall be awarded to the lowest responsible bidder. The lowest bid shall be determined upon the basis of net cost to the Local Authority. Net cost, for the purposes of this subsection (d), shall mean the gross deposit premium, plus the cost of insurance against the hazards, if any, of assessments, less any anticipated dividend based on the dividend payment and assessment record of the insurer for the previous ten years. Nothing in this subsection (d) shall have the effect of requiring the Local Authority to purchase insurance from any insurer not licensed to do business in the State or to purchase insurance which involves any hazard of assessment unless insurance against such hazard is available.

(e) The Local Authority shall require that each liability insurance policy prohibit the insurer from defending any tort claim on the ground of immunity of the Local Authority from suit.

(f) The Local Authority shall submit certified duplicate copies of all insurance policies and bonds to the Government not less than forty-five days before the effective date thereof for review to determine compliance with this Contract. Unless disapproved by the Government within thirty days of the date submitted, the policies and bonds submitted shall be considered as approved by the Government.

(g) If the Local Authority shall fail at any time to obtain and maintain insurance as required by subsections (a), (b), (c), and (d) of this section 2.12, the Government may obtain such insurance on behalf of the Local Authority and the Local Authority shall promptly reimburse the Government for the cost thereof together with interest at the then going Federal rate as determined pursuant to section 2(10) of the Act.

2.13. *Procurement.* In the purchasing of equipment, materials, and supplies, and in the award of contracts for services, the Local Authority shall comply with all applicable State and local laws, and in any event shall make such purchases and award such contracts only to the lowest responsible bidder after advertising a sufficient time previously for proposals, except:

(a) When the amount involved in any one case does not exceed $2,500; or

(b) When the public exigencies require the immediate delivery of the articles or performance of the service; or

(c) When only one source of supply is available and the purchasing or contracting officer of the Local Authority shall so certify; or

(d) When the services required are (1) of a technical and professional nature, or (2) to be performed under Local Authority supervision and paid for on a time basis.

2.14. *Personnel.* (a) The Local Authority shall adopt and comply with a statement of personnel policies comparable with pertinent local public practice. Such statement shall cover job titles and classifications, salary and wage rates for employees, weekly hours of work, qualification standards, leave regulations, and payment of expenses of employees in travel status.

(b) The Local Authority may charge contributions for participation in a retirement plan for its employees to Project Expenditures where such plan has been approved by the Government or is required by law.

(c) The Local Authority shall maintain complete records with respect to employee's leave, authorizations of overtime and official travel, and vouchers supporting reimbursement of travel expense.

(d) No funds of any Project may be used to pay any compensation for the services of members of the Local Authority.

2.15 *Books of Account and Records; Reports; Audits.* (a) The Local Authority shall maintain complete and accurate books of account and records, as may be prescribed from time to time by the Government, in connection with the Projects, including records which permit a speedy and effective audit, and will among other things fully disclose the amount and the disposition by the Local Authority of the Annual Contributions and other Project Receipts, if any.

(b) The Local Authority shall furnish the Government such financial, operating, and statistical reports, records, statements, and documents at such times, in such form, and accompanied by such supporting data, all as may reasonably be required from time to time by the Government.

(c) The Government and the Comptroller General of the United States, or his duly authorized representatives, shall have full and free access to the Projects and to all the books, documents, papers, and records of the Local Authority that are pertinent to its operations with respect to financial assistance under the Act, including the right to audit, and to make excerpts and transcripts from such books and records.

(d) The Local Authority shall not charge as a Project Expenditure the cost or expense of any audit with respect to any Project for any Fiscal Year unless (1) the Government has approved such audit, or (2) such audit is required by law, or (3) the Government has failed to furnish the Local Authority with a report of its fiscal audit of the Local Authority's books of account for such Fiscal Year within six months after the end thereof and, subsequent to a notice by the Local Authority of such failure, the Government has failed to submit its report of such audit within three months after receipt of such notice.

2.16. *General Depositary Agreement and General Fund.* (a) Promptly after the execution of this Contract, the Local Authority shall enter into, and thereafter maintain, one or more agreements, which are herein collectvely called the "General Depositary Agreement," in form prescribed by the Government, with one or more banks (each of which shall be, and continue to be, a member of the Federal Deposit Insurance Corporation) selected as depositary by the Local Authority. Immediately upon the execution of any General Depositary Agreement, the Local Authority shall furnish to the Government such executed or conformed copies thereof as the Government may require. No such General Depositary Agreement shall be terminated except after thirty days notice to the Government.

(b) All monies received by or held for account of the Local Authority in connection with the Projects shall constitute the General Fund.

(c) The Local Authority shall, except as otherwise provided in this Contract, deposit promptly with such bank or banks, under the terms of the General Depositary Agreement, all monies constituting the General Fund.

(d) The Local Authority may withdraw monies from the General Fund only for (1) the payment of Project Expenditures, and (2) other purposes specifically approved by the Government. No withdrawals shall be made except in accordance with a voucher or vouchers then on file in the office of the Local Authority stating in proper detail the purpose for which such withdrawal is made.

(e) If the Local Authority (1) in the determination of the Government, is in Substantial Default, or (2) makes or has made any fraudulent or willful misrepresentation of any material fact in any of the documents or data submitted to the Government pursuant to this Contract or in any document or data submitted to the Government as a basis for this Contract or as an inducement to the Government to enter into this Contract, the Government shall have the right to require any bank or other depositary which holds any monies of the General Fund, to refuse to permit any withdrawals of such monies; *Provided, however,* That upon the curing of such Default the Government shall promptly rescind such requirement.

2.17. *Pooling of Funds under Special Conditions and Revolving Fund.* (a) The Local Authority may deposit under the terms of the General Depositary Agreement monies received or held by the Local Authority in connection with any other housing project developed or operated by the Local Authority pursuant to the provisions of any contract for annual contributions, administration, or lease between the Local Authority and the Government.

(b) The Local Authority may also deposit under the terms of the General Depositary Agreement amounts necessary for current expenditures of any other project or enterprise of the Local Authority, including any project or enterprise in which the Government has no financial interest; *Provided, however,* That such deposits shall be lumpsum transfers from the depositaries of such other projects or enterprises, and shall in no event be deposits of the direct revenues or receipts of such other projects or enterprises.

(c) If the Local Authority operates other projects or enterprises in which the Government has no financial interest it may, from time to time, withdraw such amounts as the Government may approve from monies on deposit under the General Depositary Agreement for deposit in and disbursement from a revolving fund provided for the payment of items chargeable in part to the Projects and in part to other projects or enterprises of the Local Authority; *Provided, however,* That all deposits in such revolving fund shall be lump sum transfers from the depositaries of the related projects or enterprises and shall in no event be deposits of the direct revenues or receipts.

(d) The Local Authority may establish petty cash or change funds in reasonable amounts, from monies on deposit under the General Depositary Agreement.

(e) In no event shall the Local Authority withdraw from any of the funds or accounts authorized under this section 2.17 amounts for the Projects or for any other project or enterprise in excess of the amount then on deposit in respect thereto.

2.18. *Assignment of Interest in Project to Government; Continuance of Annual Contributions.* Upon the occurrence of a Substantial Default (as herein defined) with respect to any Project the Local Authority shall, if the Government so requires, assign to the Government all of its rights and interests in and to the Project, or such part thereof as the Government may specify, and the Government shall continue to pay Annual Contributions with respect to dwelling units covered by Housing Assistance Payments Contracts in accordance with the terms of this Contract until reassigned to the Local Authority. After the Government shall be satisfied that all defaults with respect to the Project have been cured and that the Project will thereafter be operated in accordance with the terms of this Contract, the Government shall reassign to the Local Authority all of the rights and interests of the Government in and to the Project as such rights and interests exist at the time of such reassignment.

2.19. *Remedies Not Exclusive and Non-Waivers of Remedies.* Any remedy provided for herein shall not be exclusive or preclude the Owner, LHA and/or the Government from exercising any other remedy available under this Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies available to such parties. Failure on the part of any such party to exercise any right or remedy shall not constitute a waiver of that or any other right or remedy, nor operate to deprive the party of the right thereafter to take any remedial action for the same or any subsequent default.

2.20. *Interest of Members, Officers, or Employees of Local Authority, Members of Local Governing Body, or Other Public Officials.* (a) Neither the Local Authority nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement, in connection with any Project, in which any member, officer, or employee of the Local Authority, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Authority was activated, or any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Local Authority, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the Local Authority and such disclosure is entered upon the minutes of the Local Authority, the Local Authority, with the prior approval of the Government may waive the prohibition contained in this subsection; *Provided, however,* That any such present member, officer, or employee of the Local Authority shall not participate in any action by the Local Authority relating to such contract, subcontract, or arrangement.

(b) The Local Authority shall insert in all contracts entered into in connection with any Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of its subcontracts, the following provisions:

No member, officer, or employee of the Local Authority, no member of the governing body of the locality in which the Project is situated, no member of the governing body of the locality in which the Local Authority was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof.

(c) The provisions of the foregoing subsections (a) and (b) of this section 2.20 shall not be applicable to the General Depositary Agreement, or utility service the rates for which are fixed or controlled by a governmental agency.

2.21. *Interest of Member of or Delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise therefrom.

APPENDIX III—AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT

This Agreement to Enter into Housing Assistance Payments Contract ("Agreement") is made and entered into this _____ day of _____, 19__, by and between the _____ ("LHA"), a body, corporate and politic, organized and existing under and by virtue of the laws of the State of _____, and _____ ("Owner").

Whereas, the Owner proposes to complete a Project consisting of substantial rehabilitation of certain housing (as described in the Owner's approved proposal, including any approved modifications, attached hereto as Exhibit "A"); and

Whereas, the Owner and the LHA propose to enter into a Housing Assistance Payments Contract ("Contract") upon the completion of said Project for the purpose of making housing assistance payments to enable eligible low-income families ("Families") to occupy said Project, or units therein as described in Exhibit "B", attached hereto; and

Whereas, the LHA has entered into an Annual Contributions Contract dated _____, with the United States of America (hereinafter called the "Government"), with respect to Project No. _____ ("ACC"), under which the Government will provide financial assistance to the LHA pursuant to section 23 of the United States Housing Act of 1937 for the purpose of making housing assistance payments, which ACC is attached hereto as Exhibit "C"; and

Whereas, the rehabilitator of this Project is the Owner. (Name of rehabilitator if he is not the Owner) _____.

Now therefore, the parties hereto agree as follows:

1. *The Rehabilitation.* The rehabilitated Project shall be in accordance with Exhibit "A". The Owner shall be solely responsible for completion of the Project and nothing contained in this Agreement shall create or affect any relationship between the LHA and the lender or any contractors or subcontractors employed by the Owner in the completion thereof.

2. *Time for completion.* a. The Project shall be completed in accordance with section 4 no later than __ days after the date of this Agreement.

The Owner agrees that no later than _____, 19 , the work will be commenced and diligently continued. The LHA reserves the right to cancel this Agreement, subject to Government approval, in the event the work is not commenced and/or diligently continued as aforesaid.

b. In the event that there is delay in the completion of this Project due to strikes, lockouts, labor union disputes, fire, unusual delay in transportation, unavoidable casualties, weather, acts of God, or any other causes beyond the Owner's control, or by delay authorized by the LHA, the time for completion shall be extended to the extent that completion is delayed due to one or more of these causes.

3. *Changes during rehabilitation.* The LHA with HUD approval, may reduce the rents payable to the Owner if deviations from Exhibit "A" alter the Project design or quality or other basis for proposal selection. Accordingly, the Owner shall obtain prior written approval for such changes from the LHA and the Government.

4. *Project completion: execution of housing assistance payments contract.* a. *Evidence of completion.* The completion of the Project shall be evidenced by furnishing the LHA with the following:

(1) a certificate of occupancy and/or other official approvals necessary for occupancy; and

(2) separate certifications by a registered architect[1] and the Owner that: (a) There are no defects or deficiencies in the Project; (b) all work has been completed in accordance with the terms and conditions of this Agreement; and (c) the Project is in good and tenantable condition.

b. *Government Inspection.* (1) The LHA shall notify the Government when the Project is completed. Upon receipt of such notification a Government representative shall inspect the Project and the evidence of completion listed in paragraph a above. The Government shall make a written determination as to whether or not the Project has been satisfactorily completed. If the determination is in the affirmative, the Government will authorize the execution of the Contract. If the LHA or the Owner disagrees with the Government determination, the matter may be appealed to the Secretary of Housing and Urban Development as if it were a dispute under section 9b of this Agreement.

(2) If the Owner, after furnishing the LHA with all the items in paragraph a above, believes that the LHA has unreasonably withheld or delayed notification to the Government of Project completion, the Owner may make a written request to the Government to determine if the Project is completed and take action as provided in paragraph b(1) above.

5. *Housing assistance payments contract.* a. Upon written determination by the Government that the Project has been completed in accordance with the terms and conditions of this Agreement, the Owner and the LHA

[1] If working drawings and specifications were prepared and certified to by a registered architect, the same architect shall furnish the certification required in this paragraph.

shall execute the Contract attached hereto as Exhibit "D".

b. The rents to the Owner, by unit size, amounts of housing assistance payments, and all other applicable terms and conditions shall be as specified in the proposed Housing Assistance Payments Contract. Each party has read or is presumed to have read the proposed Contract. It is expressly agreed that there shall be no change in the terms and conditions of the Contract other than in accordance with section 3 of this Agreement.

6. *Relocation requirements.* a. The Owner hereby certifies that the Project was without occupants as of the date of the Notification of Selection by checking the "Yes" box below.

☐ Yes
☐ No

b. If the answer to a above is "No", the Owner hereby agrees to comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and applicable Government regulations and requirements issued pursuant thereto, and the following shall apply:

(1) The maximum potential amount of all relocation costs as calculated by the LHA and approved by the Government is _____ dollars.

(2) The Owner has deposited this amount in an escrow account under the terms of which payments may be made only upon presentation of written authorization by the LHA for the purpose of meeting relocation costs.

(3) The Owner hereby voluntarily undertakes liability for all relocation costs with respect to site occupants and agrees that if the funds in the escrow account shall prove to be insufficient to meet all such relocation costs, he will deposit such additional amounts as the LHA determines to be necessary for such purpose.

(4) When the LHA determines, with Government approval, that there is no longer any potential liability for relocation costs, any balance in the escrow account shall be paid to the Owner.

7. *Employment of project area residents and contractors.* The Owner shall comply and shall require each of its contractors and subcontractors employed in the performance of this Contract to comply (including compliance with the Government-approved affirmative action plan for utilization of Project area businesses) with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations and requirements of the Government thereunder, requiring that, to the greatest extent feasible, opportunities for training and employment be given lower income residents of the Project area and that contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.

8. *Equal employment opportunity.* a. The Owner shall incorporate or cause to be incorporated into any contract for rehabilitation work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is to be performed pursuant to this Agreement the following Equal Opportunity clause:

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer: recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Local Authority setting forth the provisions of this Equal Opportunity clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Local Authority advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Government and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the Equal Opportunity clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

b. The Owner agrees that he will be bound by the above Equal Opportunity clause with respect to his own employment practices when he participates in federally assisted rehabilitation work.

c. The Owner agrees that he will assist and cooperate actively with the Government and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that he will furnish the Government and the Secretary of Labor such information as they may require for the supervision of such compliance, and that he will otherwise assist the Government in the discharge of the Government's primary responsibility for securing compliance.

d. The Owner further agrees that he will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the Government or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

9. *Disputes.* a. Except as otherwise porvided herein, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement of the LHA and Owner may be submitted by either party to the HUD Area Director who shall make a decision and shall mail or otherwise furnish a written copy thereof to the Owner and the LHA.

b. The decision of the Area Director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, either party mails or otherwise furnishes to the Area Director a written appeal addressed to the Secretary of Housing and Urban Development. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Section, the appellant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the performance of the Agreement and in accordance with the decision of the Area Director.

c. This "Disputes" section does not preclude consideration of questions of law in connection with decisions rendered under paragraph a of this section; Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

10. *Interest of members, officers, or employees of local authority, members of local governing body, or other public officials.* No member, officer, or employee of the LHA, no member of the governing body of the locality (city and county) in which the Project is situated, no member of the governing body of the locality in which the LHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or in any proceeds or benefits arising therefrom.

11. *Interest of member of or delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Agreement or to any benefits which may arise therefrom.

12. *Nonassignability.* a. The Owner agrees that he has not made, and will not make, any sale, assignment, or conveyance or transfer in any other form of this Agreement or the Project, or any part thereof, or any of his interests therein, except as follows:

(1) With the prior consent of the LHA and the Government; or

(2) To a financial institution or trustee for the purpose of obtaining financing of the Project, to which assignment the LHA and the Government shall consent in writing if requested by the Owner or the lender.

b. The Owner agrees that he will not change to a different rehabilitator from the one named in the preamble of this Agreement, except with the prior consent of the LHA and the Government.

c. The Owner agrees that the approved rehabilitator has not made, and will not make, except with the prior consent of the LHA and the Government, any assignment or transfer in any form of the rehabilitator's contract to perform the rehabilitation work, or of any part thereof, or any of the rehabilitator's interests therein.

d. The Owner agrees to notify the LHA and the Government promptly of any proposed action covered by paragraph a or b or c of this section. The Owner further agrees to request the written consent of the LHA and the Government except where the proposed action is covered by paragraph a(2) of this section.

e. For the purpose of this section, a transfer of stock in the Owner or rehabilitator in whole or in part, by a party holding ten percent or more of the stock of said Owner or rehabilitator, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to parties in control of the Owner or rehabilitator or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this Agreement, the Project, or the rehabilitation contract. With respect to this provision. The Owner, and the party signing this Agreement on behalf of said Owner, represent that they have the authority of all of the exisitng stockholders of the Owner to agree to this provision on behalf of said stockholdcrs and to bind them with respect thereto.

13. *Authority of the LHA.* The LHA warrants that it is a duly organized body, corporate and politic, authorized by law to engage in the development or administration of low-rent housing or slum clearance, and that it is in fact and in law authorized to execute this Agreement.

14. *Annual contributions contract.* The execution of the ACC by the Government signifies that said ACC has been properly authorized; that the faith of the United States is solemnly pledged to the payment of annual contributions pursuant to said ACC; and that funds have been obligated by the Government for such payment to assist the LHA in the performance of its obligations under the Housing Assistance Payments Contract. The LHA shall not, without the consent of the Owner, amend or modify the ACC in any manner which would reduce the amount of annual contributions payable thereunder with respect to the Project.

In witness whereof, the parties hereto have executed this Agreement in four original counterparts as of the day and year first above written.

LHA: _____
By: _____
Owner: _____
By: _____

APPENDIX IV—HOUSING ASSISTANCE PAYMENTS CONTRACT

This Housing Assistance Payments Contract ("Contract") is made and entered into on this __ day of _____ 19 __, by and between _____ ("Owner") and _____, ("LHA") a public body, corporate and politic, organized and existing under and by virtue of the laws of the State of _____.

The Owner and the LHA agree as follows:

1. *Purpose of contract.* a. The LHA hereby agrees to make housing assistance payments on behalf of eligible low-income families ("Families") for the number and type of units specified in Schedule "A", attached hereto ("assisted unit(s)"), to enable such Families to lease decent, safe, and sanitary housing pursuant to section 23 of the United States Housing Act of 1937.

b. The assisted units are to be leased by the Owner to Families for use and occupancy by such Families solely as private dwellings.

2. *Annual contributions contract.* a. The LHA has entered into an Annual Contributions Contract dated _____, with the United States of America (hereinafter called the "Government"), with respect to Project No. _____ ("ACC"), under which the Government will provide financial assistance to the LHA pursuant to section 23 of the United States Housing Act of 1937, for the purpose of making housing assistance payments, which ACC is attached hereto.

b. The LHA hereby pledges such annual contributions to the payment of housing assistance payments pursuant to the Housing Assistance Payments Contract. The LHA shall not, without the consent of the Owner, amend or modify the ACC in any manner which would reduce the amount of annual contributions payable thereunder with respect to the Project.

e. (1) The Owner shall submit monthly requests to the LHA for housing assistance payments. Each such request shall set forth: (a) The name of each Family and the address and/or number of the unit leased by the Family; (b) the rent as set forth in Schedule "A" for each leased unit and the amount of rent payable by the Family leasing the unit; and (c) the amount of housing assistance payment requested by the Owner. Upon the determination of the LHA that the amount of the request is correct and that the Owner is in compliance with the provisions of this Contract, the LHA shall pay to the Owner the amount of housing assistance payment requested.

(2) If the Owner has received an excessive payment, the LHA, in addition to any other rights to recovery, may deduct the amount from any subsequent payment or payments.

(3) The statements set forth in each of the Owner's monthly requests for housing assistance payments shall be made subject to penalty under 18 U.S.C. 1001, which provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States shall be fined not more than $10,000 or imprisoned for not more than five years or both.

4. *The premises*—a. *Definition.* The term "Premises", as used in this Contract, means units which are leased by eligible Families and areas, facilities and grounds which are for their benefit or use, as described in the "Property Description" attached hereto.

b. *Legal Interest.* The Owner warrants that it has the legal right and power to execute this Contract and to lease dwelling unit(s) in the Premises.

c. *Owner's Warranty of Condition of Premises.* The Owner warrants that the Premises have been rehabilitated in accordance with the Agreement to Enter into Housing Assistance Payments Contract ("Agreement") applicable to the Premises.

3. *Housing assistance payments.* a. Housing assistance payments shall be made by the LHA to the Owner, under the terms and conditions of this Contract, only for the period during which assisted units are leased by Families under Leases approved by the LHA. If a Family vacates its unit in violation of the provisions of its Lease, the Owner may continue to receive housing assistance payments with respect to such unit in accordance with the terms of the Contract, not beyond the termination of the Lease (in accordance with its terms), but only if the Owner (1) has promptly (within 30 days) notified the LHA of the vacancy and (2) has not rejected, except for good cause acceptable to the LHA, any substitute Family provided by the LHA.

b. Housing assistance payments shall equal the difference between the rents for the units leased by Families as set forth in Schedule "A" and the amounts of such rents payable by Families. The LHA shall determine the eligibility of Families and the amount of rentals and other charges to be paid by each Family to the Owner in accordance with standards applicable to the Housing Assistance Payments Program. The amount of housing assistance payment payable on behalf of a Family and the amount of rent payable by such Family shall be subject to change by reason of changes in Family income or composition, as determined by the LHA, effective as of the date stated in a notification of such change by the LHA to the Owner and the Family. However, an increase or decrease in the amount payable by the Family shall be offset by a corresponding decrease or increase in the amount of housing assistance payment.

c. The sole financial obligation of the LHA shall be to make housing assistance payments on behalf of the Family. Neither the LHA nor the Government has assumed any obligation whatsoever for the amount of rent payable by the Family or the satisfaction of any claim by the Owner against the Family.

d. Housing assistance payments shall not be made for units which are: (1) Vacant except as provided in section 3a above; (2) leased by other than eligible Families; or (3) subject to rent abatement as provided in section 4d below.

d. *Maintenance and Operation of Premises.* The Owner agrees to maintain and operate the Premises so as to provide decent, safe, and sanitary housing, including the provision of all services and maintenance under Owner-Family Lease(s). If, at any time during any term of this Contract, the Owner fails to comply with this obligation with respect to any unit leased by an eligible Family, either: (1) Housing assistance payments on behalf of such Family shall be abated, effective upon written notification to the Owner, until such time as the obligation is complied with, or (2) this Contract shall be terminated in accordance with section 14b of this Contract.

e. *LHA Inspections.* (1) Prior to occupancy of any unit by an eligible Family, the LHA shall inspect the unit, or cause it to be inspected, to determine that the unit is in decent, safe, and sanitary condition.

(2) The LHA may inspect or cause to be inspected, at least annually, the Premises to determine that they are in decent, safe, and sanitary condition.

5. *Term of contract.* The initial term of this Contract shall be __ years (not to exceed five years) beginning _____ 19__, and ending _____, 19__. This Contract shall be renewed, at the option of the Owner, for an additional term(s) of __ years (not to exceed

five years each), provided that the total Contract term, including renewals, shall not exceed 15 years. Renewals shall be automatic unless: (1) The Owner notifies the LHA, no later than 60 days prior to the expiration of the current term, of his intention not to renew or to request a rent renegotiation pursuant to section 6 below; or (2) the LHA notifies the Owner, no later than 30 days prior to the expiration of the current term, that he is in Default, as defined in section 14 below. The term of Owner-Family Lease, including renewals, if any, shall not extend beyond the term of this Contract.

6. *Rent adjustments.* The payment of increased housing assistance payments as a result of rent adjustments under this section shall be subject to the provisions contained in subsection c hereof.

a. *Automatic Annual Adjustments.* (1) The monthly rents in Schedule "A" shall be adjusted automatically on the date of execution of this contract and on each annual anniversary date of this Contract. The adjustment(s) shall be based upon the Government-determined Adjustment Factor, as defined below.

(2) The Adjustment Factor is the Government-determined percentage change in the Government-established fair market rent for existing housing for the market area in which the Premises are located.

(3) The amount of each automatic annual adjustment shall be computed by applying the Adjustment Factor in effect at the time of the adjustment (provided that the Adjustment-Factor determination is not more than one year old) to the rents shown in Schedule "A", as it may be amended from time to time.

(4) In no case may an annual adjustment result in Contract rents which, together with any allowance for utilities payable directly by Families, would exceed the fair market rents in effect for the market area at the time of adjustment. For the first four annual adjustments the fair market rents shall be those which apply to newly constructed housing, plus the percentage, if any, by which the original Schedule "A" Contract rents exceeded the then applicable fair market rents. For all subsequent adjustments, the fair market rents shall be those which apply to existing housing.

(5) Rents may be adjusted upward or downward, as may be appropriate; provided that, in no case shall the adjusted rents be less than the original Schedule "A" rents.

b. *Renegotiations.* The Contract rents in Schedule "A" may be renegotiated to become effective at the beginning of the sixth and eleventh years of the Contract (if the Contract is renewed for that length of time), whether or not such effective date of renegotiation coincides with the beginning of a renewal term. However, such renegotiations may not result in rents in excess of the fair market rents for existing housing for the housing market area in effect at the time of renegotiation.

c. *Limitation.* The LHA will make housing assistance payments in increased amounts commensurate with upward rent adjustments under this section, but only to the extent possible within the limits of the maximum total amount of Annual Contributions payable under the Annual Contributions Contract in respect to the Project. No commitment is made by the LHA or the Government that the maximum total amount of Annual Contributions payable in respect to the Project, as specified in Part I of said Contract, will be increased by reason of any such rent adjustments. Accordingly, to enable the Owner to receive sufficient income from rents, the Owner shall have the right to select, and the LHA shall be obligated to approve as promptly as possible, Families whose average rent payments will result in receipts commensurate with the adjusted rents.

7. *Contract Amendment.* Any adjustment or renegotiation in Schedule "A" rents shall be incorporated by amendment to Schedule "A" of this Contract.

8. *Utilities.* The Owner agrees to provide and to pay promptly when due all utilities for the Premises, except to the extent that Families are obligated to pay directly for utilities for their respective units.

9. *Admission of families.* a. Families may apply to either the LHA or the Owner. The Owner may select a Family, subject to the Family's obtaining a Certificate of Family Eligibility from the LHA, or may refer all applications to the LHA for selection.

b. In the selection of Families, or in the approval thereof, the Owner and the LHA shall comply with the Government-approved Affirmative Marketing Plans, which are attached hereto and made a part hereof.

10. *Nondiscrimination in housing.* a. Neither the Owner nor the LHA shall, in the selection or approval of Families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, or national origin. In determining the eligibility of Families for admission to the Premises, no person shall be automatically excluded because of membership in a class such as unmarried mothers or families having police records or poor rent-paying habits, etc.

b. The Owner shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, § 1.1, et seq.; the requirements of said Department pursuant to said regulations; and Executive Order 11063 to the end that, in accordance with that Act, the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the ground of race, color, creed, religion, or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program or be otherwise subjected to discrimination.

11. *Employment of project area residents and contractors.* The Owner shall comply and shall require each of its contractors and subcontractors employed in the performance of this Contract to comply (including compliance with the Government-approved affirmative action plan for utilization of project area businesses) with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations and requirements of the Government thereunder, requiring that, to the greatest extent feasible, opportunities for training and employment be given lower income residents of the Project area and that contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.

12. *Eviction.* The Owner shall not evict, nor give an eviction notice to, any Family without having notified the LHA of the grounds and obtained the LHA's authorization for the proposed eviction. In the event the Owner requests such authorization, the LHA shall give the authorization unless the circumstances are such that in the LHA's judgment the granting thereof would be an abuse of the LHA's discretion.

13. *Owner-family lease.* The lease between the Owner (Lessor) and the Family (Lessee) shall contain the following provisions:

a. The total rent to the Lessor for this unit shall be $_____ per month. Inasmuch as the Lessor has contracted with _____ (Housing Authority), herein referred to as the LHA, for housing assistance payments on behalf of the Lessee, the amount of rent payable by the Lessee shall be $_____. The amount shall be subject to change by reason of changes in the family income or composition, as determined by the LHA, effective as of the date stated in a notification of such change by the LHA to the Lessee and Lessor. However, any increase or decrease in the rent payable by the Lessee shall be offset by a corresponding decrease or increase in the amount of the housing assistance payments.

b. The Lessor shall not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

c. The Lessor shall not evict nor give an eviction notice to the Lessee without having notified _____ (the LHA) of the grounds and obtained the LHA's authorization for the proposed eviction.

d. The Lessee shall permit inspections of his dwelling unit, provided such inspections are made at a reasonable time and after reasonable notice has been given.

e. The Lessor covenants that the Lessee shall have peaceful possession of his unit.

f. The Lessor shall continue to maintain the dwelling unit in a decent, safe, and sanitary condition, as determined by the LHA.

g. The Lessor shall perform all maintenance, repair, and replacement services for the Premises (including the equipment, grounds, and common areas thereof). Minimum standards of maintenance under this Lease shall include at least the following:

(1) Custodial services (including, but not limited to: cleaning of hallways, garbage storage areas, and all public or common areas on a regularly scheduled basis but not less frequently than _____; and provision of an adequate supply of trash and garbage storage equipment, and/or adequate trash and garbage disposal);

(2) Grounds maintenance (including, but not limited to: exterior custodial services on a regularly scheduled basis; maintenance of lawns and outdoor plantings, including lawn cutting and reseeding);

(3) Prompt response to Lessee service calls (including, but not limited to: calls with respect to refrigerators, ranges, plumbing, heating, electrical and hot water fixtures and systems, and broken, stuck, or damaged doors, screens, or windows);

(4) Repainting and redecorating dwelling space and non-dwelling space surfaces on a regularly scheduled basis as appropriate;

(5) Prompt replacement of light bulbs and other lighting equipment in non-dwelling spaces, common areas, and outdoor areas;

(6) Exterminating services on a regularly scheduled basis, but not less frequently than _____;

(7) Where applicable, removal of snow and ice from walkways, exterior stairs, and parking areas on a timely basis;

(8) Repair of walkways and parking lot surfaces;

(9) Where applicable, repair of garbage disposals, dishwashers, air conditioners, and laundry equipment;

(10) Where applicable, regular maintenance and prompt repair of elevators, incinerators, compactors, and laundry equipment and facilities;

(11) Such other maintenance services as are generally supplied to tenants in the housing market area.

h. The Lessor shall provide at least those security services generally supplied to tenants in the housing market area.

i. The sole financial obligation of the LHA shall be to make housing assistance payments

on behalf of the Lessee. Neither the LHA nor the Federal Government has assumed any obligation whatsoever for the amount of rent payable by the Lessee or the satisfaction of any claim by the Lessor against the Lessee.

j. If the Lease contains a notice-to-vacate provision and the Lessee vacates the dwelling unit without giving the required 30-day notice to the Lessor, the Lease shall terminate on the date when it would have terminated if the Lessee had given notice in accordance with the provisions of the Lease on the date that he vacated the dwelling unit. If the Lease does not contain a notice to vacate provision and the Lessee vacates the dwelling unit before the end of the Lease term, the Lessor's rights to continue to receive housing assistance payments are governed by the Housing Assistance Payments Contract.

k. If any of these required Lease provisions should conflict with any other provisions of the this Lease, the required provisions shall prevail.

14. *Default by the owner.* a. A Default by the Owner under this Contract shall result if:

(1) The Owner has violated or failed to comply with any provisions of this Contract or of any Owner-Family Lease; or

(2) The Owner has failed to perform any of its obligations under this Contract or under any Owner-Family Lease; or

(3) The Owner has asserted or demonstrated an intention not to perform some or all of his obligations under this Contract or under any Owner-Family Lease.

b. Upon the determination by the LHA that a Default has occurred, the LHA, with approval of HUD, may notify the Owner that the LHA is terminating the Contract effective 30 days from the date of notice, unless within that period the Owner cures any non-compliance, or initiates a course of corrective action which will cure the non-compliance within such minimum additional time as may be necessary and agreed to by the LHA with the approval of HUD. If the LHA so notifies the Owner, it shall also send a copy of such notice to the Family, together with information regarding continued assistance.

15. *Default by the LHA.* a. A Default by the LHA under this Contract shall result if:

(1) The LHA has violated or failed to comply with any provisions of the Contract or failed to perform any of its obligations under this Contract; or

(2) This Contract at any time is held to be void, voidable, or ultra vires, or the power or right of the LHA to enter into this Contract is drawn into question in any legal proceeding; or

(3) The LHA asserts or claims that this Contract is not binding upon it for any reason, or otherwise asserts or demonstrates that it does not intend to fulfill its obligations under said Contract.

b. Upon the determination by the Government that a Default by the LHA has occurred, the following provisions of the ACC (which is hereby made a part of this Contract), shall be applicable:

(In such case) the Local Authority shall, if the Government so requires, assign to the Government all of its rights and interests in and to the Project, or such part thereof as the Government may specify and the Government shall continue to pay Annual Contributions with respect to dwelling units covered by Housing Assistance Payments Contracts in accordance with the terms of this Contract until reassigned to the Local Authority. After the Government shall be satisfied that all defaults with respect to the Project have been cured and that the Project will thereafter be operated in accordance with the terms of this Contract, the Government shall reassign to the Local Authority all of the rights and interests of the Government in and to the Project as such rights and interests exist at the time of such reassignment.

16. *Remedies not exclusive and non-waiver of remedies.* Any remedy provided for herein shall not be exclusive or preclude the Owner, LHA and/or the Government from exercising any other remedy available under this Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies available to such parties. Failure on the part of any such party to exercise any right or remedy shall not constitute a waiver of that or any other right or remedy, nor operate to deprive the party of the right thereafter to take any remedial action for the same or any subsequent default.

17. *Disputes.* a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement of the LHA and Owner may be submitted by either party to the HUD Area Director who shall make a decision and shall mail or otherwise furnish a written copy thereof to the Owner and the LHA.

b. The decision of the Area Director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, either party mails or otherwise furnishes to the Area Director a written appeal addressed to the Secretary of Housing and Urban Development. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this section, the appellant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the performance of the Contract and in accordance with the decision of the Area Director.

c. This section does not preclude consideration of questions of law in connection with the decisions rendered under paragraph a and b of this section; *Provided, however,* That nothing herein shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

18. *Interest of members, officers or employees of local authority, members of local governing body or other public officials.* No member, or employee of the LHA, no member of the governing body of the locality (city and country) in which the Premises are situated, no member of the governing body of the locality in which the LHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Premises, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract or in any proceeds or benefits arising from it.

19. *Interest of member of or delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commission shall be admitted to any share or part of this Contract or to any benefits which may arise therefrom.

20. *Nonassignability.* a. The owner agrees that he has not made, and will not make any sale, assignment, or conveyance or transfer in any other from, of this Contract or the Premises, or any part thereof, or any of his interest therein, except with the prior consent of the LHA and the Government.

b. The Owner agrees to notify the LHA and the Government promptly of any proposed action covered by paragraph of this section, and to request the written consent of the LHA and the Government in regard thereto.

c. For the purpose of this section, a transfer of stock in the Owner in whole or in part by a party holding ten percent or more of the stock of said Owner, or a transfer by more than one stockholder or the Owner of ten percent or more of the stock of said Owner or any other similarly significant change in the ownership of such stock or in the relative distribution thereof in or with respect to the parties in control of the Owner or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or addition stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this provision, the Owner and the party signing this Contract on behalf of said Owner, represent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

21. *Entire agreement.* This Contract constitutes the entire agreement of the parties in respect to the Premises, and there are no oral agreements between the parties. No change in this Contract shall be made except in writing signed by both the Owner and the LHA and approved by the Government.

Local Housing Authority:

By:

Owner:

By:

Approved:

United States of America
Secretary of Housing and
Urban Development
By:---

APPENDIX V—CERTIFICATE OF FAMILY ELIGIBILITY

1. *Family.* This to certify that ---
(head of
---, herein referred to as the Fam-
eligible family)
ily, is eligible for housing assistance payments under the section 23 Housing Assistance Payments Program operated by ---
(name of Local
---, herein referred to as the Housing Authority)
LHA, as set forth more fully below. This Certificate shall automatically expire at the end of 45 days from---
(date of Certificate)
unless the Family has provided the LHA with a written offer by an owner as described in 3.b below. This Certificate may be extended by the LHA, at its discretion, upon submission by the Family of this Certificate to the LHA.

2. *Housing Assistance Payments.* a. The LHA has determined that the Family can afford to pay $---[1] toward gross rent (including the cost of utilities). The LHA will pay on behalf of the Family a housing assistance payment in the amount of the difference between the rent chargeable by the Owner and that portion of the rent payable

[1] Enter appropriate amount consistent with the applicable rent to income ratio, not to exceed 25 percent of the Family's adjusted income.

by the Family, provided that the rent chargeable by the Owner shall not exceed the fair market rent established by the Department of Housing and Urban Development (HUD) for a _____[2] bedroom unit suitable to the Family's needs, less any allowance for utilities payable directly by the Family.

b. The amount payable by the Family shall be subject to change by reason of changes in Family income or Family composition, as determined by the LHA, effective as of the date stated in a notification of such change to the Family and the Owner. Any increase or decrease in the amount payable by the Family shall be offset by a corresponding decrease or increase in the amount of Housing Assistance Payment.

3. *Authorization to Family.* The Family is authorized by the LHA to:

a. find a dwelling unit which is suitable to the Family's needs and is decent, safe, and sanitary as determined by the LHA; and

b. Obtain a written offer by the Owner of said unit to lease the unit to the Family in accordance with the provisions of this Certificate of Family Eligibility, and to submit such offer, in the prescribed form (Owner's Offer to Lease Dwelling Unit) attached hereto, to the LHA for its approval.

4. *Action by the LHA.* The LHA shall, as promptly as possible, inspect, or cause to be inspected, the offered unit, and, if the LHA determines that (a) the unit is suitable for the Families needs and is in decent, safe, and sanitary condition, (b) the proposed rent is acceptable, and (c) the LHA has sufficient funds available under its Annual Contributions Contract, the LHA shall execute a Housing Assistance Payments Contract (prescribed form attached hereto) for the approved dwelling unit and approve the Lease for said unit.

5. *Conditions.* a. Breach or noncompliance with any of the following conditions may terminate eligibility for housing assistance payments:

(1) The dwelling unit shall continue to be decent, safe, and sanitary as determined by the LHA.

(2) The term of the Lease between the Owner and the Family shall be for not less than one year and shall generally be for not more than one year but may contain an option of either party to terminate upon 30 days advance notice in writing. The Lease may be renewed upon expiration of the original term; however, the specified lease term, including specified renewal options, if any, shall in no event exceed three years or the term of the Annual Contributions Contract pertaining to the Lease, whichever is shorter.

(3) The Lease shall include the special provisions attached hereto as Attachment 1.

(4) The Family shall make timely rental payments to the Lessor under the LHA-approved Lease.

(5) The Family shall provide such Family income information and records as may be required in the administration of the program, and shall permit inspections of its dwelling unit, provided that such inspections are made at a reasonable time and after reasonable notice has been given.

b. The Family must continue to occupy its approved unit to remain eligible for housing assistance payments except that:

(1) If the Family (a) wishes to vacate its unit at the end of the Lease term, or prior thereto in accordance with the provisions of the Lease, in order to move to another approvable unit, or (b) is required to move for reasons other than violation of the Lease on the part of the Family, as determined by the LHA, and wishes to move to another approvable unit, the Family shall be given a new Certificate of Family Eligibility providing for housing assistance payments for occupancy of such other unit, if:

(i) The Family provides reasonable notice to the LHA of its intention to vacate; and

(ii) The LHA determines that the Family is in compliance with the provisions of the Lease, including provisions requiring notice to the Owner, if applicable; and

(iii) The LHA has sufficient funds under its Annual Contributions Contract.

(2) If the Family wishes to vacate the unit prior to the termination of the Lease other than in accordance with the provisions of the Lease, in order to move to another approvable unit, the Family may be given a new Certificate providing for housing assistance payments for occupancy of such other unit if:

(i) The Family provides reasonable notice of its intention to vacate and the reason(s) therefor to both the LHA and the Owner; and

(ii) The LHA determines that the Family is otherwise in compliance with the provisions of the Lease; and

(iii) The LHA determines that the Family has good reasons to vacate; and

(iv) The LHA has sufficient funds under its Annual Contributions Contract, after meeting its obligations for housing assistance payments to the owner of the unit to be vacated.

6. *Equal Housing Opportunity.* If the Family has reason to believe that, in its search for suitable housing, it has been discriminated against on the basis of race, color, creed, religion, sex, or national origin, or because of membership in a class such as unmarried mothers or families having police records or poor rent-paying habits, etc., it may file a complaint with the HUD Regional Office of Equal Opportunity. Fair Housing Complaint Forms (HUD 903(s)) are available in this LHA Office.

7. *Availability of Funds.* It is the LHA's best judgment that it will have funds available to honor this Certificate when the Family locates an acceptable unit. However, honoring of this Certificate by the LHA is subject to the availability of funds to the LHA at that time.

I agree to the foregoing conditions in order to have housing assistance payments made in my behalf under the section 23 Housing Assistance Payments Program.

_____
Signature of Head of Family

_____
Signing for the LHA

_____
Date

ATTACHMENT 1—LEASE PROVISIONS REQUIRED FOR PARTICIPATION IN THE HOUSING ASSISTANCE PAYMENTS PROGRAM

a. The total rent to the Lessor for this unit shall be $_____ per month. Inasmuch as the Lessor has contracted with _____ (Housing Authority), herein referred to as the LHA, for housing assistance payments on behalf of the Lessee, the amount of rent payable by the Lessee shall be $_____. This amount shall be subject to change by reason of changes in family income or family composition, as determined by the LHA, effective as of the date stated in a notification of such change by the LHA to the Lessee and Lessor. However, any increase or decrease in the rent payable by the Lessee shall be offset by a corresponding decrease or increase in the amount of the housing assistance payments.

b. The Lessor shall not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

c. The Lessor shall not evict nor give an eviction notice to the Lessee without having notified the LHA of the grounds and obtained the LHA's authorization for the proposed eviction.

d. The Lessee shall permit inspections of his dwelling unit, provided such inspections are made at a reasonable time and after reasonable notice has been given.

e. The Lessor covenants that the Lessee shall have peaceful possession of his unit.

f. The Lessor shall continue to maintain the dwelling unit in a decent, safe, and sanitary condition, as determined by the LHA.

g. The Lessor shall perform all maintenance, repair, and replacement services for the Premises (including the equipment, grounds, and common areas thereof). Minimum standards of maintenance under this Lease shall include at least the following:

(1) Custodial services (including but not limited to: cleaning of hallways, garbage storage areas, and all public or common areas on a regularly scheduled basis, but not less frequently than _____; and provision of an adequate supply of trash and garbage storage equipment, and/or adequate trash and garbage disposal);

(2) Grounds maintenance (including, but not limited to: exterior custodial services on a regularly scheduled basis; maintenance of lawns and outdoor plantings, including lawn cutting and reseeding);

(3) Prompt response to Lessee service calls (including, but not limited to: calls with respect to refrigerators, ranges, plumbing, heating, electrical and hot water fixtures and systems, and broken, stuck, or damaged doors, screens or windows);

(4) Repainting and redecorating dwelling space and non-dwelling space surfaces on a regularly scheduled basis as appropriate;

(5) Prompt replacement of light bulbs and other lighting equipment in non-dwelling spaces, common areas, and outdoor areas;

(6) Exterminating services on a regularly scheduled basis, but not less frequently than _____;

(7) Where applicable, removal of snow and ice from walkways, exterior stairs, and parking areas on a timely basis;

(8) Repair of walkways and parking lot surfaces;

(9) Where applicable, repair of garbage disposals, dishwashers, air conditioners, and laundry equipment;

(10) Where applicable, regular maintenance and prompt repair of elevators, incinerators, compactors, and laundry equipment and facilities;

(11) Such other maintenance services as are generally supplied to tenants in the housing market area.

h. The Lessor shall provide at least those security services generally supplied to tenants in the housing market area.

i. The sole financial obligation of the LHA shall be to make housing assistance payments on behalf of the Lessee. Neither the LHA nor the Federal Government has assumed any obligation whatsoever for the amount of rent payable by the Lessee or the satisfaction of any claim by the Lessor against the Lessee.

j. If the Lease contains a notice to vacate provision and the Lessee vacates the dwelling unit without giving the required 30-day notice to the Lessor, the Lease shall terminate on the date when it would have terminated if the Lessee had given notice on the date that he vacated the dwelling unit. If the Lease does not contain a notice to vacate provision and the Lessee vacates the dwelling unit before the end of the Lease term, the Owner's

[2] Enter the unit size, by number of bedrooms, for which the Family is eligible pursuant to the occupancy standards of the LHA.

rights to continue to receive housing assistance payments are governed by the Housing Assistance Payments Contract.

k. If any of these required Lease provisions should conflict with any other provisions of this Lease, the required provisions shall prevail."

APPENDIX VI—OWNER'S OFFER TO LEASE DWELLING UNIT

I _____ hereby offer
(name of owner/lessor)
the following dwelling unit _____
(street address/
_____ for lease by
apartment number, if any)
_____ for a period of
(name of head of family)
_____ months (not less than one year) beginning _____.

The unit, consisting of __ bedrooms, is to be leased at $_____ per month. Such amount includes the cost of the utilities checked below:

____ heat ____ electricity ____ gas
____ water ____ other (specify)
____ none.

The most recent rent charged for the above dwelling unit was $_____ per month. The difference between this amount and the proposed rent, if any, is due to the following reasons:

_____.
_____.
_____.

The above dwelling unit is currently:

Vacant and I hereby certify that the unit was vacant prior to the date of execution of this Offer to Lease.

Occupied by the above-named family.

Occupied by other than the above-named family but it shall have been vacated prior to the execution of a lease with the above-named family as a result of (1) voluntary decision of occupant or (2) action by landlord for cause or (3) reasons clearly unrelated to the proposed leasing to the above-named family.

I have read the proposed Housing Assistance Payments Contract and, if such Contract is entered into, will comply with the provisions contained therein.

This offer shall expire _____ days from the date entered below.

_____ _____
Owner/Lessor Date

Accepted by: _____
Signing for LHA

_____
Date

(Sec. 7(d), Department of Housing and Urban Development Act; (42 U.S.C. 3535(d)); sec. 10(b) of the U.S. Housing Act of 1937, (42 U.S.C. 1410(b)); sec. 23, U.S. Housing Act of 1937, (42 U.S.C. 1421(b)))

DANIEL P. KEARNEY,
Deputy Assistant Secretary for Housing Production and Mortgage Credit.

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