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Title 3—The President

EXECUTIVE ORDER 11825

Revocation of Executive Orders Pertaining to the Regulation of the Acquisition of, Holding of, or Other Transactions in Gold

By virtue of the authority vested in me by section 1 of the Act of August 8, 1950, 64 Stat. 419, and section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a), and as President of the United States, and in view of the provisions of section 3 of Public Law 93–110, 87 Stat. 352, as amended by section 2 of Public Law 93–373, 88 Stat. 445, it is ordered as follows:

SECTION 1. Executive Order No. 6260 of August 28, 1933, as amended by Executive Order No. 6359 of October 25, 1933, Executive Order No. 6556 of January 12, 1934, Executive Order No. 6560 of January 15, 1934, Executive Order No. 10896 of November 29, 1960, Executive Order No. 10905 of January 14, 1961, and Executive Order No. 11037 of July 20, 1962; the fifth and sixth paragraphs of Executive Order No. 6073, March 10, 1933; sections 3 and 4 of Executive Order No. 6359 of October 25, 1933; and paragraph 2(d) of Executive Order No. 10289 of September 17, 1951, are hereby revoked.

SECTION 2. The revocation, in whole or in part, of such prior Executive orders relating to regulation on the acquisition of, holding of, or other transactions in gold shall not affect any act completed, or any right accruing or accrued, or any suit or proceeding finished or started in any civil or criminal cause prior to the revocation, but all such liabilities, penalties, and forfeitures under the Executive orders shall continue and may be enforced in the same manner as if the revocation had not been made.

This order shall become effective on December 31, 1974.

Gerald R. Ford

THE WHITE HOUSE,
December 31, 1974.

[FR Doc.75–472 Filed 1–3–75;10:22 am]

EXECUTIVE ORDER 11826

Exemption of Willard Deason from Mandatory Retirement

Willard Deason, Commissioner of the Interstate Commerce Commission, will become subject to mandatory retirement for age during January of 1975 under the provisions of section 8335 of title 5 of the United States Code unless exempted by Executive order.

In my judgment, the public interest requires that Commissioner Deason be exempted from such mandatory retirement.

NOW, THEREFORE, by virtue of the authority vested in me by subsection (c) of section 8335 of title 5 of the United States Code, I hereby exempt Willard Deason from mandatory retirement until December 31, 1975.

Gerald R. Ford

THE WHITE HOUSE,
December 31, 1974.

[FR Doc.75-473 Filed 1-3-75;10:23 am]

rules and regulations

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

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

Title 10—Energy

CHAPTER 1—ATOMIC ENERGY COMMISSION

PART 51—LICENSING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

Environmental Effects of Transportation of Radioactive Materials to and From Nuclear Power Plants

On February 5, 1973, the Atomic Energy Commission published in the FEDERAL REGISTER a notice of consideration of an amendment to Appendix D, Interim Statement of General Policy and Procedure: Implementation of the National Environmental Policy Act, 10 CFR Part 50, Licensing of Production and Utilization Facilities, (38 FR 3334). The amendment proposed would supplement the Commission's rules for implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). The proposed amendment addressed the question of consideration of environmental effects associated with the transportation of nuclear fuel and wastes in individual cost-benefit analyses for light-water-cooled nuclear power reactors. An Atomic Safety and Licensing Appeal Board had earlier held that such effects should be considered.[1] The proposed amendment would allow applicants in their environmental reports, and the Commission in its detailed environmental statements, to account for the environmental effects of transportation of fuel and waste by using specified numeric values contained in an appended Summary Table.

The proposed amendment has been adopted by the Commission in the form set out below. Since the time of publication of the Notice of Proposed Rule Making in this proceeding, the Commission has promulgated a new 10 CFR Part 51, Licensing and Regulatory Policy and Procedures for Environmental Protection, (39 FR 26279), which replaces and supersedes Appendix D to 10 CFR Part 50. In view of this, the rule set out below is in the form of an amendment to 10 CFR Part 51 rather than in the form of the originally proposed amendment to Appendix D to 10 CFR Part 50. To the extent that this rule differs from the Appeal Board decisions in *Vermont Yankee, supra*, those decisions have no further precedential significance.

In conjunction with publication of the proposed amendment, the Commission, by notice published in the FEDERAL REGISTER on February 5, 1973 (38 FR 3334), announced the availability for comment of the "Environmental Survey of Transportation of Radioactive Materials to and from Nuclear Power Plants" (WASH-1238), dated December 1972 and prepared by the Commission's Regulatory Staff. The Environmental Survey, which serves as a primary data base for the amendment, considers and assesses the contribution of environmental effects from transportation of fuel and solid wastes for a "typical" light-water-cooled nuclear power reactor. The Survey also contains an analysis of the probabilities of occurrences of transportation accidents, the expected consequences of such accidents, and an analysis of the potential radiation exposures to transportation workers and the general public under normal conditions of transport. The document was not intended to serve, however, as a detailed analysis of alternatives and costs and benefits as they relate to the transportation aspects of the uranium fuel cycle. Nor was the purpose of this proceeding to undertake a full environmental review of transportation of fuel and waste. The purpose of this proceeding was to determine certain elements to be factored into impact statements in particular licensing proceedings. As in the rulemaking proceeding on the Environmental Effects of the Uranium Fuel Cycle (39 FR 14188, April 22, 1974), this proceeding addresses a procedural question involving the implementation of NEPA's requirement for cost-benefit analyses in impact studies. For this reason, no environmental impact statement has been prepared in connection with the rule adopted herein.

The Commission notes that transportation of mixed oxide fuel and waste to and from light-water reactors will be considered separately in the generic environmental impact statement currently being prepared in connection with use of that type of fuel in light-water reactors. In addition, a number of other studies are currently being conducted which relate to the transportation of radioactive materials, including reactor fuels and waste. These studies include, among others, (i) a surveillance program of cargo handlers and loading crews to determine the exposure of personnel involved in handling radioactive materials; (ii) a joint AEC-Department of Transportation program to simplify regulations to assure adequate training of shipper and carrier personnel and to encourage development of industry standards on transportation of radioactive materials; and (iii) development of guides for state and local authorities on responsibilities and procedures for handling emergency situations.[2] Any pertinent results of these studies and other ongoing studies will be reflected in a revised Environmental Survey, when such a revision is determined to be necessary.

In the notice of proposed rule making, all interested persons were invited to submit written comments and suggestions in connection with the proposed amendment and the Environmental Survey within 60 days after publication of the notices in the FEDERAL REGISTER. In addition, an informal rule making hearing was held on April 2, 1974 in Washington, D.C. to permit interested members of the public to present written and oral views on the Environmental Survey and the approach to consideration of the environmental effects associated with the transportation of fuel and waste.

In setting forth the procedural format which was to be followed in the informal rule making hearing, the Commission specified, among other things, that since the hearing would be part of a rule making rather than an adjudicatory proceeding, the provisions of Subpart G, "Rules of General Applicability," of Part 2 of the Commission's Rules of Practice would not be applicable and, therefore, such procedural features as discovery and cross-examination would not be utilized.

It was provided, however, that the participants in the hearing would be subject to questioning by the presiding hearing board and that at the conclusion of the hearing, the record was to be held open for a period of 30 days, during which time any person could file supplemental written comments deemed appropriate in light of the hearing record. The notice further provided that after the expiration of the 30-day period, the presiding hearing board, without rendering any decision or making any recommendation, was to forward the hearing transcript to the Commission together with an identification of issues raised at the hearing.

Written comments were received from 26 individuals and organizations including Federal and State agencies, industry, public utilities, environmental and citizens groups, and private citizens. Participants in the informal rule making hearing included the Commission's Regulatory Staff; the Environmental Protection Agency; the Atomic

[1] Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-56, ALAB-73 (June 6, 1972 and October 11, 1972).

[2] The guides will include responsibilities of State and local law enforcement authorities coordinating with AEC personnel in emergency situations.

Industrial Forum; the Consolidated Utility Group; and Mr. Richard Sandler representing Mr. Ralph Nader, Friends of the Earth, and the Consolidated National Intervenors.

In its Report to the Commission by the Fuel and Waste Transportation Rule Making Hearing Board, submitted on September 26, 1973, the presiding hearing board identified seven areas in which it believed issues were raised either at the hearing itself or by the written comments filed both before and after the public hearing.

The first area in which an issue was identified concerns the adequacy of the rule making procedures employed and the nature of the participation by interested persons and organizations. One participant, Mr. Richard Sandler, argued that for any rule making hearing dealing with the environmental effects of transportation of fuel and waste on a generic basis to be legally valid, the hearing must incorporate the same procedural features used in individual production and utilization facility licensing adjudicatory proceedings, including the rights of discovery and cross-examination.

The Commission considered a similar challenge to the legal validity of the rule making proceding on the Environmental Effects of the Uranium Fuel Cycle cited above. The Commission concluded there, as it does here, that adjudicatory procedures were not warranted. Each participant was given all the time he requested for his oral presentation and was afforded full opportunity to submit information and data for the record. No testimony offered was excluded from the record. All documents, including the Survey, were available to the parties several weeks before the hearing. In addition, each participant was invited to submit to the hearing board relevant questions for the Regulatory Staff and/or other participants.

The second area in which issues were identified by the presiding hearing board concerns the technical adequacy of the Environmental Survey. The board noted that there had been a number of comments from a variety of sources on such matters as: (i) the choice of population distribution and exposure time parameters used in estimating exposure dose (man-rem) value, (ii) the operation and testing of shipping containers and the effects of accidents on members of the public, (iii) testing and possible failure of fuel rods, and (iv) the assumptions and methods employed in analyzing input data and calculating critical parameters.

With respect to the choice of population distribution and exposure time parameter, the Staff indicated that it chose "average" estimates. Although one could postulate a situation wherein a larger (than "average") number of persons would be exposed to radiation for a longer time period, the radiation exposure of that larger group would still be only a very small fraction of the 3 man-rem per year shown in the rule as the total exposure to the general public for transportation. Thus, since use of parameters exceeding "average" estimates would still not exceed the 3 man-rem value for normal transportation exposure, the Staff's selection of average estimates was appropriate.

With respect to the operation and testing of packages used in the shipment of fuels and wastes to and from nuclear reactors and the effects of accidents on members of the public, the Commission's regulations in 10 CFR Part 71 impose specific requirements on shippers: (i) to demonstrate the adequacy of their packages by tests or engineering analysis at the design stage; (ii) to perform careful quality assurance control during package fabrication; (iii) to exercise close supervision over the loading and closing of packages; and (iv) to perform adequate maintenance and testing to assure that levels of containment, shielding, and effectiveness of the package are maintained throughout its useful life. More important, Part 71 requires that package designs be reviewed and approved by the Commission and prescribes specific package standards which must be met during design and construction. These standards include standards for hypothetical accident conditions such as a 20 foot free drop onto an essentially unyielding surface, a 40 inch drop onto a penetrating bar, exposure to a temperature of 1,475°F for 30 minutes, and immersion under at least 3 feet of water for a period of not less than 8 hours. Generally, these hypothetical accident conditions are designed to qualify a package to withstand the actual conditions which might be encountered in severe transportation accidents.

Although these packaging standards and criteria establish the threshhold for package failure, analysis of test results cited in the Environmental Survey show that some designs will withstand stresses well above test conditions. ("Special Tests for Plutonium Shipping Containers—6m, SP5795, and L-10," L. F. Stravasnik SC-DR-72 0597, September, 1972. In these tests, shipping containers survived impact tests from a height of 270 feet, puncture tests from a height of 12.5 feet, and fire tests at 1800°F for 1 hour.) In addition, where packages are to be used in the shipment of larger quantities of special nuclear material (e.g., casks used in the shipment of irradiated fuel), the Commission's Directorate of Regulatory Operations makes observations during the fabrication of the package and reviews records of quality assurance and fabrication, use, and maintenance records to assure that the package is fabricated and used in accordance with the approved design specifications.

With respect to the effect of accidents on members of the public, the Survey contains an extensive discussion of accident severity categories, together with the accident probabilities for those categories for truck, rail, and barge per vehicle mile. Accident consequences for many of the more severe categories of accidents are analyzed, including accidents with probabilities so low as to be considered incredible. Although accidents even more serious than those analyzed in the Environmental Survey could be postulated, the Survey shows that their probability is even more remote and that, therefore, a detailed analysis of their consequences is unnecessary to describe adequately the risks to the general public.

Fuel rod failure, which is a major factor in determining radiation exposures resulting from severe accidents, was assessed in the Survey in the reported results of actual drop tests carried out on fresh fuel rods. In these tests, fuel rods were dropped from a height of 30 feet on to an unyielding surface. Results showed no leakage from the rods after being dropped on their end, side, and corners. Preliminary results reported by applicants submitting designs of shipping containers for transporting irradiated fuel indicate major damage to fuel elements may occur only under conditions of high impact forces or relatively high temperatures, i.e., above 1250°F. In calculating doses from releases under accident conditions in the Survey, the Staff assumed that up to 50 percent of the irradiated fuel rods failed. The basis for this assumption is the Staff's prediction that at 1250°F, 50 percent of the fuel rods in an irradiated fuel cask will perforate. For greater than a 50 percent failure rate, a much higher temperature for a longer period of time would be required. Such circumstances appear to be beyond the realm of possibility. An increase in fuel rod failure over and above the 50 percent assumed by the Staff might result in some increase in resultant doses, but since increased fuel rod failure affects only the accident case where there has been a breach of the irradiated fuel cask, and the probability of an accident causing such a breach is already so low, changes in the fuel rod failure rate would have little effect on the risk. Thus, the assumptions used by the Staff are sufficiently conservative, in the light of present knowledge that further assessment of fuel rod failure is unnecessary.

The hearing record indicates that the assumptions and methods used in analyzing the environmental effects set forth in the Survey were critically examined by industry, the general public, and particularly the Environmental Protection Agency. EPA initially took exception to Summary Table values for cumulative dose estimates for transportation workers and members of the general public because it had arrived at different conclusions concerning the probable exposure of persons to radiation due to transportation using the same data the Staff had used. EPA also recommended that the radiation dose values in the Summary Table be enlarged to encompass the majority of the nuclear reactor data analyzed rather than only 50 percent of the data, as was the case with the proposed values in the Summary Table.

At the hearing board's suggestion, the Regulatory Staff and the EPA met to reexamine their data and discuss their

differences. Subsequent to that meeting, the Regulatory Staff submitted a letter to the Board and the other participants which explained that some of the differences in radiation dose estimates were due to differing interpretations of input data, some to differences in presentation, and some due to differences in assumed values for uncertain parameters. Although there was not complete agreement, the hearing board noted that the differences in calculated values were deemed by the Staff and EPA to be close enough to consider the discrepancy resolved. In addition, the Staff responded to the EPA recommendation for enlarging the values in the Summary Table to encompass a majority of data analyzed by increasing the values from 3 man-rem to 4 man-rem for transport workers and from 2 man-rem to 3 man-rem for members of the general public. These revised values would exceed the cumulative doses calculated for 90 percent of the 84 nuclear reactors for which specific analysis of the environmental impact of transportation had been made. It should be noted that these values in the rule are not reflected in the Environmental Survey. The Survey contains the detailed method of analysis for assessing the environmental impact of transportation of fuel and waste to and from a typical light-water reactor. The 3 and 4 man-rem values in the rule reflect the application of this methodology to 84 reactors at 53 different sites. Although the derivation of these values was explained by the Regulatory Staff during the course of the rule-making proceeding, the Staff intends to issue in the near future a supplement to the Survey outlining in detail the derivation of these impact values.

The Commission agrees with the Board concerning resolution of the Staff-EPA differences. The Commission has also accepted the Staff's recommendation to enlarge the cumulative dose values in the proposed rule and has revised the rule accordingly. It is anticipated, of course, that additional data and methods of analysis will be developed. At such time as these data and methods become available, the Commission will undertake a re-evaluation of the environmental impact and, where significant changes are indicated, will make appropriate changes in the Environmental Survey and, where necessary, the Summary Table of environmental impact.

A third area in which issues were identified by the hearing board relates to the scope of coverage of the amendment and the questions which were raised as to how and when it should be applied. In its supplemental comments, the Staff recommended that language be added to the proposed rule to make clear when and how the rule is to be applied and what criteria are to be used in determining whether a given case is or is not within the scope of the rule. In view of the question which had been raised over the amendment's scope, the Commission has incorporated clarifying language similar to that proposed by the Staff in the amendment set forth below. However, the Staff's recommended language relating to the general procedures to be followed for transportation falling outside the scope of the rule has not been included in the effective rule. Regardless of the methodology used for assessing the environmental effects of such transportation—be it that contained in the Survey or otherwise—any assessment will be subject to separate consideration in individual licensing cases if it covers transportation of a type which is outside the scope of the rule. Consequently, the Commission sees no need to spell out either general or specific procedures in this rule for covering transportation outside its scope.

The Commission is cognizant of the fact that there may occasionally arise a situation where transportation of fuel and waste for a particular reactor falls within the scope of the rule, but the transportation involves distances, population exposures, accident probabilities, or other factors which are much greater than those discussed and analyzed in the Survey or which are not accounted for in the Survey. In such an instance, parties to a reactor licensing proceeding have available to them the provisions of 10 CFR § 2.758 which provides, in part, that the Commission, upon a showing of special circumstances such as those mentioned above, may waive the application of a rule in a particular proceeding.

It should be noted that transportation of fuel and waste by air was not analyzed in the Environmental Survey and is outside the scope of this rule. Air transportation was not covered in the Survey primarily because fuel and wastes are currently not shipped to and from reactors via air owing to cost and space limitations. Should air shipments be contemplated in the future for fuel and/or wastes to or from a particular reactor, the environmental impact of such transportation would be subject to separate consideration in the individual reactor licensing proceeding. While the Commission is cognizant of the fact that there have been incidents aboard passenger aircraft involving improperly sealed containers which resulted in radiation exposures to passengers, these incidents did not involve shipments of reactor fuel or wastes to or from nuclear reactors.

It should also be noted that sabotage and diversion of shipments of fuel and waste to and from reactors are not covered in the Enviornmental Survey and are not accounted for in the values contained in the Summary Table. The environmental effects of sabotage and diversion, therefore, are beyond the scope of the rule and are subject to appropriate separate consideration in individual reactor licensing proceedings. The Commission has promulgated regulations in 10 CFR Part 73 for safeguarding shipments of special nuclear material. It is actively pursuing the subject and has underway a number of studies which may ultimately culminate in separate rule making proceedings on the various aspects of sabotage and diversion in transportation. These studies include (i) development of a specially designed vehicle for transporting special nuclear material; (ii) expansion of secure communications systems; and (iii) an assessment of radiation effects of dispersion which might result from sabotage of special nuclear material shipments in transit.

A fourth area in which issues were identified concerns whether a substantial revision of the Survey and proposed amendment should be undertaken prior to issuance of the final amendment in light of the comments received. If such revisions are undertaken, the question then arises as to whether the Administrative Procedure Act requires reopening the proceeding and, if so, whether the proceeding should take the form of the original proceeding or some other form. The Commission believes that the existing Survey provides an adequate data base for the promulgation of the regulation set forth below. The changes in the cumulative dose values of the Summary Table are in response to EPA's comments and the Staff's recommendation. As noted earlier, the Staff intends to issue a supplement to the Survey explaining the derivation of these values. In addition, the Commission does not believe that incorporation of a clarifying scope provision into the amendment set forth below requires further public proceedings since this revision is clarifying in nature and reflects comments received during the course of the proceeding. Thus, since the Commission sees no present need for further rulemaking, there is no occasion to consider either reopening the proceeding or determining what form it should take.

A fifth area in which an issue was identified concerns the inter-relationship between the rulemaking proceeding on transportation and the rulemaking proceeding on the environmental effects of the uranium fuel cycle, a matter which we specifically addressed in the Notice of Proposed Rulemaking issued in this proceeding on February 5, 1973. The question raised was whether, because of this inter-relationship, the two proceedings should be combined to avoid conflict or duplication. While this suggestion has some merit, it is apparent that consolidation would have unnecessarily delayed publication of an effective regulation relating to the environmental effects of the uranium fuel cycle. In any event, both the fuel cycle rule and this rule have been appropriately conformed as amendments to 10 CFR Part 51, and, in this manner, any potential for conflict or duplication has been eliminated.

The sixth area in which an issue was identified concerns whether any provision should be made for exempting or limiting the applicability of the final amendment insofar as pending licensing cases are concerned.

Since the environmental impact of transportation of fuel and waste is currently considered in individual proceedings on a case-by-case basis, the

Commission believes that these cases can be expedited if given the benefit of the transportation rule. Accordingly, compliance with the new rule will be required upon the effective date.

A seventh area in which the Board identified an issue concerns suggestions made by many of the participants for revision and reexamination of the Environmental Survey at periodic intervals. While the Commission agrees with the suggestions that the Survey be re-examined from time to time to accommodate new technology and information, it does not believe it necessary or advisable to impose any specific time limit. As in the uranium fuel cycle proceeding, our view is that revision should be based on development of new methodologies and information for assessing the environmental impact associated with transportation, and not on any arbitrary or fixed time period.

The presiding hearing board also identified a number of miscellaneous items. One item concerns the Staff's position that since the overall environmental impact resulting from transportation is small, there is no need to search for alternative methods of reducing the impact still further. The question raised by the hearing board for Commission consideration is whether this position satisfies the principle of "as low as practicable" exposures. The Commission does not believe this proceeding is an appropriate one for considering whether or not the Staff's position with respect to transportation of fuel and wastes satisfies the "as low as practicable" requirement of 10 CFR Part 20. As indicated earlier, the purpose of this proceeding is to quantify the associated environmental impact of transportation of fuel and wastes under an existing set of circumstances. While the concept of "as low as practicable" must be considered in individual reactor licensing cases, it is not a concept which is applicable or appropriate to this proceeding. Of course, nuclear technology is not static. As improvements in packaging are developed, they will be reflected in the Commission's requirements.

Another of the Board's suggestions for Commission consideration concerns requiring the Environmental Survey to include the Summary Table together with an indication of which parts of the Survey provide the basis for each part of the Table.

As discussed earlier, the Survey provides a methodology for analyzing and assessing the environmental effects associated with the transportation of nuclear fuels and waste and contains environmental impact values for a "model" light-water reactor. The impact values contained in the Summary Table represent the application of that methodology to 84 reactors either under construction or in operation at 53 different sites. Impact values were derived for each individual reactor and values encompassing 90 percent of the 84 reactors studied were then calculated for insertion into the Rule. In view of the fact that the Staff intends to issue a Supplement to the Survey showing how these values were derived, the Commission believes that this matter has been resolved.

Finally, the Board mentioned three matters raised by comments of the participants which the Staff contended were beyond the scope of the proceeding. These were: (i) regulatory standards for packaging covered by other Commission regulations; (ii) methods of transportation, types of fuel, and materials not covered by the Survey; and (iii) transportation from other than a single nuclear power reactor (i.e., transportation from 1000 reactors as opposed to a single "model" reactor). While these matters may be of interest, the Commission agrees with the Staff's position that they are beyond the scope of this proceeding.

The purpose of this proceeding was not to consider the adequacy or inadequacy of the Commission's regulations governing packaging of nuclear material and wastes found in 10 CFR Part 71, but rather, in part, was to assess the environmental impact of transportation of fuel and waste packaged in accordance with those regulations. Likewise, the purpose of this proceeding was not to assess or speculate as to the environmental impact of differing modes of transportation or differing types of fuel, but rather was to assess the environmental impact associated with currently used methods of transportation of fuel and waste. As to transportation from 1000 reactors as opposed to a single "model" reactor, the purpose of this proceeding was to develop environmental impact values for transportation of fuel and waste that could be factored into cost-benefit analyses for individual reactors, not to assess the cumulative environmental impact of transportation of fuel and wastes for all reactors contemplated to be in operation at some future date.

On the basis of the foregoing, the record of the rulemaking hearing, consideration of the comments received, and other factors involved, the Commission has adopted the amendment set forth below. The amendment is in substance essentially the same as the amendment proposed in the notice of proposed rulemaking published February 5, 1973 (38 FR 3334) except for the addition of a scope definition, and changes in certain values to reflect EPA comments and clarifying and editorial changes to make it conform with the format of 10 CFR Part 51.

Pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendment to 10 CFR Part 51 is published as a document subject to codification.

1. A new paragraph (g) is added to § 51.20 to read as follows:

§ 51.20 Applicant's Environmental Report Construction Permit Stage.

* * * * *

(g) (1) The Environmental Report required by paragraph (a) for light-water cooled nuclear power reactors shall contain either (i) a statement that the transportation of cold fuel to the reactor and irradiated fuel from the reactor to a fuel reprocessing plant and the transportation of solid radioactive wastes from the reactor to waste burial grounds is within the scope of this paragraph, and as the contribution of the environmental effects of such transportation to the environmental costs of licensing the nuclear power reactor, the values set forth in the following Summary Table S-4; or (ii) if such transportation does not fall within the scope of this paragraph, a full description and detailed analysis of the environmental effects of such transportation and, as the contribution of such effects to the environmental costs of licensing the nuclear power reactor, the values determined by such analyses for the environmental impact under normal conditions of transport and the environmental risk from accidents in transport.

(2) This paragraph applies to the transportation of fuel and wastes to and from a nuclear power reactor only if:

(i) The reactor is a light-water-cooled nuclear power reactor with a core thermal power level not exceeding 3,800 megawatts;

(ii) The reactor fuel is in the form of sintered uranium dioxide pellets encapsulated in zircaloy rods with a uranium-235 enrichment not exceeding 4% by weight;

(iii) The average level of irradiation of the irradiated fuel from the reactor does not exceed 33,000 megawatt days per metric ton and no irradiated fuel assembly is shipped until at least 90 days have elapsed after the fuel assembly was discharged from the reactor;

(iv) Waste (other than irradiated fuel) shipped from the reactor is in the form of packaged, solid wastes; and

(v) Unirradiated fuel is shipped to the reactor by truck; irradiated fuel is shipped from the reactor by truck, rail, or barge; and waste other than irradiated fuel is shipped from the reactor by truck or rail.

(3) This paragraph does not apply to any applicant's environmental report submitted prior to

SUMMARY TABLE S-4—ENVIRONMENTAL IMPACT OF TRANSPORTATION OF FUEL AND WASTE TO AND FROM ONE LIGHT-WATER-COOLED NUCLEAR POWER REACTOR [1]

NORMAL CONDITIONS OF TRANSPORT

	Environmental impact
Heat (per irradiated fuel cask in transit)	250,000 Btu/hr.
Weight (governed by Federal or State restrictions)	73,000 lbs. per truck; 100 tons per cask per rail car.
Traffic density:	
Truck	Less than 1 per day.
Rail	Less than 3 per month.

Exposed population	Estimated number of persons	Range of doses to exposed individuals [2] (per reactor year)	Cumulative dose to exposed population (per reactor year) [3]
Transportation workers	200	0.6 to 300 millirem	4 man-rem.
General public:			
Onlookers	1,100	0.003 to 1.3 millirem	3 man-rem.
Along Route	600,000	0.0001 to 0.06 millirem	

ACCIDENTS IN TRANSPORT

	Environmental risk
Radiological effects	Small [4].
Common (nonradiological) causes	1 fatal injury in 100 reactor years; 1 nonfatal injury in 10 reactor years; $475 property damage per reactor year.

[1] Data supporting this table are given in the Commission's "Environmental Survey of Transportation of Radioactive Materials To and From Nuclear Power Plants," WASH-1238, December 1972.

[2] The Federal Radiation Council has recommended that the radiation doses from all sources of radiation other than natural background and medical exposures should be limited to 5,000 millirem per year for individuals as a result of occupational exposure and should be limited to 500 millirem per year for individuals in the general population. The dose to individuals due to average natural background radiation is about 130 millirem per year.

[3] Man-rem is an expression for the summation of whole body doses to individuals in a group. Thus, if each member of a population group of 1,000 people were to receive a dose of 0.001 rem (1 millirem), or if 2 people were to receive a dose of 0.5 rem (500 millirem) each, the total man-rem dose in each case would be 1 man-rem.

[4] Although the environmental risk of radiological effects stemming from transportation accidents is currently incapable of being numerically quantified, the risk remains small regardless of whether it is being applied to a single reactor or a multireactor site.

2. Paragraph (a) of § 51.23 is amended to read as follows:

§ 51.23 Contents of Draft Environmental Statement.

(a) The draft environmental impact statement will include the matters specified in § 51.20 (a), (e), and (g) and § 51.21, as appropriate.

* * * * *

Effective Date. The foregoing amendments become effective on Feb. 5, 1975.

(Sec. 161, Pub. Law 83-703, 68 Stat. 948; (42 U.S.C. 2201), sec. 102, Pub. Law 91-190, 83 Stat. 853; (42 U.S.C. 4332)).

Dated at Germantown, Maryland, this 27th day of December, 1974.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.75-125 Filed 1-3-75;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Public Reference Facilities and Publications

As a result of changes which have been taking place over a period of time since §§ 200.80, 200.80b, 200.80c and 200.80d of Chapter II, Title 17, Code of Federal Regulations, were published in the FEDERAL REGISTER, the statements concerning the Commission's public reference facilities and publications which are given in those sections as previously published are no longer accurate. Accordingly, the Commission amends § 200.80, and revises §§ 200.80b, 200.80c and 200.80d as follows:

1. Paragraphs (b), (d) and (g) of § 200.80 are amended to read as follows:

§ 200.80 Commission records and information.

* * * * *

(b) *Public reference facilities; materials and records available.* (1) The Commission has a specially staffed and equipped public reference room located at 1100 L Street, NW., Washington, D.C., and public reference facilities in the New York, Chicago and Los Angeles regional offices. Some facilities for public use are also provided in other regional and branch offices. In addition to materials otherwise set forth in this paragraph, certain of the materials described in paragraph (a) of this section will be available at the public reference room at the principal office of the Commission and may be available at the regional offices. Written requests should continue to be addressed to the Public Reference Section, 500 North Capitol Street, Washington, D.C. 20549.

* * * * *

(5) In the New York, Chicago and Los Angeles regional offices sets of microfiche are available for inspection and reproduction of all recent registration statements filed pursuant to the Securities Act of 1933, registration statements and periodic reports filed pursuant to the Securities Exchange Act, and periodic reports filed pursuant to the Investment Company Act, from 1969 to date.

(6) [Removed]

(7) [Removed]

* * * * *

(d) *Requests for Commission records and copies thereof.* Requests for Commission records may be made in person during normal business hours at the public reference room at the principal offices of the Commission in Washington, D.C. Inquiries, in general, may be made to the public reference room personally, by telephone or by mail. Orders for copies of Commission records may be made personally or by mail to the public reference section.

* * * * *

(g) *Fees for records services, schedule of fees.* * * *

* * * * *

(4) *Copying services.* * * *

(i) * * *

(ii) *Self-service copying facilities.* The contractor maintains coin-operated machines in the public reference room at the Commission's principal office in Washington, D.C. and coin-operated microfiche reader-printers in the New York, Chicago and Los Angeles regional offices. These machines, which are operated by customers on a do-it-yourself basis, can be used to make immediate copies of materials that are available for inspection in those offices.

2. In §§ 200.80b, 200.80c, and 200.80d the heading and text are revised to read as follows:

§ 200.80b Appendix B—SEC releases.

(a) Companies and persons who are registered with the Commission under the various Acts will continue to receive copies of individual releases pertaining to rule proposals and rule changes under the Acts for which they are registered.

(b) Other free mailing list distribution of releases has been discontinued by the Commission because of rising costs and staff limitations. However, the texts of all releases under the various Acts, the corporate reorganization releases, and the litigation releases are contained in the SEC Docket, which may be purchased through the Superintendent of Documents as described in § 200.80c of this Part. The Statistical series releases are contained in the *Statistical Bulletin*, which also can be obtained by purchase through the Superintendent of Documents.

§ 200.80c Appendix C—Statutes, rules and miscellaneous publications available from the Government Printing Office.

(a) The current rules of the Commission are not published by the Commission in pamphlet form. All SEC public rules and regulations, including its Rules, of Practice, are contained in Title 17 of the Code of Federal Regulations, which also is available for purchase from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. New rules and rules changes, and other Commission releases, except statistical releases, also are published in the FEDERAL REGISTER as they are adopted.

(b) Copies of the following statutes and miscellaneous publications may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Please address to him directly all inquiries, orders and payments concerning the following publications:

1. *Act pamphlets.*

Securities Act of 1933, as amended.

Securities Exchange Act of 1934, as amended.

Public Utility Holding Company Act of 1935, as amended.

Trust Indenture Act of 1939, as amended.

Investment Company Act of 1940, as amended.

Investment Advisers Act of 1940, as amended.

2. *Reports and Compilations.*

SEC Annual Report to the Congress.

SEC Decisions and Reports.

Accounting Services Releases (compiled, includes Nos. 1 through 112).

Compilation of Releases with Matters Arising Under the Securities Act of 1933.

Compilation of Releases Dealing with Matters Arising Under the Securities Exchange Act of 1934 and Investment Advisers Act of 1940.

Compilation of Releases, Commission Opinions, and Other Material Dealing with Matters Frequently Arising Under the Investment Company Act of 1940.

Study on Unsafe and Unsound Practices of Broker-Dealers. Hse. Doc. #231, 92nd Cong.

Report of the Real Estate Advisory Committee to the SEC.

The Financial Collapse of the Penn Central Company. Staff Report of the SEC to the Special Subcommittee on Investigations, August, 1972.

Report of the SEC Special Study of Securities Markets (1963). Hse. Doc. #95, 88th Cong. Parts 1 through 6.

Institutional Investor Study Report. Hse. Doc. #92-64, Complete Set Summary Volume.

Report of the SEC on the Public Policy Implications of Investment Company Growth. Hse. Report #2337, 89th Cong., 2nd Session.

3. *Periodicals.*

Official Summary. A monthly summary of securities transactions and holdings reported under the provisions of the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, and the Investment Company Act of 1940 by officers, directors, and certain other persons.

Statistical Bulletin. A monthly publication containing data on round-lot and odd-lot share volume in stock exchanges, OTC volume in selected securities, block distributions, securities registrations and offerings, net change in corporate securities outstanding, working capital of U.S. corporations, assets of non-insured pension funds, Rule 144 filings and 8K reports. SEC Docket. A weekly compilation of the full texts of SEC releases under the following Acts: Securities Act, Securities Exchange Act, Public Utility Holding Company Act, Trust Indenture Act, Investment Advisers Act, and Investment Company Act. Also included are the full texts of Accounting series releases, corporate reorganization releases, and litigation releases.

News Digest. A daily summary of orders, decisions, rules and rule proposals issued by the Commission under the various laws it administers, together with a resume of financing proposals contained in Securities Act registration statements and of other Commission announcements.

Directory of Companies Filing Annual Reports with the Securities and Exchange Commission under the Securities Exchange Act of 1934. Published annually. Lists companies alphabetically and classified by industry groups according to the Standard Industrial Classification Manual of the Bureau of the Budget.

§ 200.80d Appendix D—other publications available from the Commission.

(a) Limited amounts of the following materials are available free of charge upon request to the Commission's Publications Section:

Work of the Securities and Exchange Commission.

Uniform System of Accounts for Public Utility Holding Companies.

Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies.

Sample copies of the more commonly used forms under each of the Acts.

(b) Facsimile copies of other SEC publications which are out of stock may be obtained through the Commission's Public Reference Section, at the cost of the copying service to be performed by the commercial copier employed to do the copying. Purchasers of copies will be billed by the copier. An example of the publications which are available in this way is the List of Registered Investment Companies.

(Sec. 3, 60 Stat. 238, as amended, P.L. 90-23, 81 Stat. 54, 5 U.S.C. 552; secs. 19, 23, 48 Stat. 85, 901 as amended, 15 U.S.C. 77s, 77w; sec. 20, 49 Stat. 833, 15 U.S.C. 79t; sec. 319, 53 Stat. 1173, 15 U.S.C. 77sss; secs. 38, 211, 54 Stat. 841, 855, 15 U.S.C. 80 a-37, 80b-11)

The Commission finds that the foregoing amendments affect only the Commission's rules of agency organization and procedure and, therefore, notice and procedures under 5 U.S.C. 553 are unnecessary. The foregoing action, therefore, is effective immediately.

For the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

DECEMBER 24, 1974.

[FR Doc.75-199 Filed 1-3-75;8:45 am]

[Release Nos. 33-5550, 34-11147, AS-165]

REGISTRANTS AND INDEPENDENT ACCOUNTANTS

Amended Rules for Increased Disclosure of Relationships

The Securities and Exchange Commission today adopted certain amendments of Form 8-K [17 CFR 249.308], Regulation S-X [17 CFR Part 210] and Schedule 14A [17 CFR 240.14a-101] of the proxy rules. These amendments were originally proposed on October 11, 1974, in Securities Act Release No. 5534 [39 FR 37999]. Based on the comments received in response to that proposal, several modifications have been made which are discussed in this release.

One of the underpinnings of the Commission's administration of the disclosure requirements of the federal securities laws is its reliance on the reports of independent public accountants on the financial statements of registrants. These reports provide the assurance of an outside expert's examination and opinion, thereby substantially increasing the reliability of financial statements.

The decision that the Commission and investors should rely on independent public accountants for the audit of financial statements was made by Congress when it enacted the Securities Acts forty years ago, and in the judgment of the Commission this system has worked effectively in the interests of investors. The independence of these professionals both in fact and appearance is an essential ingredient in the system, and the Commission has taken a number of steps to strengthen this independence. The amendments adopted herein are a further effort in this direction.

In recent years, the Commission has described in several releases situations in which it concluded that the necessary independence did not exist due to economic or personal relationships between accountant and client. In this way, it assisted the accounting profession's own standard-setting bodies in the creation of credible and useful standards of independence for the profession as a whole. This process is a continuing one.

In addition, the Commission, starting in 1971, has required specific disclosure in a timely Form 8-K filing of any change in principal accountants made by the registrant, including disclosure of any disagreement between the registrant and its principal accountant in the eighteen months prior to the change which could have required or did require mention in the accountant's report. This was designed to strengthen accountants' independence by discouraging the practice of changing accountants in order to obtain more favorable accounting treatment.

In 1972, in Accounting Series Release No. 123 [37 FR 6850], the Commission urged registrants to create an audit committee of the outside members of the Board of Directors in order to provide for more effective communication between independent accountants and outside directors. It was believed that such a committee would lessen the accountants' direct reliance on management and would put them directly in touch with outside members of the Board whose performance was less specifically being reported on in financial statements, thus increasing the accountants' independence.

Finally, the Commission and its staff have for many years offered support to accountants in numerous conferences and in informal administrative determinations of what reporting procedures should be followed in particular factual circumstances. The Commission's general refusal to accept opinions qualified in regard to audit scope or accounting principle as satisfying the Acts' requirements for certified financial statements has also strengthened the accountants' independence.

The Commission believes that the necessary independence of accountants does exist. It has noted with approval reports in which the accountants have evidenced their independence by bringing significant information to the attention of investors. For example, in one recent case an independent accountant reported that its client's accounting procedures, while acceptable under generally accepted accounting principles, were not those which the firm believed best reported financial results under the particular factual circumstances. In another case, an independent accountant while reporting on a five-year summary of earnings noted in its report that the accounting principles used to account for a transaction in an unaudited interim period subsequent to the five-year period

were such that had the firm been required to report on this period an adverse opinion would have been required. After discussions with the staff in this case, the registrant ultimately revised the interim statements.

It is essential that both the fact and the appearance of independence be sustained so that the confidence of the investing public in the reliability of audited financial statements and the integrity of the public accounting profession will be maintained and enhanced. To this end, the Commission has concluded that it is desirable to increase the level of disclosure regarding relationships between independent accountants and their clients.

Accordingly, the Commission is adopting herewith a number of amendments to its forms and rules designed to enhance the accountant's independence by increasing disclosure of auditor-client relationships.

First, Item 12 of Form 8-K [17 CFR 249.308] under which changes in accountants must currently be reported is amended to expand the disclosures required and to clarify the intent of the item. The changes made and the reasons therefor are as follows:

1. The resignation (or declination to stand for reelection after completion of the current audit) and dismissal of accountants would be reportable events as well as the engagement of a new accountant. In the past, when only the engagement of a new accountant triggered the reporting requirement, there was sometimes considerable delay in bringing significant disagreements to the attention of investors. Under the new rule, timely disclosure is required. This may mean on some occasions that two reports on Form 8-K will be required for a single change of accountants, the first on the resignation (or declination to stand for reelection after completion of the current audit) or dismissal of the previous accountant and the second where a new accountant is selected. In such a case, information filed in connection with the first report may be incorporated by reference in the second.

A special variant of resignation, declination to stand for re-election after completion of the current audit, was not recognized in Securities Act Release No. 5534 which proposed these amendments. It is specified as a trigger for reporting in the adopted amendments because of a recognition that, where an auditor declines to stand for re-election after completion of his current audit, such action is the substantive act of resignation, rather than the later time when his current engagement is terminated.

Changes in the independent accountant for a significant subsidiary on whom the principal accountant expressed reliance also become reportable events. The proposal did not restrict this modification of existing rules to a significant subsidiary and thus would have required reporting of changes which are minor in relation to the consolidated whole and of changes by non-controlled investee companies. For these purposes, significant subsidiary is as defined in Regulation S-X Rule 1-02 [17 CFR 210.1-02], except that a non-incorporated segment such as a division which met the size tests of the definition would be included:

In some circumstances, a report would be required regarding an accountant who did not report on financial statements of the registrant. For example, where Accountant A reported on the financial statements of the prior year, Accountant B was engaged for the current year but was replaced by Accountant C before he completed any examination, reports on Form 8-K would be required with respect to the change from Accountant A to Accountant B and from Accountant B to Accountant C.

2. The item would require disclosure as to whether the principal accountants' reports for either of the past two years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainty, audit scope or accounting principles. Based on comments received, the language was modified to make clear that "consistency" exceptions need not be reported in this item. This disclosure will assist users of Form 8-K to determine whether there were any items in the previous two years which were of such an unusual and material nature that disclosure was required in the accountants' report. Although such data are on file elsewhere in most cases, including them in the 8-K report will bring together in one place information which is relevant in the evaluation of auditor-client relationships.

3. The period prior to the date of the change of accountants for which disagreements of sufficient importance to warrant mention in the accountants' report if not resolved must be reported is extended from eighteen months to the period which includes the two most recent fiscal years and the subsequent interim period. The previous requirement was not sufficient to assure reporting of such disagreements in the previous two audits, and since two-year comparative statements are normally presented this seems the minimum period which should be covered.

4. The item is amended to clarify the intent of the present item which was to require a description of all disagreements, including those where the disagreement was resolved to the satisfaction of the accountant. This clarification was necessary as a result of the experience gained from analyzing 8-Ks filed in which no description was given of disagreements or in which a simple statement was made that there were no unresolved disagreements and staff follow-up was required to obtain the necessary information. Some commentators on Securities Act Release No. 5534 which proposed these amendments requested clarification of whether disagreements at lower staff levels are required to be reported. Disagreements contemplated by this rule occur at the decision-making level; i.e., between personnel of the registrant responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

5. The term "disagreements" should be interpreted broadly in responding to this item. For example, if an accountant resigned or was dismissed after advising the registrant that he had concluded that internal controls necessary to develop reliable statements did not exist, this would constitute a reportable disagreement in the event of a change of accountants. Similarly, if an accountant were to resign or be dismissed after informing the registrant that he had discovered facts which led him no longer to be able to rely on management representations or which made him unwilling to be associated with statements prepared by management, such situations would constitute reportable disagreements.

6. The item is amended to require that the registrant's statement as to whether any disagreements existed be included in the Form 8-K filing rather than in a separate letter attached to the filing and to require that copies of the accountant's letter be filed as an exhibit with all 8-K copies filed. These changes are intended to simplify the filing procedure and to clarify the Commission's intent that the registrant's description of disagreements, if any, and the accountant's concurrence or non-concurrence therewith be included in the Form 8-K (or attached as an exhibit). Under the existing rule, a few registrants have submitted letters separate from the Form 8-K filing with the result that the full disclosure of any disagreement was not readily available to the public.

7. When a change in independent accountants occurs so that the accountant being replaced is aware that a Form 8-K should be filed reporting the event, he might well bring that reporting responsibility to the attention of the registrant. If he becomes aware that the required reporting has not been made, e.g., because he has not been requested to furnish a letter as required by Form 8-K, Item 12(d), he should consider advising the registrant in writing of that reporting responsibility with a copy to the Commission.

Second, Regulation S-X (17 CFR Part 210] is amended to require disclosure in a note to the financial statements of any material disagreement on any matter of accounting principles or practices or financial statement disclosure reported in Item 12 of Form 8-K within twenty-four months of the date of the most recent financial statements in a filing. This disclosure is believed necessary to put readers of the financial statements on notice that such a disagreement existed which could have significantly affected the statements.

In addition, this amendment requires footnote disclosure of any transactions or events occurring during the fiscal year in which the change of accountants took place or during the subsequent fiscal year which are similar to any transactions

or events which gave rise to a reported disagreement and are differently accounted for. This would include cases in which a disagreement arose during the year of change and the same transaction or transactions which gave rise to the disagreement was accounted for in a different manner than that which the previous accountant concluded was necessary.

If such transactions which raise the same issues of accounting principle application or disclosure are material and are accounted for in a manner different from that which the former accountant apparently concluded was required, disclosure must be made of the effect on the financial statements if the accounting method specified by the former accountant had been followed. Also, if disclosure which the former accountant apparently concluded was required regarding such events or transactions has not been made elsewhere in the financial statements, it should be made in the footnote required by this rule. The proposal was modified to not require such disclosure where the method asserted by the former accountant ceases to be generally accepted because of standards subsequently issued. This disclosure will make investors aware of situations where alternative accounting approaches may be followed and are favored by at least one professional accountant, and the effect of such alternative approaches. In addition, it is believed that such disclosure requirements may have the effect of discouraging shifts in accountants simply to obtain approval of an alternative accounting approach. If registrants and their present independent accountants believe that the disclosure of the effect of applying the alternative accounting approach favored by the predecessor accountant would not be significant to investors in the circumstances, they may submit a statement to that effect to the staff which will consider a waiver of the rule.

Finally, a number of amendments are made to Item 8 of Schedule 14A [17 CFR 240.14a-101] of the proxy rules to require additional disclosures in the proxy statement of the relationships between issuers and independent public accountants. Since this disclosure is unlikely to be relevant to other solicitations, it is required only for annual meetings of securities holders or where financial statements are required pursuant to Item 15. These changes and the reasons therefor are as follows:

1. Disclosure of the principal accountant selected or to be recommended to shareholders for election, approval or ratification for the current year. This requirement is designed to make stockholders aware of the identity of the independent accountant of record for the current year, even in cases when the shareholders are not asked to take formal action to approve his selection. The Commission believes that such knowledge will enhance the stockholders' recognition of the role of the independent accountant.

2. Disclosure is required of the name of the principal accountant for the previous year if different from that selected or recommended for the current year or if no accountant has been selected for the current year. This disclosure is designed to inform the stockholder when a change in accountants has occurred and who the independent accountant of record is in cases where no action has been taken to select an accountant for the current year.

3. Disclosure of disagreements between accountant and issuer reported on a Form 8-K filed to report a change in accountant during the past year is required. The disclosure is designed to call disagreements to stockholders' attention so that they may be more fully informed of the relationships between accountant and issuer. Since any disagreement must by its nature have two sides, it seems desirable that both sides have an opportunity to review its description in the interests of obtaining a balanced and complete presentation. Accordingly, the issuer is required to submit the description included in the preliminary proxy material to the accountant, and if the accountant believes that the description is incorrect or incomplete he may include a brief statement, ordinarily expected not to exceed 200 words, in the proxy statement presenting his view of the disagreement. In recognition of valid comments received, the time for submitting such statement to the issuer was extended to ten days and provision for flexibility in the number of words was made.

4. Disclosure is required of whether or not representatives of the principal accountants for the current year and the most recently completed fiscal year are expected to be present at the stockholders' meeting with the opportunity to make a statement and available to respond to appropriate questions. The Commission believes that it is desirable for communication between stockholders and their independent accountants to be encouraged. While the principal communication is the accountant's report on financial statements, there may be some matters which the accountants wish to bring to the attention of stockholders and there may be questions which stockholders wish to address to the accountants. This disclosure will emphasize the existence of this opportunity for communication when it is available.

5. Disclosure is required of the existence and composition of the audit committee of the Board of Directors. The Commission has already expressed its judgment that audit committees made up of outside directors have significant benefits for a company and its shareholders (Accounting Series Release No. 123). This disclosure will make stockholders aware of the existence and composition of the committee. If no audit or similar committee exists, the disclosure of that fact is expected to highlight its absence.

6. The current requirement in Item 8 for disclosure of any financial interests of any accountant who is being selected or approved by stockholders of the issuer or certain other relationships which existed during the past three years is rescinded inasmuch as the accountant, who must be independent of the issuer, is precluded from having such relationships by the accounting profession's (and the Commission's) standards for independence of accountants.

Commission action: The Commission hereby adopts amendments revising Item 12 and the list of exhibits in § 249.308 and Item 8 in § 240.14a-101 and adding a new paragraph (s) to § 210.3-16 of Chapter II of Title 17 of the Code of Federal Regulations and as amended they read as follows.

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, AND INVESTMENT COMPANY ACT OF 1940

1. Part 210 of this chapter (Regulation S-X). A new rule designated as (s) is added to § 210.3-16 as given below:

§ 210.3-16 General notes to financial statements. (See Release No. AS-4.)

(a) to (r) * * *

(s) *Disagreements on accounting and financial disclosure matters.*—If, within the twenty-four months prior to the date of the most recent financial statements, a Form 8-K has been filed reporting a change of accountants and included in such filing there is a reported disagreement on any matter of accounting principles or practices or financial statement disclosure, and if such disagreement, if differently resolved, would have caused the financial statements to differ materially from those filed, state the existence and nature of the disagreement. In addition, if during the fiscal year in which the change in accountants took place or during the subsequent fiscal year there have been any transactions or events similar to those which involved a reported disagreement and if such transactions are material and were accounted for or disclosed in a manner different from that which the former accountant apparently concluded was required, state the effect on the financial statements if the method which the former accountant apparently concluded was required had been followed. The effects on the financial statements need not be disclosed if the method asserted by the former accountant ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

2. Regulation 14A: Solicitation of Proxies. Item 8 of Schedule 14A is revised as given below:

§ 240.14a-101 (Schedule 14A). Information required in proxy statement.

Item 8. *Relationship with independent public accountants.*—If the solicitation is made on behalf of management of the issuer and relates to an annual meeting of security holders at which directors are to be elected, or financial statements are included pursuant to Item 15, furnish the following information

describing the issuer's relationship with its independent public accountants:

(a) The name of the principal accountant selected or being recommended to shareholders for election, approval or ratification for the current year. If no accountant has been selected or recommended, so state and briefly describe the reasons therefor.

(b) The name of the principal accountant for the fiscal year most recently completed if different from the accountant selected or recommended for the current year or if no accountant has yet been selected or recommended for the current year.

(c) If a change or changes in accountants have taken place since the date of the proxy statement for the most recent annual meeting of shareholders and if in connection with such change(s) a disagreement between the accountant and issuer has been reported on Form 8-K or in the accountant's letter filed as an exhibit thereto, the disagreement shall be described. Prior to submitting preliminary proxy material to the Commission which contains or amends such description, the issuer shall furnish the description of the disagreement to any accountant with whom a disagreement has been reported. If that accountant believes that the description of the disagreement is incorrect or incomplete, he may include a brief statement, ordinarily expected not to exceed 200 words, in the proxy statement presenting his view of the disagreement. This statement shall be submitted to the issuer within ten business days of the date the accountant receives the issuer's description.

(d) The proxy statement shall indicate whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year are expected to be present at the stockholders' meeting with the opportunity to make a statement if they desire to do so and whether or not such representatives are expected to be available to respond to appropriate questions.

(e) If the issuer has an audit or similar committee of the Board of Directors, state the names of the members of the committee. If the Board of Directors has no audit or similar committee, so state.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. Item 12 of § 249.308 and exhibits are revised to read as follows:

Item 12. Changes in Registrant's Certifying Accountant.

If an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements resigns (or indicates he declines to stand for re-election after the completion of the current audit) or is dismissed as the registrant's principal accountant, or another independent accountant is engaged as principal accountant, or if an independent accountant on whom the principal accountant expressed reliance in his report regarding a significant subsidiary resigns (or formally indicates he declines to stand for re-election after the completion of the current audit) or is dismissed, or another independent accountant is engaged to audit that subsidiary:

(a) State the date of such resignation (or declination to stand for re-election), dismissal or engagement.

(b) State whether in connection with the audits of the two most recent fiscal years and any subsequent interim period preceding such resignation, dismissal or engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of the former accountant would have caused him to make reference in connection with his report to the subject matter of the disagreement(s); also, describe each such disagreement. The disagreements required to be reported in response to the preceding sentence include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this rule are those which occur at the decision-making level; i.e., between personnel of the registrant responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

(c) State whether the principal accountant's report on the financial statements for any of the past two years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainty, audit scope, or accounting principles; also, describe the nature of each such adverse opinion, disclaimer of opinion, or qualification.

(d) The registrant shall request the former accountant to furnish the registrant with a letter addressed to the Commission stating whether he agrees with the statements made by the registrant in response to this item and, if not, stating the respects in which he does not agree. The registrant shall file a copy of the former accountant's letter as an exhibit with all copies of the Form 8-K required to be filed pursuant to General Instructions F.

* * * * *

EXHIBITS

Instruction 7. Letters from the independent accountants furnished pursuant to Item 12(d).

* * * * *

[Secs. 6, 7, 8, 10 and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j and 77s] of the Securities Act of 1933; and Sections 12, 13, 15(d) and 23(a) [15 U.S.C. 78l, 78m, 78o(d) and 78w] of the Securities Exchange Act of 1934]

The amendments to Form 8-K and to Regulation 14A shall be effective for Forms 8-K and proxy statements filed subsequent to January 31, 1975. The amendment of Regulation S-X shall be effective with respect to financial statements filed for periods beginning on or after January 1, 1975.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

DECEMBER 20, 1974.

[FR Doc.75-198 Filed 1-3-75;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER C—DRUGS

PART 135—NEW ANIMAL DRUGS

Subpart C—Sponsors of Approved Applications

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

Tylosin

The Commissioner of Food and Drugs has evaluated a new animal drug application (98-688V) filed by Farmers Feed & Supply Co., Tipton, IA 52772, proposing safe and effective use of a tylosin premix in the manufacture of swine feed. The application is approved.

To facilitate referencing, the firm is being assigned a sponsor code number and placed in the list of firms in 21 CFR § 135.501(c).

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR § 2.120), Parts 135 and 135e are amended as follows:

1. In § 135.501(c) by adding a new sponsor as follows:

§ 135.501 Names, addresses, and code numbers of sponsors of approved applications.

* * * * *

(c) * * *

Code No.	*Firm name and address*
* * * *	* * * *
133	Farmers Feed & Supply Co., Ninth St. at Northwestern Tracks, Tipton, IA 52772.

2. In § 135e.10(b) by adding an additional approval as follows:

§ 135e.10 Tylosin.

* * * * *

(b) * * *

(29) To 133: 0.4 grams per pound, item 4.

* * * * *

Effective date. This order shall be effective on January 6, 1975.

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

Dated: December 27, 1974.

FRED J. KINGMA, *Acting Director, Bureau of Veterinary Medicine.*

[FR Doc.75-213 Filed 1-3-75;8:45 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Diethylcarbamazine Citrate Tablets

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (6-462V) filed by American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, proposing safe and effective use of diethylcarbamazine citrate tablets containing 200 milligrams per tablet, in addition to previously approved tablet sizes, for the treatment of dogs and cats. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i) 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR § 2.120), § 135c.86 is amended by revising paragraph (a)(1) to read as follows:

§ 135c.86 Diethylcarbamazine citrate tablets.

(a)(1) *Specifications.* Diethylcarbamazine citrate tablets contain 50, 200, or 400 milligrams of diethylcarbamazine citrate per tablet.

* * * * *

Effective date. This order shall be effective on January 6, 1975.

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

Dated: December 27, 1974.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.75-212 Filed 1-3-75;8:45 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Ampicillin Soluble Powder, Veterinary

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (55-050V) filed by E. R. Squibb & Sons, Inc., New Brunswick, NJ 08902, proposing additional safe and effective uses of ampicillin soluble powder, veterinary, for oral use in the treatment of swine. The supplemental application is approved.

In addition, the title of 21 CFR § 135c.85 is being revised to reflect current terminology as in 21 CFR § 149b.21 (a)(2).

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), § 135c.85 is amended by revising its section heading and paragraph (c)(1) to read as follows:

§ 135c.85 Ampicillin soluble powder, veterinary.

* * * * *

(c) *Conditions of use.* (1) Indicated for oral use in swine in the treatment of porcine colibacillosis (E. coli) and salmonellosis (Salmonella spp.) infections in swine up to 75 pounds of body weight, and bacterial pneumonia caused by Pasteurella multocida, Staphylococcus spp. Streptococcus spp. and Salmonella spp.

* * * * *

Effective date. This order shall be effective on January 6, 1975.

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

Dated: December 27, 1974.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.75-214 Filed 1-3-75;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7334]

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

Special Rules for Determining Tax Credit for Foreign Income Taxes Paid by Controlled Foreign Corporations

Correction

In FR Doc. 74-29867 appearing in the issue of Monday, December 23, 1974, make the following changes:

1. In the sixth line of the first full paragraph in the first column on page 44211 the number reading "1.9541" should read "1.954-1".

2. In § 1.960-1(c)(4) the table to example (6) on page 44212 should appear as set forth below:

Pretax earnings and profits of A Corporation:			
Dividends received from B Corporation		$150.00	
Other income		250.00	
Total pretax earnings and profits			$400.00
Foreign income taxes:			
On dividends received from B Corporation		none	
On other income ($250×0.40)		100.00	
Total foreign income taxes			100.00
Earnings and profits:			
Attributable to dividends received from B Corporation to which sec. 902(b) does not apply		100.00	
Attributable to other income:			
Attributable to dividends received from B Corporation to which sec. 902(b)(1) applies	$50.00		
Attributable to other income ($250—$100 [$250×0.40])	150.00	200.00	
Total earnings and profits			300.00
Foreign income taxes deemed paid by N Corporation under sec. 960(a)(1)(C) with respect to A Corporation:			
Tax paid by A Corporation in respect to its income other than dividends received from B Corporation to which sec. 902(b) does not apply ($175/$200×$100)			87.50
Tax of B Corporation deemed paid by A Corporation under sec. 902(b)(1) in respect to such income ($175/$200×$25)			21.88
Total foreign income taxes deemed paid by N Corporation under sec. 960(a)(1)(C) with respect to A Corporation			109.38

3. In § 1.960-2(e) the table to example (7) on page 44213 should appear as set forth below:

B Corporation (second-tier corporation):			
Pretax earnings and profits			200.00
Foreign income taxes (20%)			40.00
Earnings and profits			160.00
Amount required to be included in N Corporation's gross income for 1965 under sec. 951 with respect to B Corporation			100.00
Dividends paid by B Corporation:			
Dividends to which sec. 902(b) does not apply (from B Corporation's earnings and profits in respect of which an amount is required under sec. 951 to be included in N Corporation's gross income with respect to B Corporation)		$100.00	
Dividends to which sec. 902(b)(1) applies (from B Corporation's other earnings and profits)		50.00	
Total dividends paid to A Corporation			150.00
Foreign income taxes of B Corporation deemed paid by A Corporation for 1965 under sec. 902(b)(1) ($50/$160×$40)			12.50
A Corporation (first-tier corporation):			
Pretax earnings and profits:			
Dividends received from B Corporation		$150.00	
Other income		100.00	
Total pretax earnings and profits			250.00
Foreign income taxes:			
On dividends received from B Corporation		none	
On other income ($100×0.10)		10.00	
Total foreign income taxes			10.00
Earnings and profits:			
Attributable to dividends received from B Corporation to which sec. 902(b) does not apply		$100.00	
Attributable to other income:			
Attributable to dividends received from B Corporation to which sec. 902(b)(1) applies	$50.00		
Attributable to other income ($100—$10)	90.00	140.00	
Total earnings and profits			240.00

A Corporation (first-tier corporation)—Con.			
Earnings and profits after exclusion of amounts attributable to dividends to which sec. 902(b) does not apply ($240−$100)			140.00
Amount required to be included in N Corporation's gross income for 1965 under sec. 951 with respect to A Corporation			none
Dividends paid by A Corporation:			
Dividends to which sec. 902(a) does not apply (from A Corporation's earnings and profits in respect of which an amount is required under sec. 951 to be included in N Corporation's gross income with respect to A Corporation)		none	
Dividends to which sec. 902(a)(1) applies (from A Corporation's other earnings and profits)		175.00	
Total dividends paid to N Corporation			175.00
N Corporation (domestic corporation):			
Foreign income taxes deemed paid by N Corporation under sec. 960(a)(1)(C) with respect to B Corporation ($100/$160×$40)			25.00
Foreign income taxes deemed paid by N Corporation under sec. 902(a)(1) with respect to A Corporation (allocation of earnings and profits being made under pars. (c)(2) and (d) of this section):			
Tax paid by A Corporation in respect to dividends received from B Corporation to which sec. 902(b) does not apply ($100/$100×$0)		none	
Tax paid by A Corporation in respect to its other income ($75/$140×$10)		5.36	
Tax of B Corporation deemed paid by A Corporation in respect to such other income ($75/$140×$12.50)		6.70	
Total taxes deemed paid under sec. 902(a)(1)			12.06
Total foreign income taxes deemed paid by N Corporation under sec. 901			87.06

4. In § 1.960–2(e) the table to example (8) on page 44214 should appear as set forth below:

B Corporation (second-tier corporation):			
Pretax earnings and profits			$250.00
Foreign income taxes (20 percent)			50.00
Earnings and profits			200.00
Amount required to be included in N Corporation's gross income for 1965 under sec. 951 with respect to B Corporation			150.00
Dividends paid by B Corporation:			
Dividends to which sec. 902(b) does not apply (from B Corporation's earnings and profits in respect of which an amount is required under sec. 951 to be included in N Corporation's gross income with respect to B Corporation)		$150.00	
Dividends to which sec. 902(b)(1) applies (from B Corporation's other earnings and profits)		50.00	
Total dividends paid to A Corporation			200.00
Foreign income taxes of B Corporation deemed paid by A Corporation for 1965 under sec. 902(b)(1) ($50/$200×$50)			12.50
A Corporation (first-tier corporation):			
Pretax earnings and profits:			
Dividends received from B Corporation		200.00	
Other income		100.00	
Total pretax earnings and profits			300.00
Foreign income taxes:			
On dividends received from B Corporation to which sec. 902(b) does not apply ($50×0.05)		7.50	
On other income:			
Dividends received from B Corporation to which sec. 902(b)(1) applies ($50×0.05)	$2.50		
Other income of A Corporation ($100×0.20)	20.00	22.50	
Total foreign income taxes			30.00
Earnings and profits:			
Attributable to dividends received from B Corporation to which sec. 902(b) does not apply ($150−$7.50)		142.50	
Attributable to dividends received from B Corporation to which sec. 902(b)(1) applies ($50−$2.50)	47.50		
Attributable to other income ($100−$20)	80.00	127.50	
Total earnings and profits			270.00

A Corporation (first-tier corporation)—Con.		
Earnings and profits after exclusion of amounts attributable to dividends to which sec. 902(b) does not apply ($270 less $142.50)		127.50
Amount required to be included in N Corporation's gross income for 1965 under sec. 951 with respect to A Corporation		47.50
Dividends paid by A Corporation:		
Dividends to which sec. 902(a) does not apply (from A Corporation's earnings and profits in respect of which an amount is required under sec. 951 to be included in N Corporation's gross income with respect to A Corporation)	none	
Dividends to which sec. 902(a)(1) applies (from A Corporation's other earnings and profits)	100.00	
Total dividends paid to N Corporation		100.00
N Corporation (domestic corporation):		
Foreign income taxes deemed paid by N Corporation under sec. 960(a)(1)(C) with respect to—		
B Corporation ($150/$200×$50)		37.50
A Corporation (allocation of earnings and profits being made under § 1.960-1(c)(3) and par. (d) of this sec.):		
Tax paid by A Corporation ($47.50/$127.50×$22.50)	8.38	
Tax of B Corporation deemed paid by A Corporation under sec. 902(b)(1) ($47.50/$127.50×$12.50)	4.66	13.04
Total taxes deemed paid under sec. 960(a)(1)(C)		50.54
Foreign income taxes deemed paid by N Corporation under sec. 902(a)(1) with respect to A Corporation (allocations of earnings and profits being made under pars. (c)(2) and (d) of this sec.) ($100/$142.50×$7.50)		5.26
Total foreign income taxes deemed paid by N Corporation under sec. 901		55.80

[T.D. 7339]

PART 11—TEMPORARY INCOME TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Temporary Regulations Relating to Election of Lump Sum Distribution Treatment Under Sections 402 and 403 of the Code

This document contains temporary income tax regulations (26 CFR Part 11) under section 402(e)(4)(B) of the Internal Revenue Code of 1954, as added by section 2005(a) of the Employee Retirement Income Security Act of 1974 in order to provide rules for the election to treat an amount as a lump sum distribution.

Section 402(e) defines the term "lump sum distribution" and provides a special 10-year averaging method of calculating the tax on the ordinary income portion of such a distribution. Under section 402(e)(4)(B), a taxpayer may elect this special averaging method for a taxable year with respect to a lump sum distribution if he elects to treat all such distributions received during that taxable year under the special method. However, after an individual has attained the age of 59½, only one election may be made with respect to that individual. The individual referred to in the preceding sentence is the employee who has participated in the plan. This is clearly expressed in the Conference Committee report, H. R. Rep. No. 93-1280, 93rd Cong., 2d Sess. 351 (1974), and in H.R. Rep. No. 93-807, 93rd Cong., 2d Sess. 154 (1974). Individuals, estates, and trusts are the only taxpayers permitted to use the special averaging method. If a lump sum distribution with respect to an employee is made to two or more trusts, the election is to be made by the employee or by the personal representative of a deceased employee.

The proposed temporary regulations provide that an election is to be made before the expiration of the period (including extension thereof) prescribed in section 6511 of the Code for making a claim for credit or refund of the assessed tax imposed by chapter 1 of subtitle A of the Code for such taxable year. The taxpayer is to make the election by filing Form 4972 as part of his income tax return or amended return for the taxable year. An election may be revoked within the time allowed for an election.

Amendments to the regulations. In order to prescribe temporary income tax regulations relating to the election to treat an amount as a lump sum distribution pursuant to section 402(e)(4)(B) of the Internal Revenue Code of 1954, as added by section 2005(a) of the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406, 88 Stat. 987), the following temporary regulations are hereby adopted:

Section 11.402(e)(4)(B)-1 is revised to read as follows:

§ 11.402(e)(4)(B)-1 Election to treat an amount as a lump sum distribution.

(a) *In general.* For purposes of sections 402, 403, and this section, an amount which is described in section 402(e)(4)(A) and which is not an annuity contract may be treated as a lump sum distribution under section 402(e)(4)(A) only if the taxpayer elects for the taxable year to have all such amounts received during such year so treated. Not more than one election may be made under this section with respect to an employee after such employee has attained age 59½.

(b) *Taxpayers eligible to make the election.* Individuals, estates, and trusts are the only taxpayers eligible to make the election provided by this section. In the case of a lump sum distribution made with respect to an employee to 2 or more trusts, the election provided by this section shall be made by the employee or by the personal representative of a deceased employee.

(c) *Procedure for making election*—(1) *Time and scope of election.* An election under this section shall be made for each taxable year to which such election is to apply. The election shall be made before the expiration of the period (including extension thereof) prescribed in section 6511 for making a claim for credit or refund of the assessed tax imposed by chapter 1 of subtitle A of the Code for such taxable year.

(2) *Manner of making election.* An election by the taxpayer with respect to a taxable year shall be made by filing Form 4972 as a part of the taxpayer's income tax return or amended return for the taxable year.

(3) *Revocation of election.* An election made pursuant to this section may be revoked within the time prescribed in subparagraph (1) of this paragraph for making an election, only if there is filed, within such time, an amended income tax return for such taxable year, which includes a statement revoking the election and is accompanied by payment of any tax attributable to the revocation. If an election for a taxable year is revoked, another election may be made for that taxable year under subparagraphs (1) and (2) of this paragraph.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Secs. 402(e)(4)(B) and 7805 of the Internal Revenue Code of 1954 (88 Stat. 989, 68A Stat. 917; 26 U.S.C. 402(e)(4)(B), 7805))

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: December 27, 1974.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

[FR Doc.75-303 Filed 1-3-75;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 73-191]

PART 110—ANCHORAGE REGULATIONS

PART 127—SECURITY ZONES

Apra Harbor; Guam

The purpose of this amendment to the Coast Guard anchorage and security zone regulations is to disestablish Explosives Anchorages 702 and 703, establish a new explosives anchorage, and revise the rules for using the general anchorage in Apra

Harbor. This amendment also disestablishes Security Zones C, D, E, and F and revises the rules for using Security Zone B in Apra Harbor.

The Commander, Fourteenth Coast Guard District has issued two Public Notices, No. 14-72-02 dated December 19, 1972 and No. 14-73-04, dated November 26, 1973, which proposed these amendments. Only one comment was received as a result of the first Public Notice, and this comment, from the Harbor Master and Deputy Director of the Commercial Port of Guam was in complete support of the proposal. No comments were received as a result of the second Public Notice.

Explosives Anchorages 702 and 703 are disestablished because of their close proximity to the explosive transfer facility at Navy Wharf H. An Explosives Anchorage designated 701 is established within Naval Anchorage A. All vessels carrying more than 25 tons of high explosives are required to use this anchorage.

A special anchorage area is established in the northwest corner of Apra Outer Harbor, east of Cabras Island to promote safety for the fleet of the Marianas Yacht Club.

Security Zones C, D, E, and F are no longer needed by the U.S. Navy.

In order to promote the safe passage of all vessels, the exemption of public vessels from the regulations in § 128.1401 (b) (1) and (3) is removed.

These amendments have local applicability and were the subject of a local notice to and the comment by the persons concerned or they relieve restrictions to operation of vessels or are minor clarifications. Therefore notice and public procedure on these amendments are unnecessary.

In consideration of the foregoing, Parts 110 and 127 of Title 33 of the Code of Federal Regulations are amended as follows:

1. By amending Subpart A by adding a new § 110.129a to read as follows:

§ 110.129a Apra Harbor, Guam.

The waters of Apra Harbor east of a line running from the eastern most corner of Pier C (old seaplane ramp) and the northwestern most corner of the Guam Oil and Refining Pier.

2. By amending Subpart B by revoking § 110.238(a) (3) and revising § 110.238(a) (1) and (2) and (b) (1) and (2) to read as follows:

§ 110.238 Apra Harbor, Guam.

(a) * * *

(1) *General Anchorage.*-The waters of Apra Outer Harbor enclosed by a line beginning at Southwest Point at latitude 13°27'29" N., longitude 144°39'32" E.; thence to latitude 13°27'18" N., Longitude 144°39'18" E.; thence to Spanish Rocks at latitude 13°27'09.5" N., longitude 144°37'20.6" E.; thence along the shoreline to the point of beginning.

(2) *Explosives Anchorage 701.*-In Naval Anchorage A, a circular area with a radius of 350 yards, centered at latitude 13°26'51" N., longitude 144°37'48.7" E.

(3) *(Reserved.)*

* * * * *

(b) *The regulations.*-(1) *General Anchorage.*-Any vessel may anchor in the General Anchorage except vessels carrying more than 25 tons of high explosives.

(2) *Anchorage 701.*-Vessels carrying more than 25 tons of high explosives must use Anchorage 701, unless otherwise directed by the Captain of the Port.

* * * * *

3. By revoking § 127.1401(a) (3), (4), (5) and (6), revising § 127.1401(b) (1), and adding a new § 127.1401(b) (4). As amended § 127.1401 reads as follows:

§ 127.1401 Apra Harbor, Guam.

(a) * * *

(3) (Revoked.)

(4) (Revoked.)

(5) (Revoked.)

(6) (Revoked.)

(b) *Special regulations.*-(1) Section 127.15 does not apply to Security Zones A and B, except when Navy Wharf H, or a vessel berthed at Navy Wharf H, is displaying a red (BRAVO) flag by day or a red light by night.

* * * * *

(4) Vessels under 65 feet in length may anchor in the Special Anchorage Area as described in § 110.129a of this part without permission of the Captain of the Port.

(33 U.S.C. 180, 258, 322, 471; 50 U.S.C. 191, 49 U.S.C. 1655(b), (g)(1); E.O. 10173, E.O. 11249; 3 CFR 1949-1953 Comp. p. 356, 3 CFR 1964-1965 Comp. p. 349; 49 CFR 1.46(b), (c))

Effective Date: These amendments become effective on February 6, 1975.

Dated: December 24, 1974.

O. W. SILER,
Admiral, U.S. Coast Guard Commandant.

[FR Doc.75-238 Filed 1-3-75;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5462]

IDAHO

Withdrawal for National Forest Administrative Sites and Recreation Areas

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 FR 4831), it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from appropriation under the mining laws, 30 U.S.C., Ch. 2, but not from leasing under the mineral leasing laws, in aid of programs of the Department of Agriculture:

PAYETTE NATIONAL FOREST

BOISE MERIDIAN

Peck Mountain Lookout Administrative Site

T. 18 N., R. 2 W.,
Sec. 29, S½SW¼.

Horse Heaven Administrative and Recreation Site

T. 22 N., R. 2 W.,
Sec. 9, NE¼NE¼NE¼.

Emerald Lake Recreation Site

T. 22 N., R. 2 W.,
Sec. 27, lot 1 and E½ of lot 2, also all of the bed of Emerald Lake in sec. 27 and 34.

Sitz Lake Basin Recreation Site

T. 21 N., R. 2 W.,
Sec. 4, lots 3, 4, 5, 6;
Sec. 5, lots 1 and 8.
T. 22 N., R. 2 W.,
Sec. 32, SE¼SE¼;
Sec. 33, S½SW¼.

PAYETTE AND NEZPERCE NATIONAL FORESTS

BOISE MERIDIAN

Lake Bar Recreation Site

T. 22 N., R. 3 W.,
Sec. 3, lot 1;
Sec. 10, N½ of lot 1, lot 2.

SALMON NATIONAL FOREST

BOISE MERIDIAN

Middle Fork Bar Recreation Area

A tract of land located in unsurveyed section 28, Township 23 North, Range 16 East, Boise Meridian, Idaho, more particularly described by a metes and bounds description as follows:

Beginning at Corner No. 1 of M.S. No. 3355 which is located S. 76°50' W., and 28.9 feet from U.S.M.M. No. 3355; thence S. 6°10' W., 400 feet to Corner No. 2 of M.S. No 3355; thence N. 75°35' W., 411.3 feet to Corner No. 3 of M.S. 3355; thence N. 88°25' W., 540 feet to Corner No. 4 of M.S. No. 3355; thence N. 52°10' E., 780.7 feet to Corner No. 5 of M.S. No. 3355; thence S. 61°25' E., 415.0 feet to Corner No. 1 of M.S. No. 3355, the place of beginning, including the area between this claim and the mean high waterline of the Middle Fork and main Salmon River, containing 7.182 acres, more or less.

The areas described aggregate 542.782 acres in Custer, Adams, and Idaho Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

Dated: December 27, 1974.

JACK O. HORTON,
Assistant Secretary of the Interior.

[FR Doc. 75-215 Filed 1-3-75;8:45 am]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 141—STRENGTHENING INSTRUCTION IN ACADEMIC SUBJECTS IN PUBLIC SCHOOLS

State Grant Provisions

Notice of proposed rule making was published in the FEDERAL REGISTER on March 29, 1974 at 39 FR 11556 and July 24, 1974 at 39 FR 27086 setting forth regulations governing the administration of Title III-A of the National

Defense Education Act of 1958, as amended. This program provides grants to the States to strengthen instruction in the academic subjects in public elementary and secondary schools through the acquisition of laboratory and other special equipment, and minor remodeling. Pursuant to section 503 of the Education Amendments of 1972, public hearings were held April 25, 1974 and September 20, 1974 in Washington, D.C., on the proposed regulations. In addition, written comments were invited.

No comments were received either orally or in writing.

After making necessary minor technical changes, Part 141 of Title 45 of the Code of Federal Regulations is amended to read as set forth below.

Effective date: Pursuant to Section 431(d) of the General Education Provisions Act, as amended, (20 U.S.C. 1232 (d)), these regulations have been transmitted to the Congress concurrently with the publication of this document in the FEDERAL REGISTER. That section provides that regulations subject thereto shall become effective on the forty-fifth day following the date of such transmission, subject to the provisions therein concerning Congressional action and adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.483; Strengthening Instruction Through Equipment and Minor Remodeling)

Dated: December 13, 1974.

T. H. BELL,
U.S. Commissioner of Education.

Approved: December 30, 1974.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Subpart A—Definitions; General Provisions

Sec.
141.1 Definitions.
141.2 General provisions regulations.

Subpart B—State Plans

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141.4 Effect of State plan.
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141.30 Equipment and minor remodeling.
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141.32 Public nature of funds.
141.33 Reallotment.
141.34 Allotment to the Department of Interior and the Department of Defense.

Subpart E—Acquisition of Equipment and Minor Remodeling

141.46 Equipment and minor remodeling eligible for Federal financial participation.
141.47 Equipment and minor remodeling costs eligible for Federal financial participation.
141.48 Use of equipment in other subject areas.

Subpart F—Supervision and Administration

141.54 Programs for supervision and related services.
141.55 Expansion or improvement.
141.56 Time basis for measurement of activities.

AUTHORITY: Secs. 301-304, Pub. L. 85-864, as amended, 72 Stat. 1588 (20 U.S.C. 441-444), unless otherwise noted.

Subpart A—Definitions; General Provisions

§ 141.1 Definitions.

As used in this part:

"Academic subjects" means the following elementary and secondary school subjects: The arts, civics, economics, English, geography, history, the humanities, industrial arts, mathematics, modern foreign languages, reading, and science.

"Act" means the National Defense Education Act of 1958, 20 U.S.C. Ch. 17.

"Arts" includes, but is not limited to, music (instrumental and vocal), dance, drama, folk art, creative writing, architecture and allied fields, painting, sculpture, photography, graphic and craft arts, industrial design, costume and fashion design, film, television, radio, tape and sound recording, and the arts related to the presentation, performance, execution and exhibition of such major art forms.

"Audiovisual library" means a facility used for the acquisition, preparation, maintenance, and circulation of audiovisual materials for education in academic subjects in public elementary and secondary schools, and controlled and operated by a State or local educational agency or other public school authority below the State level.

"Class" means a group of students assembled for instruction for a given period of time under a teacher or teachers.

"Electronic digital and analog computing equipment" means electronic devices capable of input (receiving information), memory (storing information), programs (performing arithmetical and logical operations), and output (presenting the results of the processing). Input devices may be in the form of key or paper punches, magnetic tape impregnators, magnetic ink, printed characters, or keyboard. Memory devices may be in the form of magnetic drums, tapes, disks, cards, or cores. The term also includes output media which may be in the form of punch cards, magnetic or paper tape, printed copy, or visual display. (Special purpose computing devices and auxiliary equipment whose major application is in data processing and other business and administrative areas are not eligible except for those elements which may be essential for scientific problem solving or for mediating instruction in one of the academic subjects.)

"Equipment" means laboratory and other special equipment as defined in this section, including materials as defined in § 100.1 of this chapter.

"Humanities" includes, but is not limited to, the study of the following: Language, both modern and classic; linguistics; literature; history; jurisprudence; philosophy; archeology; the history, criticism, theory, and practice of the arts; and those aspects of the social sciences which have humanistic content and employ humanistic methods.

"Laboratory and other special equipment" (a) The term includes: (1) Fixed or movable articles, including electronic digital and analog computing equipment, which are particularly appropriate for use in providing education in academic subjects in a public elementary or secondary school and which are to be used either by teachers in connection with teaching or by students in learning in such subjects; (2) audiovisual equipment (including projectors, recorders, television cameras, television receivers, closed-circuit television distribution systems, and ancillary television projection and reception equipment to be used primarily for nonbroadcast purposes, except where broadcast takes the place of closed-circuit cable systems), to be used, either by teachers in connection with teaching or by students in connection with learning, primarily in providing education in academic subjects in a public elementary or secondary school; (3) materials (as defined in § 100.1 of this chapter) and devices (other than those used for printing, such as printing presses and offset printing machines) to be used for preparation of audiovisual and instructional materials for academic subjects; (4) storage equipment to be used solely for the care and protection of the items specified in paragraph (a) (1)-(3) of this definition, when used in laboratories or classrooms; (5) testgrading equipment to be used primarily in providing education in academic subjects in a public elementary or secondary school; and (6) specialized equipment for audiovisual libraries serving public elementary or secondary schools when such equipment is to be used primarily in providing education in academic subjects.

(b) The term excludes such items as general-purpose furniture, school public address systems, or items for the maintenance and repair of equipment. However, the term does include equipment for maintenance, repair, and storage of materials in audiovisual libraries.

"Local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as is recognized in a State as an administrative agency for its public elementary or secondary schools. It also includes any

other public institution or agency having administrative control and direction of a public elementary or secondary school.

"Minor remodeling" (notwithstanding the definition set forth in § 100.1 of this chapter) means those minor alterations, in a previously completed building in space used or to be used a laboratory or classroom for education in academic subjects, which are needed to make effective use of equipment in providing education in such subjects. The term also includes those minor alterations in a previously completed building which are needed to make effective use of the items referred to in paragraph (a) (5)–(6) of the definition of "Laboratory and other special equipment" in this section. The term may also include the extension of utility lines, such as for water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of such previously completed building, to the extent needed to make effective use of equipment. The term does not include building construction, structural alterations to buildings, building maintenance, repair, or renovation.

"Project": (a) As applied to the acquisition of laboratory or other special equipment or minor remodeling the term means (1) a proposal submitted by a local educational agency, or agencies, or other public school authority below the State level, or (2) in cases where the State educational agency operates one or more public elementary or secondary schools or audiovisual libraries, a proposal submitted by the highest administrative officer of such school or audiovisual library.

(b) Proposals shall contain: (1) Description and current cost estimates of the equipment to be acquired or minor remodeling to be performed; (2) certification that the equipment is to be used primarily for providing education in academic subjects, except that in the case of storage equipment the certification shall be to the effect that the storage equipment will be used solely for the care and protection of equipment and materials used in providing such education; and (3) information showing the direct relationship of the proposed expenditures to the overall design for enriching the planned educational program and the achievement of desired curriculum goals in academic subjects.

"School" means a division of instructional organization consisting of a group of pupils comprised of one or more grade groups, organized on a class basis as one unit with one or more teachers to give instruction of a defined type, and housed in a school plant of one or more buildings. More than one school may be housed in one school plant as when elementary and secondary schools are so housed.

"Secondary school" means a school which provides secondary education, as determined under State law or, if such school is not in a State, as determined by the Commissioner. The term does not include any education provided beyond grade 12 except that (notwithstanding the definition set forth in § 100.1 of this chapter) it may include a public junior college when it is a part of or an extension of the secondary school system of the State as determined under State law.

"Services": (a) "Supervisory services" mean the services rendered by a qualified person in the promotion, maintenance, and improvement of instruction in one or more of the academic subjects;

(b) "Related Services" mean those technical activities which support supervisory services in academic subjects.

"Standards" are means for determining the suitability of equipment or minor remodeling as it relates to the improvement of instruction in one or more of the academic subjects in public elementary and secondary schools.

(a) With respect to equipment acquisition: "standards" mean criteria, categories of eligible equipment and materials, and such relevant information as the State wishes to use in determining eligibility, including any limitations, prohibitions, or minimum quality requirements developed by the State to encourage long-range planning and to ensure acquisition of equipment appropriate for a specific program of instruction.

(b) With respect to minor remodeling: "standards" are criteria for determining approvability of projects. Such standards shall include a requirement that there be a direct relationship between the minor remodeling and the improvement of instruction in the academic subjects.

"State" means a State of the Union, the District of Columbia, Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"State educational agency" or "State agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

"Textbook" means a book, workbook, or manual which is used as the principal source of study material for a given class or group of students, a copy of which is expected to be available for the individual use of each pupil in that class or group of students.

(20 U.S.C. 403, 443)

§ 141.2 General provisions regulations.

Assistance under this part is subject to applicable provisions contained in Subchapter A of this chapter relating to fiscal, administrative, property management, and other matters.

(20 U.S.C. 443)

Subpart B—State Plans

§ 141.3 Purpose.

(a) *States.* A basic condition for the payment of Federal funds to a State under sections 301–304 of the Act is a State plan that meets the requirements of sections 303(a) and 1004(a) of the Act in providing a program under which funds paid to the State under its allotment under section 302(a) of the Act will be expended solely for projects approved by the State educational agency for the acquisition of laboratory and other special equipment suitable for use in providing education in academic subjects, and minor remodeling.

(b) *Departments of Interior and Defense.* The basic condition for the payment of funds under Title III–A of the Act to the Department of the Interior or the Department of Defense is a plan which describes the projects to be carried out with the funds together with such other information and assurances as the Commissioner may require.

(20 U.S.C. 443(a), 588 (B))

§ 141.4 Effect of State plan.

The State plan, when approved by the Commissioner, shall constitute the basis on which Federal grants will be made, as well as a basis for determining the propriety of State and local expenditures in which Federal participation is requested.

(20 U.S.C. 443(a))

§ 141.5 Effect of Department plan.

A plan from the Department of the Interior or the Department of Defense, when approved by the Commissioner, shall constitute the basis on which payments will be made to those Departments under Title III–A of the Act and the basis for determining the propriety of the expenditures of those funds by those Departments.

(20 U.S.C. 588(B))

§ 141.6 Program and operational procedures.

(a) The administration of the program shall be kept in conformity with the approved plan, the regulations in this part, and Title III–A of the Act.

(b) A description of the program and operational procedures shall be recorded and made available to the public upon request.

(c) Whenever there is any material change in the content or administration of the program, or when there has been any material change in pertinent State law or in the organization, policies, or operations of the State agency affecting the program under the plan, the plan shall be appropriately amended.

(20 U.S.C. 443(a))

§ 141.7 Submission.

(a) (1) A State plan shall be submitted to the Commissioner by a duly authorized officer of the State agency. (2) A plan submitted by the Department of the Interior or the Department of Defense shall be submitted by an officer of that Department.

(b) A State plan shall give the official name of the agency which will administer the plan and shall indicate that such agency meets the criteria for a State educational agency.

(20 U.S.C. 443(a), 584(a)(3), 588(B))

§ 141.8 Certificate of the State Attorney General or other appropriate State legal officer.

The State plan shall also include as an attachment a certificate by the appropriate State legal officer to the effect that

the State educational agency named in the plan is the agency having authority to administer the State plan or to supervise the administration of the State plan; that the State educational agency has authority under State law to develop, submit, and administer or supervise the administration of the plan; and that the State has authority under State law to carry out the State plan.

(20 U.S.C. 443(a))

§ 141.9 Approval by the Commissioner.

The Commissioner will approve each plan which he determines meets the applicable requirements of Title III-A of the Act and regulations in this part, and will notify the applicant of the granting or withholding of approval in each such case. However, no final action, other than one of approval, will be taken by the Commissioner unless he first notifies the applicant of his proposed action and affords the applicant a reasonable opportunity for a hearing on whether the affected plan meets such requirements.

(20 U.S.C. 443(b), 584(b))

§ 141.10 Ineligibility to participate.

Whenever the Commissioner, after reasonable notice and opportunity for a hearing, finds:

(a) That the plan fails to comply with the requirements of Title III-A of the Act or the regulations in this part; or

(b) that in the administration of the plan there is a failure to comply substantially with any such provisions, the Commissioner will notify the applicant that the applicant will not be regarded as eligible to participate in the program under Title III-A of the Act until the Commissioner is satisfied that there is no longer any such failure to comply.

(20 U.S.C. 584(c))

§ 141.11 State plan assurances.

Each State plan shall contain the following assurances:

(a) *Authority.* That the State agency will administer the plan and has adequate authority to do so under State law.

(b) *Fiscal procedures.* That the State agency has provided for such fiscal control and fund accounting procedures as will assure proper disbursement of and accounting for Federal funds paid to the State under the plan, including the funds paid by the State to local educational agencies. Subject to the applicable provisions of Part 100b of this chapter, such administration shall be conducted in accordance with applicable State laws, policies, and procedures.

(c) *Reports.* That the State agency will participate in periodic consultations and will make reports to the Commissioner, at such time, in such form, and containing such information, as the Commissioner may consider reasonably necessary to enable him to perform his duties under the Act and will keep such records and afford such access thereto, and will comply with such other requirements as the Commissioner may find necessary to assure the correctness and verification of such reports.

(d) *Description of program.* That the State agency has developed a program under which funds paid to the State from its allotment under section 302(a) of Title III-A of the Act will be expended solely for (1) projects approved by the State agency for the acquisition of (i) laboratory and other special equipment (other than supplies consumed in use), including audiovisual materials and equipment, (ii) printed and published materials (other than textbooks), suitable for use in providing education in academic subjects in public elementary and secondary schools, and (iii) test-grading equipment for those schools and specialized equipment for audiovisual libraries serving those schools; and (2) projects approved by the State agency for minor remodeling of laboratory or other space used for those materials or equipment. In addition, that the State agency has developed a program under which funds paid to the State from its allotment under section 302(b) will be expended solely for projects for (i) expansion or improvement of supervisory and related services in public elementary and secondary schools, including leadership and services to local educational agencies to improve instruction in academic subjects, and (ii) for the administration of the State plan. The programs developed pursuant to sections 302(a) and 302(b) must either be set forth in the State plan itself or be incorporated therein by reference as separate existing and identified documents available for inspection by the Commissioner.

(e) *Principles for determining priority of projects.* That the State agency has established the principles that will be applied in determining the priority of and order of undertaking of projects for assistance under the provisions of Title III-A of the Act. Such principles must either be set forth in the State plan itself or be incorporated therein by reference as a separate existing and identified document available for inspection by the Commissioner.

(f) *Opportunity for hearing.* That the State agency has provided for an opportunity for a hearing before the State agency to any applicant for a project under Title III-A of the Act.

(g) *Standards.* That the State agency has established standards for laboratory and other special equipment to be acquired with assistance furnished under Title III-A of the Act and will advise the Commissioner of those standards. These standards are to be related to the State's program for improving instruction in academic subjects and shall be applied by the State in approving projects for the acquisition of equipment.

(h) *Financial participation.* Whether the State agency has established requirements to be imposed upon applicants for financial participation in projects assisted under Title III-A of the Act, including any provision for taking into account the resources available to any applicant for such participation relative to the resources for participation available to all other applicants. These requirements must either be set forth in the State plan itself or be incorporated therein by reference as a separate existing and identified document available for inspection by the Commissioner.

(20 U.S.C. 443, 584)

Subpart C—State Administration

§ 141.19 Establishment of principles to govern priorities.

In meeting the requirements contained in § 141.11(e), a State must provide a list of principles which reflect its major educational concerns in the academic subject fields and which have a bearing on the functioning of the Title III-A program. These principles are then to be used as a basis for the development of priorities. The priorities themselves, while not a required part of the State plan, must be prepared by the State to be used for the purpose of assigning relative importance and order of approval of projects submitted by local educational agencies under this part.

(20 U.S.C. 443(a)(2))

§ 141.20 Administrative review and evaluation.

The State agency and the Department of the Interior and the Department of Defense shall provide for the administration and supervision of all plan programs. Program and administrative review and evaluation shall be conducted by the State agency or the Department of the Interior or the Department of Defense, as the case may be, at least annually to appraise the status of the programs and their administration in terms of plan provisions and program objectives. The State agency shall include a report of such administrative review and evaluation in its annual report.

(20 U.S.C. 443, 584(a)(1), 588(B))

§ 141.21 Advisory committees.

If State advisory committees are used in one or more aspects of the State plan, the State agency shall establish policies for the establishment of the committees, for the qualification and selection of members, for the establishment of the duties of members and of the committee, and for the payment of committee expenses, if any.

(20 U.S.C. 443, 584)

§ 141.22 Continuing review by Commissioner of State administration.

In order to assist the State agency in adhering to statutory requirements and to the provisions of its approved State plan, the Commissioner will be responsible for conducting periodic reviews, including onsite reviews of the administration of programs under Title III-A of the Act. These reviews will involve analysis of activities and procedures used by State agencies to conduct the program, including the development and monitoring of management activities.

(20 U.S.C. 584)

Subpart D—Federal Financial Participation

§ 141.30 Equipment and minor remodeling.

The Federal Government will pay from each State's allotment an amount equal to one-half of the sums expended for the purchase of equipment and for minor remodeling, when expended for an approved project under an approved State plan. There can be no Federal financial participation in the expenditures for a project if the project, including any amendments thereto, had not been approved by the State agency prior to the incurrence of the expenditures.

(20 U.S.C. 444(a))

§ 141.31 Supervision and administration.

The Federal Government will pay from each State's allotment for Title III-A of the Act one-half of the total sum expended by the State for supervision, related services, and administration in programs established under the approved State plan.

(20 U.S.C. 444(b))

§ 141.32 Public nature of funds.

The expenditures to be used in computing Federal financial participation must be made from public funds. Public funds do not include contributions by private organizations or individuals unless such contributions are deposited in accordance with State law to the account of the unit or agency of State or local government without such conditions or restrictions as would negate their public character.

(20 U.S.C. 444)

§ 141.33 Reallotment.

(a) If the Commissioner determines that any part of the amount allotted to any State for any fiscal year under section 302(a) of the Act will not be required for that year, that part will be available on such dates during that year as the Commissioner may fix for reallotment to other States. The reallotment will be made in proportion to the amounts originally allotted to other States for that year, except that the total amount available to each State will be reduced to the extent it exceeds the sum the Commissioner determines that that State needs and will be able to use for that year, and the total of such reductions shall be similarly reallotted among the States whose allotments were not so reduced.

(b) The amounts to be so reallotted will be determined by the Commissioner on the basis of (1) reports filed by the States of the amounts required to carry out the State plan approved by the Commissioner, and (2) such other information as he may have available. Each State agency shall, if requested, submit to the Commissioner, on such date or dates as he may specify, a report or reports showing the anticipated need during the current fiscal year for the amount previously allotted or any amount needed in addition thereto, and such other information as the Commissioner may request.

(c) If the Commissioner determines that any amount reserved for any fiscal year for making loans under section 305 of the Act will not be required for that year, that part shall be available for allotment to the States in the manner provided for reallotment of Title III-A funds under paragraph (a) of this section.

(20 U.S.C. 442(c))

§ 141.34 Allotment to the Department of the Interior and the Department of Defense.

The Commissioner will make allotments, according to their respective needs for the types of programs authorized under Title III-A of the Act, to the Secretary of the Interior for elementary and secondary schools operated for Indian children by the Department of the Interior, and to the Secretary of Defense for elementary and secondary schools operated for overseas dependents by the Department of Defense.

(20 U.S.C. 583(B))

Subpart E—Acquisition of Equipment and Minor Remodeling

§ 141.46 Equipment and minor remodeling eligible for Federal financial participation.

A State educational agency may approve projects for the acquisition, with Federal financial participation, of items or equipment, or for minor remodeling, for education in academic subjects only to the extent that equipment or minor remodeling for such academic subjects are covered by the State plan current at the time of project approval.

(20 U.S.C. 443)

§ 141.47 Equipment and minor remodeling costs eligible for Federal financial participation.

(a) *Equipment.* (1) Acquisition of equipment includes the costs of delivery to the school and installation. (2) Expenditures in which Federal participation is claimed may include the cost of raw or processed materials or component parts to be made into finished products or complete equipment units for instruction in academic subjects, including the cost of making and assembling the equipment.

(b) *Minor remodeling.* A minor remodeling project may include the costs of materials and the labor of local school or district personnel, provided that the costs are properly substantiated by documentation.

(20 U.S.C. 443)

§ 141.48 Use of equipment in other subject areas.

Equipment acquired under an approved project for academic subjects may be used when available and suitable in providing education in other subjects, if there exists a critical need therefor in the judgment of local school authorities. Equipment shall be deemed available only when it is not needed for the time being for use in academic subjects.

(20 U.S.C. 443)

Subpart F—Supervision and Administration

§ 141.54 Programs for supervision and related services.

The State agency shall establish policies or procedures for programs for the expansion or improvements of the State agency's supervisory and related services to public elementary and secondary schools in academic subjects. The policies and procedures shall set forth (a) how and to what extent the programs provide a new service or are improvements or expansions of existing services in the nature of supervision or instruction or services which effectively contribute to the supervisory services to be rendered; and (b) the scope of the agency's activities and arrangements to be undertaken in carrying out such programs.

(20 U.S.C. 443)

§ 141.55 Expansion or improvement.

An expansion or improvement of an existing program of supervisory or related services is a program which involves additional expenditures by the State agency for such services to public elementary or secondary schools in academic subjects over and above those theretofore expended for like services and does one or more of the following: (a) Provide for the employment of additional qualified personnel to render such services; (b) provide for rendering additional or improved services to local educational agencies; (c) extend the services already being rendered to more local educational agencies.

(20 U.S.C. 443)

§ 141.56 Time basis for measurement of activities.

Whether a program is an "expansion" or "improvement" of an existing program will be measured against the activities being carried on by the State agency prior to the first day of the fiscal year in which the initial State plan of the State agency was submitted for approval.

(20 U.S.C. 443)

[FR Doc.75-245 Filed 1-3-75;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20109; FCC 74-1353]

PART 91—INDUSTRIAL RADIO SERVICES

Correction

In FR Doc. 74-29688 appearing at page 44204 in the issue for Monday, December 23, 1974, make the following changes:

1. On page 44207, § 91.114 paragraph (j), in the left-hand column, under subheading Channel 20, Power Telephone Maintenance, *Base*, the entry now reading "407.4125" should be changed to read "507.4125".

2. In the right-hand column, under the subheading Channel 20 Business, *Mobile*, insert the number "511.4375" so the entry will read "510.6425 to 511.4375".

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Regulations No. 5, further amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Limitation on Liability of Beneficiary Where Medicare Claims are Disallowed

On April 8, 1974, there was published in the FEDERAL REGISTER (39 FR 12763) a notice of proposed rule making with proposed amendments to Subparts A, C, G, and H of Regulations No. 5 (20 CFR Part 405), regarding implementation of section 213 of Pub. L. 92-603 (86 Stat. 1386-89) entitled "Limitation on Liability of Beneficiary Where Medicare Claims are Disallowed." Interested persons were given until May 8, 1974, to submit written comments or suggestions thereon. Comments and suggestions received with regard to this notice of proposed rule making, responses thereto, and changes in the proposed regulations are summarized below.

1. With respect to the requirement for home health agencies, many comments were received that the procedures as drawn were not realistic in that the time frames specified for review and submission of materials to the intermediary were too short. These comments were considered to be well taken and the procedures have been revised to take into account the problems encountered by agencies in obtaining written documents from physicians through the mails and in their own billing and record keeping operations.

2. A variety of comments were directed toward appeal rights. Several comments were received regarding the right of appeal by the provider established by section 213. Some indicated a belief that § 405.710(b), as published in the notice of proposed rule making, would preclude the provider from filing a request for appeal until after the beneficiary stated in writing that he or she does not intend to appeal. In practice, the language of this section means that the intermediary will take action to determine whether the beneficiary intends to appeal when the provider initiates the request. Should the beneficiary request appeal, the provider is automatically made a party to the proceeding. Another comment suggested that it would not be necessary to make the beneficiary a party to an appeal requested by the provider. However, since the beneficiary is a party to the initial determination, it is a critical aspect of due process that he or she be made a party to any subsequent proceeding that potentially could change the result of the initial determination. Therefore, this suggestion has not been adopted. Another comment suggested that the regulation include a reference to the right of providers to appeal on cost settlement disputes. Since such appeal rights are set forth in detail in another subpart of 20 CFR Part 405 and are unrelated to the waiver of liability provision, the suggestion has not been adopted. Another comment objected to the restatement of existing regulations in the notice of proposed rule making concerning the determination of amount in controversy, suggesting that amount in controversy for later appeals should be based on the amount in controversy after the initial determination. We do not believe it would be appropriate to do so if an intervening determination found that additional amounts were payable. However, the regulations have been revised to clarify that items or services found to be noncovered will be considered in determining amount in controversy even though payment is made under the waiver of liability provision. Finally, a suggestion was made that the right of appeal be cited in § 405.331(b) which refers to the collection of overpayments as the result of indemnification. Since this section states that recovery of overpayments will be made in accordance with provisions of law, we believe it is unnecessary to refer to any appeal rights under those provisions of law.

3. A number of comments suggested that the criteria for providers to qualify for a favorable presumption should specify the time requirements for submitting bills and medical information in a "timely manner" and the statistical basis to be used for determining whether the providers effectively distinguish between covered and noncovered cases. Since these operating guides will be subject to change based on changes in claims processing procedures, we do not believe they should be set forth in regulations but rather that they are more appropriate for inclusion in operating instructions. Another suggestion was made that the regulations specify the period of time for which program payment will be made after notice is given of noncoverage. This suggestion has been adopted. A question was raised as to whether the presumption granted on the basis of meeting the criteria applies to all categories of claims submitted by a provider. Section 405.195 (a) has been clarified to indicate that the presumption can be rebutted for selected categories of claims, e.g., outpatient services.

4. A number of comments were received regarding the determination that there was knowledge of noncoverage of services. Comments regarding the granting of a presumption to a provider that meets the criteria set forth in the regulations included a suggestion that the provider be given written notice as to whether it has met those criteria. This suggestion has been adopted. Other comments questioned whether failure to meet the criteria created a "reverse presumption" against the provider. Section 405.332(b) states that a favorable presumption cannot apply when, among other things, the provider has not met the criteria; however, a provider that does not meet the criteria retains the right to submit evidence that in a particular case it did not know and could not reasonably have been expected to know of the noncoverage of items or services. A suggestion was made and adopted that § 405.332(a)(4) be revised to clarify that the beneficiary will be found to have actual or imputed knowledge if any one of the three situations described in paragraphs (a) (1), (2), and (3) existed. Concern was expressed in another comment that the intent of the law had been expanded by the use of the words "imputed knowledge." However, the law itself refers to whether the beneficiary or provider "knew, or could be expected to know," that services were noncovered, which we believe to be synonymous with the meaning of the regulation which refers to actual or imputed knowledge. Another concern was expressed that the intent of the law had been expanded by providing that prior notice of noncoverage of items or services similar or "reasonably comparable thereto" would serve as evidence to the contrary in rebutting a favorable presumption. However, the law itself refers to prior notice of noncoverage for "such items or services or reasonably comparable items or services."

5. Regarding indemnification, a suggestion was made and adopted that the 6-month time limit for a beneficiary to file an indemnification claim be based on the later of either the date the individual paid the provider or physician or the date of the notice to the individual that he or she was not liable for the noncovered items or services.

6. A number of comments objected to the fact that the waiver of liability benefit under the Part B program is limited to assigned claims. This limitation is set forth in the law and is based on the fact that the concept of placing liability on the person providing services in certain cases cannot be employed when that person has no relationship to the program, i.e., has not taken assignment. A number of other comments were received objecting to the statutory provisions and which, therefore, could not be accepted.

7. Various editorial changes have also been made in the interest of clarification.

(Sections 1102, 1816(b), 1842(b), 1861(k), 1862(a), 1871 and 1879, 49 Stat. 647, as amended, 79 Stat. 298, 79 Stat. 310, 318, 325, as amended, 79 Stat. 331, 86 Stat. 1384; 42 U.S.C. 1302, 1395h(b), 1395u(b), 1395x(k), 1395y(a), 1395hh, and 1395pp.)

Effective date: These amendments shall be effective February 5, 1975.

(Catalog of Federal Domestic Assistance Program No. 13-800, Health Insurance for the Aged—Hospital Insurance, and 13.801, Health Insurance for the Aged—Supplementary Medical Insurance.)

Dated: December 5, 1974.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: December 26, 1974.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Part 405 of Chapter III of Title 20 is further amended as set forth below.

§ 405.129 [Revoked]

1. Section 405.129 is revoked.

2. Sections 405.195 and 405.196 are added to read as follows:

§ 405.195 Procedures for determining whether providers of services are liable for certain noncovered services.

(a) *General.* Sections 405.330–405.332 describe the applicable standards for determining whether a provider of services will be held liable for items or services furnished a beneficiary which are excluded from coverage by reason of § 405.310(g) or § 405.310(k). In general, there will be a presumption in favor of the provider that it did not have knowledge, actual or imputed, that such items or services are excluded from coverage. However, the presumption will be rebutted for all or some categories of items or services if, among other things, the provider does not meet the criteria in paragraph (b) of this section, in the case of a hospital, in paragraph (c) of this section, in the case of a skilled nursing facility, or in paragraph (d) of this section, in the case of a home health agency. In determining whether a hospital, skilled nursing facility, or home health agency meets the applicable criteria, the intermediary will, where appropriate, make findings on the basis of the provider's claims experience, onsite reviews, and review of available data and information and will advise the provider in writing of its findings if the presumption has been rebutted.

(b) *Criteria for a hospital.* In the case of a hospital, the criteria referred to in paragraph (a) of this section are as follows:

(1) The Secretary has found that the hospital complies with each of the standards for utilization review as set out in § 405.1035 as in effect when such finding is being made and as may from time to time be revised; and

(2) The hospital complies with the procedures established by the Administration to assure that bills for payment and medical documentation are submitted in a timely manner; and

(3) The hospital has established procedures which give the Administration reasonable assurance that it promptly notifies the patient and the patient's attending physician where it is determined (whether by the hospital or intermediary) that such patient is being or will be furnished items or services which are excluded from coverage under title XVIII of the Act; and

(4) On the basis of the bills submitted by the hospital, the Administration finds that the hospital effectively distinguishes between cases where items or services furnished by the hospital are covered under title XVIII and cases where they are excluded from coverage; and

(5) The hospital has demonstrated that it is effectively applying the conditions for certification and recertification as required in § 405.160(a)(2), § 405.160(b)(2), or § 405.160(c)(2) (whichever is appropriate).

(c) *Criteria for a skilled nursing facility.* In the case of a skilled nursing facility, the criteria referred to in paragraph (a) of this section are as follows:

(1) The Secretary has found that the skilled nursing facility complies with each of the standards for utilization review as set out in § 405.1137 as in effect when such finding is being made and as may from time to time be revised; and

(2) The skilled nursing facility complies with procedures established by the Administration to assure that bills for payment and medical documentation are submitted in a timely manner; and

(3) The skilled nursing facility has established procedures which give the Administration reasonable assurance that it promptly notifies the patient and his attending physician where it is determined (whether by the facility or intermediary) that such patient is being or will be furnished items or services which are excluded from coverage under title XVIII of the Act; and

(4) On the basis of bills submitted by the skilled nursing facility, the Administration finds that the facility effectively distinguishes between cases where the items or services furnished by the facility are covered under title XVIII and cases where they are excluded from coverage; and

(5) The skilled nursing facility has demonstrated that it is effectively applying the conditions for certification and recertification as required by § 405.165 (b).

(d) *Criteria for a home health agency.* In the case of a home health agency, the criteria referred to in paragraph (a) of this section are as follows:

(1) The home health agency complies with the procedures described in § 405.196; and

(2) The home health agency complies with procedures established by the Administration to assure that bills for payment and medical documentation are submitted in a timely manner; and

(3) The home health agency has established procedures which give the Administration reasonable assurance that it promptly notifies the patient and his attending physician where it is determined (whether by the agency or the intermediary) that such patient is being furnished items or services which are excluded from coverage under title XVIII of the Act; and

(4) On the basis of bills submitted by the home health agency, the Administration finds that the agency effectively distinguishes between cases where the items or services furnished by the agency are covered under title XVIII and cases where they are excluded from coverage; and

(5) The home health agency has demonstrated that it is effectively applying the conditions for certification and recertification as required by § 405.170(b).

§ 405.196 Procedures for home health agencies in handling cases.

In order to meet the requirement set forth in § 405.195(d)(1), a home health agency must give the Secretary reasonable assurances that it is complying with the following procedures:

(a) On or before the first home health visit (see § 405.131) to an individual entitled to benefits under title XVIII, the home health agency will obtain orally or in writing the plan of treatment from such individual's attending physician. The home health agency promptly reviews such plan to determine whether the services the physician has prescribed constitute home health services as described in § 405.1633.

(b) Where the agency determines that the patient's care constitutes home health services as described in § 405.1633, it schedules the case for review when in its judgment it believes that the care will no longer constitute home health services as so described, but in no event should such review take place later than the 60th day after the initial home health visit. At the request of the intermediary in specific cases, the home health agency submits medical evidence promply after the initial home health visit for review by the intermediary.

(c) If the home health agency has reasonable doubt as to whether the individual requires home health services as described in § 405.1633, it promptly submits medical information to the intermediary, in accordance with procedures established by the intermediary, and requests the intermediary's opinion as to whether the individual needs home health visits as described in § 405.1633 and, if so, an appropriate review date.

3. Section 405.301 is revised to read as follows:

§ 405.301 Scope of subpart.

Sections 405.310 to 405.320 describe certain exclusions from coverage applicable to hospital insurance benefits (Part A of title XVIII) and supplementary medical insurance benefits (Part B of title XVIII). The exclusions in this subpart are applicable in addition to any other conditions and limitations in this part 405 and in title XVIII of the Act. Sections 405.330 to 405.332 relate to payments for expenses for certain items or services otherwise excluded from coverage. Sections 405.350 to 405.359 relate to the adjustment or recovery of an incorrect payment, or a payment made under section 1814(e) of Part A of title XVIII of the Act. Sections 405.370 to 405.373 relate to the suspension of payment to a provider of services or other supplier of services where there is evidence that such provider or supplier has been or may have been overpaid.

4. The introductory text of § 405.310 is amended to read as follows:

§ 405.310 Types of expenses not covered.

Notwithstanding any other provisions of this part 405, no payment (except as provided in §§ 405.330–405.332) may be made for any expenses incurred for the following items or services:

* * * * *

5. New §§ 405.330–405.332 are added to read as follows:

§ 405.330 Payment for certain nonreimbursable expenses.

(a) Notwithstanding the provisions of § 405.310, payment may be made for items or services furnished after October 30, 1972, which involve custodial care (§ 405.310(g)) or items or services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (§ 405.310 (k)), if:

(1) Such items or services were furnished by a provider of services (see § 405.605), or by another person pursuant to an assignment as provided for in § 405.251(b), and

(2) Neither the individual to whom such items or services were furnished nor such provider of services or other person, as the case may be, knew or could reasonably have been expected to know that the expenses incurred for such furnished items or services were excluded from coverage by reason of § 405.310(g) or § 405.310(k).

(b) Where payment is made under this provision, such payment may be made for those inpatient hospital services (§ 405.-116), posthospital extended care services (§ 405.125), and home health services (§ 405.236) furnished before the fourth day after whichever of the following days is the earlier:

(1) The day on which the individual, to whom such items or services were furnished, has been determined, pursuant to § 405.332(a), to have knowledge, actual or imputed, that such items or services were excluded from coverage by reason of § 405.310(g) or § 405.310(k), or

(2) The day on which the provider of services, which furnished such items or services, has been determined, pursuant to § 405.332(b), to have knowledge, actual or imputed, that such items or services were excluded from coverage by reason of § 405.310(g) or § 405.310(k).

§ 405.331 Liability for certain noncovered items or services.

(a) Even though payment may not be made pursuant to § 405.330 only because the provisions of paragraph (a)(2) thereof are not met, the individual to whom the items or services were furnished will be indemnified by the program (in the case of items or services furnished after October 30, 1972), to the extent specified in paragraph (b) of this section, if:

(1) The individual paid the provider of services or other person, as the case may be, referred to in § 405.330(a)(1), all or some of the charges for such services; and

(2) Such individual did not know and could not have reasonably been expected to know that the expenses incurred for such items or services were excluded from coverage by reason of § 405.310(g) or § 405.310(k); and

(3) Such provider of services or other person, as the case may be, knew or could reasonably have been expected to know that the expenses incurred for such items or services were excluded from coverage; and

(4) Such individual files a proper request for such indemnification prior to the end of the sixth month following the month in which the payment specified in paragraph (a)(1) of this paragraph was made or, if later, the month in which the intermediary or carrier informed the individual (or someone on his behalf) in writing that the individual would not be liable for items or services, except that for good cause shown such 6-month period may be extended.

(b) The amount an individual may be indemnified pursuant to paragraph (a) of this section shall be the amount he paid as specified in paragraph (a)(1) of this section, less the amount for deductibles and coinsurance, had such items or services been covered under the program. Any payment thus made as indemnification is deemed to be an overpayment to the provider of services or other person, as the case may be, who received the payment referred to in paragraph (a)(1) of this section and shall be recoverable in accordance with the provisions of this part or other applicable provision of law.

§ 405.332 Criteria for determining that there was knowledge that certain services were nonreimbursable.

(a) *The individual to whom items or services are furnished.* An individual to whom were furnished items or services which are excluded from coverage by reason of § 405.310(g) or § 405.310(k) shall, in the absence of evidence to the contrary, be presumed not to have knowledge, actual or imputed, that such items or services are excluded from coverage. Evidence to the contrary shall include (but shall not be limited to) the following situations:

(1) The intermediary or carrier informed the individual (or someone on his behalf) in writing that the items or services furnished were not covered;

(2) The group or committee responsible for conducting the utilization review function of the institution furnishing such items or services (see § 405.1035 or § 405.1137) made a finding that such items or services were not covered and such finding was conveyed in writing to the individual (or someone on his behalf);

(3) The provider of services or other person furnishing such items or services to the individual informed the individual (or someone on his behalf) in writing that such items or services are excluded from coverage and the intermediary or carrier (whichever is appropriate) has determined on the basis of the provider's or other person's past billing practices that such provider or person can effectively distinguish between cases where the items or services furnished are covered under title XVIII and where such items or services are excluded from coverage.

(4) In a prior case involving such individual he was notified under the circumstances referred to in paragraphs (a)(1), (2), or (3) of this section that similar or reasonably comparable items or services were excluded from coverage.

(b) *The provider of services or other person who furnished items or services to an individual.* A provider of services or other person who furnished items or services to an individual which are excluded from coverage by reason of § 405.310(g) or § 405.310(k) shall, in the absence of evidence to the contrary, be presumed not to have knowledge, actual or imputed, that such expenses are so excluded. Evidence to the contrary shall include (but shall not be limited to) the following situations:

(1) The intermediary or carrier informed the provider or other person that the expenses for the items or services furnished the individual were not reimbursable or that items or services similar or reasonably comparable thereto were not covered;

(2) The group or committee responsible for conducting the function or utilization review of the institution furnishing such items or services (see § 405.1035 or § 405.1137) informed the provider that such items or services were not covered;

(3) The provider of services failed to comply with the criteria set forth in paragraph (b), (c), or (d) of § 405.195 (whichever is appropriate), unless the provider demonstrates through objective evidence that, had it complied with such criteria, it would not have known that the items or services furnished are excluded from coverage;

(4) Even though the provider complied with the criteria set forth in paragraph (b), (c), or (d) of § 405.195 (whichever is appropriate), it is clear and obvious that, despite such compliance, the provider should have known at the time such items or services were furnished that they were excluded from coverage.

6. Section 405.702 is revised to read as follows:

§ 405.702 Notice of initial determination.

After a request for payment under Part A of title XVIII of the Act is filed with the intermediary by or on behalf of the individual who received inpatient hospital services, extended care services, or home health services (see §§ 405.1660–405.1674), and the intermediary has ascertained whether the items and services furnished are covered under Part A of title XVIII, and where appropriate, ascertained and made payment of amounts due or has ascertained that no payments were due (see § 405.401(c)), the individual will be notified in writing of the initial determination in his case. In addition, if the items or services furnished such individual are not covered under Part A of title XVIII by reason of § 405.-310(g) or § 405.310(k), and payment may not be made for such items or services under § 405.330 only because the requirements of § 405.330(a)(2) are not met, the provider of services (see § 405.605) which furnished such items or services will be notified in writing of the initial determination in such individual's case. These notices shall be mailed to the individual and the provider of services at their last

known addresses and shall state in detail the basis for the determination. Such written notices shall also inform the individual and the provider of services of their right to reconsideration of the determination if they are dissatisfied with the determination.

7. Section 405.704 is revised to read as follows:

§ 405.704 Actions which are initial determinations.

(a) *Initial determinations with respect to an individual.* For purposes of this Subpart G, an initial determination with respect to an individual includes any determination made on the basis of a request for payment by or on behalf of such individual under Part A of title XVIII of the Act, including a determination with respect to:

(1) The coverage of items and services furnished;

(2) The amount of an applicable deductible;

(3) The application of the coinsurance feature;

(4) The number of days of inpatient hospital benefits utilized during a spell of illness or for purposes of the inpatient psychiatric hospital 190-day lifetime maximum;

(5) The number of days of the 60-day lifetime reserve utilized for inpatient hospital coverage;

(6) The number of days of posthospital extended care benefits utilized;

(7) The number of home health visits utilized;

(8) The physician certification requirement;

(9) The request for payment requirement;

(10) The beginning and ending of a spell of illness;

(11) The medical necessity of services;

(12) When items or services are excluded from coverage pursuant to § 405.310(g) or § 405.310(k), whether such individual or the provider of services who furnished such items or services, or both, knew or could reasonably have been expected to know that such items or services were excluded from coverage (see § 405.332); and

(13) Any other issues having a present or potential effect on the amount of benefits to be paid under Part A of title XVIII of the Act, including a determination as to whether there has been an overpayment or underpayment of benefits paid under Part A, and if so, the amount thereof.

(b) *Initial determination with respect to a provider of services.* For purposes of this Subpart G, an initial determination with respect to a provider of services shall be a determination made on the basis of a request for payment filed by such provider under Part A of title XVIII of the Act on behalf of an individual who was furnished items or services by such providers, but only if such determination involves the following:

(1) A finding by the intermediary that such items or services are not covered by reason of § 405.310(g) or § 405.310(k), and

(2) A finding by the intermediary that either such individual or such provider of services, or both, knew or could reasonably have been expected to know that such items or services were excluded from coverage under the program.

8. Section 405.708 is revised to read as follows:

§ 405.708 Effect of initial determination.

(a) The initial determination under § 405.704(a) shall be final and binding upon the individual on whose behalf payment under Part A has been requested or, if such individual is deceased, upon the representative of such individual's estate, unless it is reconsidered in accordance with §§ 405.710–405.717 or revised in accordance with § 405.750. Such individual (or the representative of such individual's estate if the individual is deceased) shall be the party to such initial determination.

(b) The initial determination under § 405.704(b) shall be final and binding upon the provider of services unless it is reconsidered in accordance with §§ 405.710–405.717 or revised in accordance with § 405.750. Such provider of services shall be the party to such initial determination.

9. Section 405.710 is revised to read as follows:

§ 405.710 Right to reconsideration.

(a) An individual who is a party to an initial determination, as specified in § 405.704(a), (or if such individual is deceased, the representative of such individual's estate) and who is dissatisfied with the initial determination may request a reconsideration of such determination in accordance with § 405.711 regardless of the amount in controversy.

(b) A provider of services who is a party to an initial determination (as specified in § 405.704(b)) and who is dissatisfied with such initial determination may request a reconsideration of such determination in accordance with § 405.711, regardless of the amount in controversy, but only if the individual on whose behalf the request for payment was made has indicated in writing that he does not intend to request reconsideration of the intermediary's initial determination on such request for payment, or if the intermediary has made a finding (see § 405.704(b)) that such individual did not know or could not reasonably have been expected to know that the expenses incurred for the items or services for which such request for payment was made were not reimbursable by reason of § 405.310(g) or § 405.310(k).

10. Section 405.714 is revised to read as follows:

§ 405.714 Withdrawal of request for reconsideration.

A request for reconsideration may be withdrawn by the party to the initial determination who filed the request or by his representative provided that the withdrawal is made in writing and filed at an office of the Administration or, in the case of a qualified railroad retirement beneficiary, with the Railroad Retirement Board prior to the date of the mailing of the notice of reconsidered determination. A withdrawal filed with the intermediary which received the request for payment submitted on behalf of the individual is considered to have been filed with the Administration as of the date it is filed with the intermediary.

11. Section 405.715 is revised to read as follows:

§ 405.715 Reconsidered determination.

(a) In reconsidering an initial determination, the Administration shall review such initial determination, the evidence and findings upon which such determination was based, and any additional evidence submitted to the Administration or otherwise obtained by the intermediary or the Administration; and shall make a determination affirming or revising, in whole or in part, such initial determination.

(b) If the request for reconsideration is filed by an individual with respect to an initial determination specified in § 405.704(a)(12), the provider of services who furnished the items or services shall, prior to the making of the reconsidered determination, be made a party thereto. If pursuant to § 405.710(b) a request for reconsideration is filed by a provider of services with respect to an individual determination under § 405.704(b), the individual who was furnished the items or services shall, prior to the making of the reconsidered determination, be made a party thereto.

12. Section 405.716 is revised to read as follows:

§ 405.716 Notice of reconsidered determination.

Written notice of the reconsidered determination will be mailed by the Administration to the parties and their representatives at their last known addresses. Such notice shall state in detail the basis for the reconsidered determination and shall advise the parties of their right to a hearing if the amount in controversy is $100 or more.

13. Section 405.717 is revised to read as follows:

§ 405.717 Effect of a reconsidered determination.

The reconsidered determination shall be final and binding upon the parties thereto unless a request for a hearing is filed with the Administration within 6 months after the date of mailing notice of the reconsidered determination to such parties, or unless the reconsidered determination is revised pursuant to the provisions of § 405.750.

14. Section 405.720 is revised to read as follows:

§ 405.720 Hearing; right to hearing.

A person has a right to a hearing regarding any initial determination made under § 405.704 if:

(a) Such initial determination has been reconsidered by the Administration;

(b) Such person was a party to the reconsidered determination;

(c) Such person or his representative has filed a written request for a hearing in accordance with the procedure described in § 405.722; and

(d) The amount in controversy is $100 or more.

15. Section 405.722 is revised to read as follows:

§ 405.722 Time and place of filing request for a hearing.

The request for a hearing shall be made in writing and filed at an office of the Administration or with an administrative law judge or, in the case of a qualified railroad retirement beneficiary, at an office of the Railroad Retirement Board. Such request must be filed within 6 months after the date of mailing notice of the reconsidered determination to the parties thereto, except where the time is extended as provided in § 404.954 (a) of this chapter.

16. Section 405.730 is revised to read as follows:

§ 405.730 Court review.

To the extent authorized by section 1869 and section 1879(d) of the Act, a party to a decision of the Appeals Council (see § 404.950 of this chapter), or the decision of an administrative law judge where the request for review by the Appeals Council was denied, may obtain a court review where the amount in controversy after Appeals Council review is $1,000 or more, by filing a civil action in a district court of the United States in accordance with the provisions of section 205(g) of the Act (see § 422.210 of this chapter for filing procedure).

17. Section 405.740 is revised by adding paragraph (h) to read as follows:

§ 405.740 Principles for determining the amount in controversy.

The following principles shall be applicable for purposes of determining the amount in controversy:

* * * * *

(h) Notwithstanding the provisions of paragraph (a) of this section, when payment is made for certain non-reimbursable expenses pursuant to § 405.330, or the liability of the individual is limited for certain noncovered items or services pursuant to § 405.331, the amount in controversy should be computed as the amount that would have been charged the individual for the items and services in question, less deductible and coinsurance amounts applicable in the particular case, had such expenses not been paid pursuant to § 405.330 or had such liability not been limited pursuant to § 405.331.

18. Section 405.745 is revised to read as follows:

§ 405.745 Amount in controversy ascertained after reconsideration.

For the purpose of determining whether a party to a reconsidered determination is entitled to a hearing, the amount in controversy after the reconsideration action rather than the amount in controversy initially at issue shall be controlling.

19. Paragraph (b) of § 405.803 is revised to read as follows:

§ 405.803 Initial determination.

* * * * *

(b) An initial determination for purposes of this subpart includes among others, a determination as to whether items and services furnished are covered; whether the deductible has been met; whether the receipted bill or other evidence of payment is acceptable; whether the charges for items or services furnished are reasonable; and if the items or services furnished an enrollee by a physician or a supplier of services pursuant to an assignment (§ 405.251 (b)) are not covered by reason of § 405.310(k), whether such enrollee, physician, or supplier knew or could reasonably have been expected to know that such items or services were excluded from coverage.

20. Section 405.820(b) is revised by adding subparagraph (4) to read as follows:

§ 405.820 Right to hearing.

(a) *General.* Any party designated in § 405.822 shall be entitled to a hearing after a review determination has been made by the carrier if the amount in controversy is $100 or more as determined in accordance with paragraph (b) of this section when such party files a written request for a hearing.

(b) *Amount in controversy.* For the purpose of determining an individual's right to a hearing under paragraph (a) of this section:

(1) The amount in controversy shall be computed as the actual amount charged the individual for the items and services in question, less any amount for which payment has been made by the carrier and less any deductible and coinsurance amounts applicable in the particular case.

* * * * *

(4) Notwithstanding the provisions of subparagraph (1) of this paragraph, when payment is made for certain non-reimbursable expenses pursuant to § 405.330 or the liability of the individual is limited for certain noncovered items or services pursuant to § 405.331, the amount in controversy shall be computed as the amount that would have been charged the individual for the items or services in question, less any deductible and coinsurance amounts applicable in the particular case, had such expenses not been paid pursuant to § 405.330 or had such liability not been limited pursuant to § 405.331.

[FR Doc.75-244 Filed 1-3-75;8:45 am]

Title 7—Agriculture

CHAPTER I—AGRICULTURAL MARKETING SERVICE (STANDARDS, INSPECTIONS, MARKETING PRACTICES) DEPARTMENT OF AGRICULTURE

PART 180—PLANT VARIETY PROTECTION ACT REGULATIONS AND RULES OF PRACTICE

Status of Applications

Statement of considerations. Section 56 of the Plant Variety Protection Act (7 U.S.C. 2403), provides that applications for plant variety protection and their contents shall be kept in confidence by the Plant Variety Protection Office, by the Board, and by the offices in the Department of Agriculture to which access may be given under regulations. No information concerning the applications may be given without the authority of the applicant except under special circumstances as may be determined by the Secretary. However, the Secretary may publish the variety names designated in applications, stating the kind to which each applies.

Section 180.18(a) of the regulations and rules of practice (7 CFR 180.18(a) provides that pending applications shall be handled in confidence. Except as provided elsewhere in the rules of practice no information may be given by the Office respecting the filing of an application, the pendency of any particular application, or the subject matter of any particular application nor will access be given to, or copies furnished of, any pending application or papers relating thereto, without written authority of the applicant, or his assignee or attorney or agent. Exceptions to the above may be made by the Commissioner, in accordance with 5 U.S.C. 552 and § 1.4 of this title and upon a finding that such action is necessary to the proper conduct of the affairs of the Office, or to carry out the provisions of any Act of Congress, or as provided in section 57 of the Act and § 180.19.

Section 180.19 of the regulations and rules of practice (7 CFR 180.19) provides that information relating to pending applications shall be published in the Official Journal periodically as determined by the Commissioner to be necessary in the public interest. With respect to each application, the Official Journal must show (a) the application number and date of filing, (b) the name of the variety or temporary designation, (c) the name of the kind of seed. Additional information, such as (d) the name and address of the applicant, (e) a brief description of the novel features of the variety, and (f) whether the applicant specified that the variety is to be sold by variety name only as a class of certified seed, together with a limitation in the number of generations, may be published only upon request or approval received from the applicant at the time the application is filed or at any time before the notice of allowance of a certificate is issued.

Some applicants fail to request, or approve, publication in the Official Journal

of information in regard to whether a variety is to be sold by variety name only as a class of certified seed, together with the number of generations the seed is to be certified. The lack of information in the Official Journal on this specification may mean (1) that no specification has been made, or (2) a specification has been made but publication of this fact has not been approved by the applicant. The resulting failure to show the information in the Official Journal is causing problems and confusion for farmers and seed certifying agencies who must comply with the rules for selling and certifying seed.

Pursuant to the administrative procedure provisions of 5 U.S.C. 553, there was published in the FEDERAL REGISTER (39 FR 35177) on September 30, 1974, a notice of proposed rulemaking with respect to proposed amendments of the regulations and rules of practice (7 CFR 180) relating to §§ 180.18 and 180.19 to permit the publication in the Official Journal without specific approval of the applicant whenever the applicant specifies that his variety is to be sold by variety name only as a class of certified seed.

Interested persons were given an opportunity to submit written comments regarding the proposal. Over 1,500 copies of the proposal were distributed to interested trade and Government persons, groups, and organizations together with a press release.

Written comments were received from two organizations. Both favored adoption of the proposal.

It is concluded that the amendment of §§ 180.18(a) and 180.19 as proposed on September 30, 1974, are in the public interest and accordingly those sections are hereby amended as follows:

(Sec. 6, Stat. 1542 (7 U.S.C. 2326) 39 FR 74-22617)

1. Section 180.18(a) is revised to read as follows:

§ 180.18 Applications handled in confidence.

(a) Pending applications shall be handled in confidence. Except as provided below, no information may be given by the Office respecting the filing of an application, the pendency of any particular application, or the subject matter of any particular application, nor will access be given to, or copies furnished of, any pending application or papers relating thereto, without written authority of the applicant, or his assignee or attorney or agent. Exceptions to the above may be made by the Commissioner in accordance with 5 U.S.C. 552 and § 1.4 of this title and upon a finding that such action is necessary to the proper conduct of the affairs of the Office, or to carry out the provisions of any Act of Congress or as provided in sections 56 or 57 of the Act and § 180.19.

* * * * *

2. Section 180.19 is revised to read as follows:

§ 180.19 Publication of pending applications.

Information relating to pending applications shall be published in the Official Journal periodically as determined by the Commissioner to be necessary in the public interest. With respect to each application, the Official Journal shall show the (a) application number and date of filing, (b) the name of the variety or temporary designation, (c) the name of the kind of seed, and (d) whether the applicant specified that the variety is to be sold by variety name only as a class of certified seed, together with a limitation in the number of generations that it can be certified. Additional information, such as the name and address of the applicant or a brief description of the novel features of the variety, may be published only upon request or approval received from the applicant at the time the application is filed or at any time before the notice of allowance of a certificate is issued.

These amendments shall become effective on February 5, 1975.

Done at Washington, D.C. on: December 30, 1974.

JOHN C. BLUM,
Associate Administrator.

[FR Doc.75-252 Filed 1-3-75;8:45 am]

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 730—RICE

Subpart—1975-76 Marketing Year

MARKETING QUOTA AND NATIONAL ACREAGE ALLOTMENT FOR 1975 CROP RICE, AND APPORTIONMENT OF 1975 NATIONAL ACREAGE ALLOTMENT OF RICE AMONG THE SEVERAL STATES

The provisions of §§ 730.1501 to 730.1504 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.) (referred to as the "act"), with respect to the 1975 crop of rice. The purpose of these provisions is to (1) proclaim that marketing quotas shall not be in effect for the 1975 crop of rice, (2) establish the national acreage allotment for such crop, (3) apportion the national acreage allotment among the States, and (4) establish State reserves for new farms and new producers. The latest available statistics of the Federal Government have been used in making determinations under these provisions.

Notice that the Secretary was preparing to make determinations with respect to these provisions was published in the FEDERAL REGISTER on November 5, 1974 (39 FR 39044-5) in accordance with the provisions of 5 U.S.C. 553. Data, views and recommendations were submitted pursuant to such notice and consideration was given thereto to the extent permitted by law.

It is essential that these provisions be made effective as soon as possible to allow rice growers ample time to make cropping plans for next year on land not used for rice. Accordingly, it is hereby found and determined that compliance with the 30-day effective date requirement of 5 U.S.C. 553 is impracticable and contrary to the public interest and §§ 730.1501 to 730.1504 shall be effective upon filing this document with the Director, Office of the Federal Register.

Section 730.1501 through 730.1504 are amended with respect to the 1975 crop of rice to provide as follows:

§ 730.1501 Marketing quotas for the 1975 crop of rice.

The total supply of rice in the United States for the marketing year beginning August 1, 1974, is determined to be 121.9 million hundredweight (rough basis). The normal supply of rice for such marketing year is determined to be 122.3 million hundredweight (rough basis). Since the total supply of rice for the 1974-75 marketing year is less than the normal supply for such marketing year, marketing quotas shall not be in effect for the 1975 crop of rice.

§ 730.1502 National acreage allotment of rice for 1975.

The normal supply of rice for the marketing year commencing August 1, 1975, is determined to be 92.4 million hundredweight (rough basis). The carryover of rice on August 1, 1975, is estimated at 10.8 million hundredweight. Therefore, the production o' rice needed in 1975 to make available a supply of rice for the 1975-76 marketing year equal to the normal supply for such marketing year is 81.6 million hundredweight. The national average yield of rice for the 5 calendar years 1970 through 1974 is determined to be 4,526 pounds per planted acre. The national acreage allotment of rice for 1975 computed on the basis of the normal supply for 1975, less estimated carryover, and the national average yield per planted acre for the 5 calendar years, 1970 through 1974, is 1,802,916 acres. Since such amount is more than the minimum national acreage allotment of 1,652,596 acres prescribed under section 353(c) (6) of the act, the national acreage allotment for rice for the calendar year 1975 shall be 1,802,916 acres.

§ 730.1503 Apportionment of 1975 national acreage allotment of rice among the several States.

The national acreage allotment proclaimed in § 730.1502, less a national reserve of 300 acres, is hereby apportioned among the several rice producing States as follows:

State:	Acres
Arizona	250
Arkansas	435,322
California	327,037
Florida	1,044
Illinois	22
Louisiana:	
Farm administrative area	499,729
Producer administrative area	18,493
State total	518,222
Mississippi	50,921
Missouri	5,191
North Carolina	41
Oklahoma	163
South Carolina	3,105
Tennessee	564
Texas	460,734
Total apportioned to States	1,802,616
Unapportioned National Reserve	300
U.S. total	1,802,916

§ 730.1504 State reserve acreage.

(a) Reserve for new farms and new producers. State reserve acreages for new farms and new producers are established in accordance with sections 353 of the Act as set forth in the following table:

State:	Reserve for new farms and new producers
Arizona	7
Arkansas	13,060
California	9,811
Florida	31
Illinois	1
Louisiana:	
Farm Administrative Area	14,992
Producer Administrative Area	554
State total	15,546
Mississippi	1,528
Missouri	156
North Carolina	1
Oklahoma	5
South Carolina	93
Tennessee	17
Texas	13,822
U.S. total	54,078

(b) State reserve acreages for other factors. (To be established by amendment at a later date.)

(Sec. 301, 352, 353, 354, 375, 52 Stat. 38, 60, 61, 66, as amended; 7 U.S.C. 1301, 1352, 1353, 1354, 1375)

Effective Date: December 31, 1974.

Signed at Washington, D.C. on: December 31, 1974.

J. PHIL CAMPBELL,
Acting Secretary.

[FR Doc.74-30535 Filed 12-31-74;3:48 pm]

CHAPTER VIII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (SUGAR), DEPARTMENT OF AGRICULTURE

SUBCHAPTER I—DETERMINATION OF PRICES

[Docket No. SH-325; AMDT. 1]

PART 874—SUGARCANE; LOUISIANA

Fair and Reasonable Prices for 1974-Crop

Pursuant to the provisions of section 301(c)(2) of the Sugar Act of 1948, as amended, § 874.35 (39 FR 37182 and 39 FR 38364) is amended by revising paragraph (a) thereof to read as follows:

§ 874.35 Basic price.

(a) The basic price for standard sugarcane shall be not less than $1.06 per ton for each 1-cent per pound of raw sugar determined on the basis of the weekly average price, the season's average price, or the delivered average price as elected by the processor in writing to the State office not later than Oct. 29, 1974, and the pricing basis elected shall be used for pricing all 1974-crop sugarcane, The average price of raw sugar as determined above shall be unchanged for all processors located in Freight Area (A); may be decreased 0.04 cent per pound by processors in Freight Area (B); and may be decreased 0.08 cent per pound by processors in Freight Area (C).[1]

* * * * *

(Secs. 301,403, 61 Stat. 929, as amended, 932; 7 U.S.C. 1131, 1153).

STATEMENT OF BASES AND CONSIDERATIONS

This amendment revises the appropriate freight differentials for calculation of the basic price for standard sugarcane in Louisiana. The revision reflects the latest increases in intrastate rail freight rates on raw sugar.

In the original 1974 price determination issued on October 10, 1974, the Department stated that consideration would be given to amending the regulation, if deemed necessary, to reflect increased freight rates. At that time, the Department was aware of a slight increase in freight rates made before October 1, 1974, and the likelihood of an additional increase to be made by the Louisiana Public Service Commission before harvest was completed. Because of the pending action no recognition was given to the increase in rates in the original regulation.

A final ruling was made by the Commission effective December 2, 1974. This amendment reflects the increases made in freight rates since January 1, 1974. In calculating the basic price for standard sugarcane the average price of raw sugar shall not be adjusted by processors in Freight Area (A); may be decreased 0.04 cent and 0.08 cent by processors in Areas (B) and (C), respectively.

Accordingly, I hereby find and conclude that the foregoing regulation will effectuate the applicable provisions of the Sugar Act of 1948, as amended.

Effective date. This amendment shall become effective on the date of publication and is applicable to the 1974 crop of Louisiana sugarcane.

Signed at Washington, D.C. on Dec. 27, 1974.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 75-221 Filed 1-3-75;8:45 am]

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

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

Expenses and Rate of Assessment

This document authorizes the South Texas Lettuce Committee to spend $21,000 for its operations during the fiscal period ending July 31, 1975, and to collect one cent ($0.01) per carton on assessable lettuce handled by first handlers to defray such expenses.

The committee is the administrative agency established under Marketing Agreement No. 144 and Order No. 971 (7 CFR Part 971), regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

Notice was published in the December 11 FEDERAL REGISTER (39 FR 43229) regarding the proposals. It afforded interested persons an opportunity to file written comments not later than December 27, 1974. None was filed.

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

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) because this part requires that the rate of assessment for a particular fiscal period shall apply to all assessable lettuce from the beginning of such period.

The regulation follows:

§ 971.214 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period ending July 31, 1975, by the South Texas Lettuce Committee for its maintenance and functioning and for such other purposes as the Secretary may determine to be appropriate will amount to $21,000.

(b) The rate of assessment to be paid by each handler in accordance with this part shall be one cent ($0.01) per carton of assessable lettuce handled by him as the first handler during the fiscal period.

(c) Unexpended income in excess of expenses for the fiscal period ending July 31, 1975, may be carried over as a reserve to the extent authorized in § 971.43(a)(2).

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

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

Dated: December 31, 1974.

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

[FR Doc.75-291 Filed 1-3-75;8:45 am]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regs., 1970 and Subsequent Crops Rice Supplement, Amendment 7]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1970 and Subsequent Crops, Rice Loan and Purchase Program

CHANGE IN INSPECTION CHARGE

The regulations issued by the Commodity Credit Corporation (CCC) at 35 FR 8443 and 8873, as amended, containing the regulations Governing the 1970 and Subsequent Crops, Rice Loan and Purchase Program are hereby amended as follows:

Section 1421.308 is amended to provide that the charge made for each lot of rice sampled for farm-stored loans and for each warehouse receipt for modified-commingled or identity-preserved warehouse-stored loan is increased from $8.30 to $9.70. Because the 1974 crop rice is currently being placed under loan and the need of producers to know the fees applicable to the rice loan and purchase program, it is impractical and contrary to the public interest to follow the notice of proposed rulemaking procedure with respect to this amendment. The amended section reads as follows:

§ 1421.308 Fees and charges.

The producer shall pay a loan service fee and delivery charge as specified in § 1421.11. In addition, a charge of $9.70 for each lot sampled will be made in connection with farm-stored loans and in connection with each warehouse receipt serving as security for a modified-commingled or identity-preserved warehouse-stored loan or both.

(Secs. 4, 5, 62 Stat. 1070, as amended; secs. 101, 401, 408, 63 Stat. 1051, as amended; 15 U.S.C. 714b, 714c; 7 U.S.C. 1421, 1441, 1428)

This amendment shall be effective with respect to all loans made on or after January 5, 1975.

Signed at Washington, D.C., on December 27, 1974.

KENNETH E. FRICK,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc.75-292 Filed 1-3-75;8:45 am]

Title 13—Business Credit and Assistance

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 301—ESTABLISHMENT AND ORGANIZATION

Grant and Loan Program

Part 301 of Chapter III of Title 13 of the Code of Federal Regulations is hereby amended.

In that the material contained herein is a matter relating to the grant and loan program of the Economic Development Administration and because a delay in implementing these regulations would be contrary to the public interest, the relevant provisions of the Administrative Procedure Act (5 U.S.C. 533) requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable.

The purpose of these amendments is to make technical changes to implement EDA's new policy of decentralization of its public works program.

1. Section 301.34 is amended by amending paragraph (b) to read as follows:

§ 301.34 Deputy Assistant Secretary for Economic Development Operations.

* * * * *

(b) The Office of Public Works directs, guides and oversees all phases of the public works program; develops and implements all public works policies, standards and procedures for accepting, processing, reviewing, approving and constructing public works grant and loan projects under the Act; monitors the performance of Regional Office public works functions; trains and develops public works field staff; and maintains operating liaison with Federal agencies having grant-in-aid programs which may supplement Agency projects.

* * * * *

§ 301.35 [Deleted]

2. Section 301.35 is deleted in its entirety.

3. Section 301.42 is amended by amending paragraphs (a), (b)(1), and (b)(4) to read as follows:

§ 301.42 Economic Development Regional Offices.

(a) Regional Offices cooperate with and assist local areas in organizing for economic development; provide economic development informational services covering all programs, Federal and otherwise; assist in obtaining field surveys of local area problems through staff or through contract; cooperate with local area and other economic development representatives in the development or modifications of Overall Economic Development Programs (OEDP); review those OEDP submitted for approval and take appropriate action in accordance with prescribed agency policies and procedures; review and approve applications for public works projects; review applications for industrial and commercial assistance, for technical assistance, including administrative grants, and take appropriate final action in accordance with Agency policies, rules, regulations, and procedures and within the authority specifically delegated by the Assistant Secretary; review financial assistance project reports of processing offices, submitting analyses and recommendations for action to the Agency's Washington Office; develop and comment upon proposals for training projects within the area served by the Regional Office; and provide for official liaison channels with State economic development agencies, district and redevelopment area economic development organizations, and regional or local offices of other Federal agencies located within the same areas, particularly those with related programs.

(b) Organization structure: (1) The Regional Director, who reports to and is under the supervision and direction of the Assistant Secretary, directs the program and is responsible for the conduct of all activities of the Regional Office, and approves public works applications.

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(4) The Regional Counsel provides legal services to the Regional Director, subject to the general policy guidance and legal supervision of the Chief Counsel; performs preliminary review of all applications received in the Regional Office, making recommendations as appropriate; and advises and assists in the legal aspects of project development and management, including the closing of loans, and upon request of the Chief Counsel, provides assistance in connection with general litigation and the administration and liquidation of business development loans and working capital guarantees. Regional Counsel will provide final legal review of public works projects, subject to guidance and overseeing by the Office of Chief Counsel.

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(Sec. 701, Pub. L. 89-136 (August 26, 1965); 42 U.S.C. 3211; 79 Stat. 570 and Department of Commerce Organization Order 10-4, April 1, 1970 (35 FR 5970))

Effective date: These regulations become effective on January 3, 1975.

Dated: December 30, 1974.

D. JEFF CAHILL,
Acting Assistant Secretary
for Economic Development.

[FR Doc.75-279 Filed 1-3-75;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 13243; Amdts. 21-42; 36-4]

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

Noise Standards for Propeller Driven Small Airplanes

The purpose of these amendments is to prescribe noise standards for the issue of normal, utility, acrobatic, transport, and restricted category type certificates for propeller driven small airplanes; to prescribe noise standards for the issue of standard airworthiness certificates and restricted category airworthiness certificates for newly produced propeller driven small airplanes of older type designs; and to prohibit "acoustical changes," in the type design of those airplanes, that increase their noise levels beyond specified limits.

The primary basis for these amendments is section 611 of the Federal Aviation Act of 1958 (49 U.S.C. 1431), as

amended by the Noise Control Act of 1972 (Pub. L. 92-574).

These amendments are based on Notice 73-26, published in the FEDERAL REGISTER on October 10, 1973 (38 FR 23016). Interested persons have been afforded an opportunity to comment on the matters contained herein, and all relevant comments have been considered in the issuance of these amendments.

Pursuant to 49 U.S.C. 1431(b)(1), the Federal Aviation Administration has consulted with the Secretary of Transportation, concerning all matters contained herein, prior to the adoption of this amendment. Pursuant to that paragraph and § 1500.9(b) of the guidelines of the Council on Environmental Quality concerning statements on proposed Federal actions affecting the environment, published in the FEDERAL REGISTER on August 1, 1973 (38 FR 20550), the Federal Aviation Administration has consulted with the Environmental Protection Agency (EPA) and has submitted this amendment to that agency for review and comment.

A. *Background: Relation to Proposed Regulations Submitted to FAA by EPA.* During the period of FAA consultation with EPA on this amendment, EPA transmitted to the FAA (on December 6, 1974), its proposed regulation concerning the noise of propeller driven small airplanes, pursuant to section 611(c)(1) of the Federal Aviation Act of 1958, as amended by the Noise Control Act of 1972 (Pub. L. 92-574). Section 611(c)(1) of the Federal Aviation Act of 1958 provides that EPA shall submit to the FAA proposed regulations to provide such control and abatement of aircraft noise and sonic boom as EPA determines is necessary to protect the public health and welfare. That section also provides that the FAA "shall consider such proposed regulations submitted by EPA under this paragraph and shall, within thirty days of its submission to the FAA, publish the proposed regulations in a Notice of Proposed Rule Making." Pursuant to that provision of law, a notice of proposed rule making, entitled "Proposed Regulations submitted to the FAA by the Environmental Protection Agency: Noise Standards for Propeller Driven Small Airplanes" is being issued by the FAA simultaneously with this amendment. A detailed project report, dated November 25, 1974, was also transmitted to the FAA by EPA to support its proposed regulations. Since receiving the EPA proposed regulation and supporting project report (and in view of the fact that this amendment, representing a year of FAA analysis and review of public comments in response to Notice 73-26, was ready for issuance when the EPA proposal was received), the FAA has conducted a comparative study of the EPA proposal (and its supporting project report), and the provisions of this amendment. This study was conducted to determine whether issuance of this amendment at this time would in any manner commit the FAA to a course of action that would conflict with an objective review of the EPA proposals under the procedures prescribed in section 611(c) of the Federal Aviation Act of 1958, or in any other way impair its ability to discharge its obligations under the Noise Control Act of 1972.

This review concentrated on the areas in which the EPA proposal may differ from this amendment with respect to the protection of persons from the noise of propeller driven small airplanes. The study, thus, concentrated on differences involving (1) the unit of noise measurement, (2) the compliance dates, (3) the noise levels for each affected airplane weight, (4) the climb performance correction procedure, (5) the treatment of agricultural and fire fighting airplanes, (6) weight limitations derived from the noise compliance test, (7) the effect of wind on conduct of the noise test, (8) correction of test data for microphone losses, (9) the supplementing of field calibrations with the use of a voltage insert device, (10) the engine power that must be used, and (11) the methods of correcting acoustical and performance information. The review of these eleven areas was conducted in the light of EPA's supporting data in its Project Report.

Based on this review, the FAA is confident that there is no provision of the EPA proposals submitted on December 6, 1974, that could not be adopted later, as a supplement to this amendment, if justified on the basis of public participation and comment in response to the NPRM being issued simultaneously with this amendment, and in response to Public Hearings conducted on that NPRM. Furthermore, the FAA, by issuing this amendment at this time, has in no way limited its ability or intent to respond fully to the corresponding EPA proposals in a manner contemplated by section 611(c) of the Federal Aviation Act of 1958.

In addition to preserving FAA's ability to take any action that may be shown to be valid under the section 611(c) process, this amendment reflects FAA's awareness of the need for timely action to protect the public from the noise of propeller driven small airplanes. This amendment, thus, establishes immediate criteria for the manufacturers of propeller driven small airplanes, consistent with the direction in section 611(b) that the public be protected from aircraft noise.

FAA's decision to issue this amendment at this time was coordinated with EPA. That agency stated that it had no objection to such issuance provided that it is understood that (1) this amendment may be changed on the basis of comments received in response to the EPA proposals (issued as an FAA NPRM simultaneously with this amendment) and (2) while EPA does not object to issuance of this amendment, it does not concur in the substance of this amendment.

EPA also requested that the FAA explain, in this preamble, its reasons for issuing this amendment at this time. These reasons are stated above, and may be summarized as follows: Considering the public need for timely action and the fact that all of the provisions of the corresponding EPA proposals that are shown to be valid can be fully and objectively considered for subsequent FAA rule making, the FAA believes that it would be contrary to the public interest, and to the intent of the Noise Control Act of 1972, to delay this immediately available regulatory action until the regulatory process prescribed in section 611(c) is completed anew will respect to the recent EPA proposals.

Finally, in response to Notice 73-26, EPA submitted, on December 20, 1973, its comments in the form of a comprehensive project report. This amendment is issued after analysis of that project report. A summary of FAA responses to that project report has been prepared in support of this amendment. However, since this earlier project report has been superseded by the later EPA proposal and project report, it is now moot. This summary has, therefore, been placed in the docket as history and is not recited in this preamble. To prevent confusion, and unless otherwise noted, all FAA responses to EPA's submittals in this matter will relate to EPA's second project report (dated November 25, 1974) and its proposed regulation.

B. *Public Comments on Notice 73-26.* One comment stated that the acoustical change provisions of the proposed regulations would result in unwarranted constraints on operators of antique aircraft. It was argued that powerplant conversions of antique aircraft are necessitated by the unreliability of the original model engine or are desirable either to substitute alternate engines offered as original equipment by the manufacturer, or to achieve more performance. The FAA believes that, for antique aircraft that cannot achieve the noise limits of § F36.301 (b) prior to the change in type design, no valid reason has been submitted for permitting further noise increases. If the antique aircraft is quieter than those limits prior to the change in type design, this amendment permits noise increases up to that limit.

In either case, the FAA will monitor the burden of the regulation on antique aircraft to determine if the problem of aging aircraft justifies further review of the noise limits proposed herein. The commentator also stated that the acoustical change proposal appears to prohibit powerplant conversions that do not involve issuance of a supplemental type certificate. It was stated that this would be an unwarranted burden on antique aircraft owners. The general answer to this comment is stated above. The commentator is correct in that the acoustical change provisions of this proposal apply to the issuance of any type design change approval, not only the issuance of supplemental type certificates.

One comment stated that it was not clear whether the proposed acoustical change provisions applied only to aircraft type certificates under the proposed rules, or whether they apply also to older aircraft. As stated in § 36.1(e), this amendment applies to the issuance of

certain airworthiness certificates for new production versions of older aircraft types, not only to the issuance of new type certificates.

One comment stated that the acoustical change rules were proposed in such a manner that the tests required by Part 36, Appendix F, must be conducted by persons authorized to perform functions under Part 43 Maintenance, Preventive Maintenance, Rebuilding, and Alteration. This comment is not correct. The acoustical change provisions of Part 36 are limited by the terms of § 21.93 to changes in the type design of an aircraft. These provisions do not change, in any respect, the provisions of Part 43 concerning alteration of aircraft to conform to changes in type design that have already been approved. The acoustical change requirements in this amendment must be met, however, as a condition for the issuance of type design change approvals after the effective date of this amendment. The commentator also stated that no person has been identified as having noise compliance testing authority under Part 43. Since the approval of type design changes is the function of the Administrator or his designated representative, and is not the function of persons authorized to perform alterations under Part 43, it would not be appropriate, at this time, to designate persons under Part 43 to conduct the required tests.

One comment stated that the proposed acoustical change provisions place an expensive and time consuming burden on aircraft modifiers because of the required climatic conditions. This comment recommended that testing not be required unless there is "reasonable evidence" that the modification will result in noise levels exceeding the regulatory limit. The climatic conditions proposed within which no corrections for temperature and humidity are required cannot be expanded due to the need for consistent and reproducible results. The applicant has the choice of waiting for the test window, conducting the test in a more favorable climate, or correcting the data if the tests are conducted outside the "no correction test window." Further, the design changes which constitute an acoustical change for propeller driven small airplanes are delineated in § 21.93 (b)(3). If the type design change is an "acoustical change" under the above section, the FAA believes that reasonable evidence does exist that modification may result in increased noise. For this reason, this amendment requires that the acoustical change compliance test be conducted.

One comment stated that the acoustical change provisions should only apply to aircraft exceeding a specified horsepower/propeller or horsepower/RPM combination. Section 21.93(b)(3) specifies the alterations that constitute an acoustical change. Because of the range of noise levels and propulsion systems addressed by this amendment, it would be unworkable to attempt to specify horsepower/propeller or horsepower/RPM combinations that would adequately describe the type design changes that may result in noise increases.

One comment stated that acrobatic aircraft should be excluded from the regulations on the same basis as agricultural and fire fighting aircraft since acrobatic aircraft also need all available horsepower and any noise related power losses would result in an unacceptable tradeoff between safety and noise reductions. The FAA does not believe that the fact that an aircraft is type certificated in the acrobatic category under Part 23 of the Federal Aviation Regulations justifies exclusion of the aircraft from noise rules. It should be noted, however, that this amendment does not apply to experimentally certificated aircraft used for acrobatics.

One comment stated that the type certification noise standards, while essential, must be supplemented with operational procedures in order to ensure adequate noise control. This comment stated that all airplane flight manuals should contain a chapter on noise causes and abatement procedures to make pilots sensitive to noise problems. The FAA agrees that operating procedures are an important aspect of the overall solution to the aircraft noise problem. It is also agreed that airplane flight manuals (in addition to containing noise information obtained during type certification) may be a useful means of conveying an awareness of aircraft noise problems to the owners and operators of aircraft. While the FAA encourages manufacturers to develop general information in this area, the FAA, because of the close relationship between noise operating procedures and safety, does not believe that specific procedures should be recommended and approved in an airplane flight manual.

One comment cited two reports ("Transportation Noise and Noise from Equipment Powered by Internal Combustion Engines," NTID 300.13, U.S. Environmental Protection Agency, December 31, 1971, and Results of Noise Survey of Seventeen General Aviation Aircraft, FAA, December, 1972) and performance data on the aircraft of two manufacturers as indicating that, for new production aircraft of current types, the proposed standard to be applied to airworthiness certification should be made effective for all types prior to January 1, 1980. While the FAA does not disagree with the general accuracy of much of the information cited by the commentator, that information does not address the potentially serious impacts on certain aircraft types, that could result if the January 1, 1980, date were accelerated.

One comment stated that the public is concerned with the noise generated by an aircraft and, from this standpoint, is not concerned with the weight of the aircraft generating the noise. This being the case, the comment asks why aircraft smaller than 12,500 pounds should be subject to noise limits lower than those that apply at the higher weight. The FAA agrees that the annoyance caused by aircraft noise is not related directly to the weight of an aircraft. However, weight is chosen as the basis for selecting the applicable noise limits because the weight of an aircraft is directly related to the engine power required by the aircraft, and, in general, the higher horsepower engines are capable of generating more noise than low horsepower engines. From the standpoint of technological practicability and economic reasonableness, it is appropriate that weight differences be reflected in the limiting noise levels.

One comment pointed out differences between the proposed FAA standards and procedures being considered for adoption by the International Standardization Organization (ISO). These comments concerned the measurement unit, the test conditions, and the number of required overflights. First, the comment recommends the addition of a duration conversion to dB(A). The addition of a duration correction adds complexity to the certification process similar to that required for other units rejected for that reason. There has been no demonstrated requirement for a measurement unit more complex than the universally accepted A-weighted decibel. The comment also noted differences between the "test window" (i.e. the limiting atmospheric conditions) proposed for ISO adoption and that proposed for adoption by the FAA. The ISO proposal is more restrictive than the FAA proposal in that it allows less variation in the atmospheric absorption coefficients. The FAA does not believe that this more restrictive test is necessary in order to obtain valid acoustical data for propeller driven small airplanes. The "test window" proposed in the Notice is believed to be adequate. The commentator stated that the ISO proposal would permit a ±100-foot variation in test altitude but would require correction to the required 1,000-foot altitude, whereas the Notice proposed only a ±30-foot variation and did not propose any correction procedure. The FAA believes that the smaller altitude variation can be practically complied with during the test flights and believes that correction procedures, within the permitted altitude variation, would merely add unnecessary complexity without significantly affecting the noise levels generated by the aircraft. This aspect of the proposal is, therefore, believed to be valid. Finally, the commentator suggested that six overflights, rather than four, would be appropriate considering the confidence limits proposed in the notice. This comment has merit. Six overflights are specified herein.

One comment pointed out a conflict between proposed § F36.101(b) (which prohibits all testing at relative humidities higher than 90 percent), and § F36.201(a) which implies that tests may be conducted with relative humidities higher than 90 percent, if data corrections are made. It was not intended that the effect of § F36.101(b) be altered by the data correction procedures in § F36.201. To eliminate this inconsistency,

the words "above 90 percent or" are not included in § F36.201(a).

One comment stated that rather than requiring maximum continuous power and permitting accelerated flight (for aircraft that can exceed a limiting airspeed at maximum continuous power), the regulation should require the test to be conducted at the airspeed limit but at reduced power. The FAA believes that reduced power may mask noise problems that may be evident at maximum continuous power. The use of accelerated flight does not significantly affect the accuracy of measured data. Therefore, this amendment specifies maximum continuous power and permits accelerated flight.

One comment stated that § F36.105(e) implies the use of the "slow" dynamic characteristics of the sound level meter and that this should be expressly stated. The FAA agrees. This provision, therefore, includes the words "with dynamic characteristics designated 'slow'" after the words "A filter."

One comment questioned the need for, and the added regulatory complexity caused by, permitting aircraft of 3,300 pounds and above to generate 2 more dB(A) now than in the future. The FAA believes that the overall noise levels and timing provisions in this amendment properly reflect economic and technological factors involved in the certification of propeller driven small airplanes.

One comment noted the possibility of an abrupt change in severity as between the provisions of Appendix F for aircraft close to 12,500 pounds, and the provisions of Appendix C for turbojets and for transport category airplanes slightly heavier than 12,500 pounds. The FAA agrees that Appendix F does represent a significant advance in noise reduction over Appendix C for aircraft close to the 12,500 pound dividing line. However, this reflects the fact that Appendix C was primarily developed to respond to the technological problems associated with the abatement of turbojet noise, whereas the provisions of Appendix F deal exclusively with the inherently lower noise levels of propeller driven small airplanes.

One comment opposed the proposal that aircraft used for dispensing fire fighting or agricultural materials be required to comply with FAA approved noise abatement routes and flight plans if they cannot meet the prescribed noise limits. This comment indicated that neither agricultural nor fire fighting operations can be continued under such a restraint since both kinds of operation may require a capability of rapid response that is incompatible with a job-by-job approval of routes for noise abatement purposes. The FAA agrees with this comment and does not adopt this proposal.

One comment raised the question of whether the recording of flyover noise should be made with "A" or "linear" weighting. There is no need to specify which weighting is required since the "A" weighting required to obtain a dB(A) noise value may be applied during the recording or during the analysis of the tape. The comments also asked whether a specified calibration procedure is intended. There does not appear to be a need to restrict the applicant to a particular calibration procedure, in view of the rapidly changing technology in this field. The FAA, therefore, will consider, for approval, any calibration procedure that yields accurate and reproducible results.

One comment asked whether a nondirectional microphone could be used. This amendment does not prohibit the use of such microphones.

One comment stated that the noise tests cannot be conducted at maximum weight because of the burnoff of fuel needed to conduct the tests. The FAA agrees. This amendment provides that, if the test is conducted at weights less than an airworthiness limited weight, the lower weight becomes an operating limitation. However, to reflect this comment, this amendment adds an exception where needed to account for fuel that must be used during the test itself.

One comment recommended that testing be prohibited at altitudes greater than 6,000 feet above sea level. The FAA believes that this comment may have merit for airplanes powered by supercharged engines and will monitor the administration of this amendment to those airplanes to determine if additional rulemaking is needed. For normally aspirated engines, the decrease of available power with altitude normally would, in any case, prevent the developing of maximum continuous power at high altitudes. This amendment does not contain an altitude limit as a test requirement.

One comment stated that proposed § F36.109(g) implies that a time history record of position must be kept. Beyond requiring the applicant to demonstrate that the position of the airplane, during the actual measurement of noise, complies with the regulation, this amendment does not require the keeping of a time history of position.

One comment stated that the methods used to correct for temperature and humidity data outside of the specified limits should either be specified in the regulations or should be methods complying with acceptable industry practices. The FAA does not believe that a particular correction method should be prescribed and will consider any method that adequately corrects the data to the acoustical standard day.

One comment stated that the formula in § F36.201(c) should be limited to sea level standard day conditions for a normal takeoff distance. The values used in the formula (except for takeoff distance in some cases) are those developed during type certification under the airworthiness regulations. It is, therefore, not believed to be necessary to specify the conditions under which they are developed. Where takeoff distance is not developed as approved performance information, the values in § F36.201(d) must be applied in each case, so that reference to sea level is not needed.

One comment requested that the definition of "acoustical change" in § 21.93 (b) be amended to specify that an acoustical change is one that may increase the noise levels of the airplane "in terms of FAR 36 measurement criteria." Since that paragraph begins with the words "for the purpose of complying with Part 36 of this chapter * * *" and in view of several years of administering § 21.93(b) without problems concerning the definition of "acoustical change," the FAA does not believe that the suggested language is necessary.

One comment stated that the proposed amendment to § 21.115(a) (which proposed to add a reference to the acoustical change requirements to that paragraph) is unnecessary since § 21.115(b) already requires compliance with § 21.33(b) which includes required noise standards. The FAA agrees in part. However, to ensure that the section heading and paragraph (a) of § 21.115 are consistent with the other regulatory changes in this amendment, the change to that section is adopted as proposed.

One comment stated that, while noise standards are appropriate conditions of type certification, they should not be applied to the issuance of airworthiness certificates. The question of application of noise standards to type and airworthiness certificates was addressed in Notice No. 72-19, Newly Produced Airplanes of Older Type Designs, published in the FEDERAL REGISTER (37 FR 14813) on July 25, 1972. In that Notice, (which first associated noise standards with airworthiness certificates) it was stated that the proposed application of noise standards to airworthiness certificates—

> * * * reflects the requirement in § 611(a) of the Federal Aviation Act of 1958 that the Administrator shall issue noise abatement regulations 'including the application of such standards, rules, and regulations in the issuance * * * of any certificate authorized by this title.' Whereas the appropriate certificate for insuring that new type designs incorporate acoustical performance features is the type certificate, and Part 36 therefore currently governs the issuance of type certificates * * * only, the airworthiness certificate is an appropriate title VI certificate for insuring that new production copies of previously type certificated aircraft incorporate acoustical performance design features prior to operation. This is the case because the airworthiness certificate is individually issued to each aircraft after production, and is therefore useful as a means of distinguishing (e.g. by date of issuance) those particular aircraft within a production run that require noise compliance demonstration * * *

For the reasons discussed in Notice 72-19, the FAA believes that it is appropriate to apply noise standards to the issuance of airworthiness certificates to previously type-certificated aircraft where the objective is imposing noise standards on newly produced aircraft of older type designs.

One comment stated that the proposed regulation is not adequate since—(1) it does not account for the noise of aircraft operating below 1,000 feet, as during landing and takeoff, and (2) it does not involve retrofit of the current fleet of propeller driven small airplanes. By requiring maximum continuous power at the 1,000-foot altitude, the FAA believes that this amendment also addresses the noise source that is also a problem at lower altitudes, and that the added complexity of takeoff and approach noise

measurements would not be justified at this time. With respect to retrofit of the current fleet, the FAA is considering the advisability of such a regulation, but does not believe that adoption of this amendment should be delayed pending the results of this review.

One comment, in addition to recommending omission of the performance correction and increasing the severity of the regulation also recommended that low speed multi-bladed propellers and chamber-type mufflers be required. The FAA believes that, rather than require specific type design details, this first issuance of a noise rule for propeller driven small airplanes should set quantitative noise limits and permit any means of compliance that also complies with the applicable airworthiness requirements.

One comment stated that there should be provision in the regulation itself for progressively reducing the maximum permitted noise level as new and more advanced technology is developed. The FAA agrees that the regulation should be reviewed and amended when justified by new technology. However, this should be accomplished, in each case, with notice and public procedure as required by the Administrative Procedure Act. Provision for the future lowering of noise limits is not, therefore, included in this amendment.

Consistent with the fact that certain propeller driven small airplanes are not required to have an Airplane Flight Manual, but may have any combination of manuals, markings or placards, this amendment revises the statement required by § 36.1581 to refer to "noise levels of this airplane" rather than "noise levels in this manual."

Finally, editorial changes are made to improve the presentation of regulatory material. These include moving all of the acoustical change provisions of Part 36 to a new § 36.7, and the restructuring of the applicability provisions of § 36.1.

(Secs. 313(a), 601, 603, and 611 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423, and 1431); sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); title I of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and Executive Order 11514, March 5, 1970.)

In consideration of the foregoing, Parts 21 and 36 of the Federal Aviation Regulations are amended, effective February 7, 1975, as follows:

A. Part 21 of the Federal Aviation Regulations is amended as follows:

1. Section 21.17(a) (introductory clause) is amended to read as follows:

§ 21.17 Designation of applicable regulations.

(a) Except as provided in § 25.2 and in Part 36 of this chapter, an applicant for a type certificate must show that the aircraft, aircraft engine, or propeller concerned meets—

* * * * *

2. Section 21.25(a) (introductory clause) is amended to read as follows:

§ 21.25 Issue of type certificate: Restricted category aircraft.

(a) An applicant is entitled to a type certificate for an aircraft in the restricted category for special purpose operations if he shows compliance with the applicable noise requirements of Part 36 of this chapter, and if he shows that no feature or characteristic of the aircraft makes it unsafe when it is operated under the limitations prescribed for its intended use, and that the aircraft—

* * * * *

3. Section 21.93(b) is amended to read as follows:

§ 21.93 Classification of changes in type design.

* * * * *

(b) For the purpose of complying with Part 36 of this chapter, and except as provided in subparagraph (b)(3) of this paragraph, any voluntary change in the type design of an airplane that may increase the noise levels of that airplane is an "acoustical change" (in addition to being a minor or major change as classified in paragraph (a) of this section) for the following airplanes:

(1) Subsonic transport category large airplanes.

(2) Subsonic turbojet powered airplanes (regardless of category).

(3) Propeller driven small airplanes in the normal, utility, acrobatic, transport, and restricted categories (except for airplanes that are designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1966, or for dispensing fire fighting materials). For airplanes to which this subparagraph applies, "acoustical changes" are limited to the following type design changes:

(i) Any change to, or removal of, a muffler or other component designed for noise control.

(ii) Any change to, or installation of, a powerplant or propeller that increases maximum continuous power or thrust at sea level, or increases the propeller tip speed at that power or thrust, over that previously approved for the airplane.

4. Section 21.101(a) (introductory clause) is amended to read as follows:

§ 21.101 Designation of applicable regulations.

(a) Except as provided in § 25.2 and in Part 36 of this chapter, an applicant for a change to a type certificate must comply with either—

* * * * *

5. Section 21.115 (section heading and paragraph (a)) are amended to read as follows:

§ 21.115 Applicable requirements.

(a) Each applicant for a supplemental type certificate must show that the altered product meets applicable airworthiness requirements as specified in paragraphs (a) and (b) of § 21.101 and, in the case of an acoustical change described in § 21.93(b), show compliance with the applicable noise requirements of § 36.7 of this chapter.

* * * * *

6. Section 21.183(e) is amended to read as follows:

§ 21.183 Issue of standard airworthiness certificates for normal, utility, acrobatic, and transport category aircraft.

* * * * *

(e) *Noise requirements.* Notwithstanding all other provisions of this section, the following must be complied with for the original issuance of a standard airworthiness certificate:

(1) For subsonic transport category large airplanes and subsonic turbojet powered airplanes that have not had any flight time before the dates specified in § 36.1(d), no standard airworthiness certificate is originally issued under this section unless the Administrator finds that the type design complies with the noise requirements in § 36.1(d) in addition to the applicable airworthiness requirements in this section. For import airplanes, compliance with this paragraph is shown if the country in which the airplane was manufactured certifies, and the Administrator finds, that § 36.1 (d) (or the applicable airplane noise requirements of the country in which the airplane was manufactured and any other requirements the Administrator may prescribe to provide noise levels no greater than those provided by compliance with § 36.1(d)) and paragraph (c) of this section are complied with.

(2) For normal, utility, acrobatic, or transport category propeller driven small airplanes (except for airplanes that are designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1966, or for dispensing fire fighting materials) that have not had any flight time before the applicable date specified in Part 36 of this chapter, no standard airworthiness certificate is originally issued under this section unless the applicant shows that the type design complies with the applicable noise requirements of Part 36 of this chapter in addition to the applicable airworthiness requirements in this section. For import airplanes, compliance with this paragraph is shown if the country in which the airplane was manufactured certifies, and the Administrator finds, that the applicable requirements of Part 36 of this chapter (or the applicable airplane noise requirements of the country in which the airplane was manufactured and any other requirements the Administrator may prescribe to provide noise levels no greater than those provided by compliance with the applicable requirements of Part 36 of this chapter) and paragraph (c) of this section are complied with.

7. Section 21.185 is amended by adding a new paragraph (d) to read as follows:

§ 21.185 Issue of airworthiness certificates for restricted category aircraft.

* * * * *

(d) *Noise requirements.* For propeller-driven small airplanes (except airplanes designed for "agricultural aircraft operations," as defined in § 137.3 of this chapter, as effective on January 1, 1966, or for dispensing fire fighting materials) that have not had any flight time before the applicable date specified in Part 36 of this chapter, and notwithstanding the other provisions of this section, no original restricted category airworthiness certificate is issued under this section unless the Administrator finds that the type design complies with the applicable noise requirements of Part 36 of this chapter in addition to the applicable airworthiness requirements of this section. For import airplanes, compliance with this paragraph is shown if the country in which the airplane was manufactured certifies, and the Administrator finds, that the applicable requirements of Part 36 of this chapter (or the applicable airplane noise requirements of the country in which the airplane was manufactured and any other requirements the Administrator may prescribe to provide noise levels no greater than those provided by compliance with the applicable requirements of Part 36 of this chapter) and paragraph (c) of this section are complied with.

8. Section 21.257 is amended to read as follows:

§ 21.257 Type certificates—issue.

An applicant is entitled to a type certificate for a product manufactured under a delegation option authorization if the Administrator finds that the product meets the applicable airworthiness and noise requirements (including applicable acoustical change requirements in the case of changes in type design).

9. A new § 21.451(d) is added to read as follows:

§ 21.451 Limits of applicability.

* * * * *

(d) Notwithstanding any other provision of this subpart, a DAS may not issue a supplemental type certificate involving the acoustical change requirements of Part 36 of this chapter until the Administrator finds that those requirements are met.

B. Part 36 of the Federal Aviation Regulations is amended as follows:

1. Section 36.1 is amended to read as follows:

§ 36.1 Applicability.

(a) This Part prescribes noise standards for the issue of the following certificates:

(1) Type certificates, and changes to those certificates, and standard airworthiness certificates, for subsonic transport category large airplanes, and for subsonic turbojet powered airplanes regardless of category.

(2) Type certificates and changes to those certificates, and standard airworthiness certificates and restricted category airworthiness certificates, for propeller driven small airplanes, except airplanes that are designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1966, or for dispensing fire fighting materials.

(b) Each person who applies under Part 21 of this chapter for a type or airworthiness certificate specified in this Part must show compliance with the applicable requirements of this Part, in addition to the applicable airworthiness requirements of this chapter.

(c) Each person who applies under Part 21 of this chapter for approval of an acoustical change described in § 21.93(b) of this chapter must show that the airplane complies with § 36.7 of this Part in addition to the applicable airworthiness requirements of this chapter.

(d) Each person who applies for the original issue of a standard airworthiness certificate for a subsonic transport category large airplane or for a turbojet powered airplane under § 21.183, must, regardless of date of application, show compliance with the applicable provisions of this Part (including Appendix C), as effective on December 1, 1969, for airplanes that have not had any flight time before—

(1) December 1, 1973, for airplanes with maximum weights greater than 75,000 lbs., except for airplanes that are powered by Pratt and Whitney Turbo Wasp JT3D series engines;

(2) December 31, 1974, for airplanes with maximum weights greater than 75,000 lbs. and that are powered by Pratt and Whitney Turbo Wasp JT3D series engines; and

(3) December 31, 1974, for airplanes with maximum weights of 75,000 lbs. and less.

(e) Each person who applies for the original issue of a standard airworthiness certificate under § 21.183, or for the original issue of a restricted category airworthiness certificate under § 21.185, for a propeller driven small airplane that has not had any flight time before January 1, 1980, must show compliance with the applicable provisions of this Part.

2. A new § 36.7 is added to read as follows:

§ 36.7 Acoustical change.

(a) *Subsonic transport category large airplanes and turbojet powered airplanes.* For subsonic transport category large airplanes and turbojet powered airplanes for which an acoustical change approval is applied for under § 21.93(b) of this chapter, the following apply:

(1) If the airplane can achieve the noise limits prescribed in Appendix C of this Part, or lower noise levels, prior to the change in type design, it may not exceed the noise limits prescribed in Appendix C after the change in type design.

(2) If the airplane cannot achieve the noise limits prescribed in Appendix C of this Part prior to the change in type design, it may not, after the change in type design, exceed the noise levels created prior to the change in type design, measured and evaluated as prescribed in Appendices A and B of this Part. For airplanes covered by this subparagraph for which application for acoustical change approval is made after September 17, 1971, the following must be complied with, in addition to the applicable provisions of Appendices A and B of this Part, in determining the takeoff and sideline noise levels of the airplane:

(i) There may be no reduction in power or thrust below the highest airworthiness approved power or thrust, during the tests conducted before and after the change in type design.

(ii) For the noise levels measured and evaluated before and after the change in type design, the test day speeds and the acoustic day reference speed must be the minimum approved value of V+10 knots, or the all-engine-operating speed at 35 feet (for turbine engine powered airplanes), or 50 feet (for reciprocating engine powered airplanes), whichever speed is greater as determined under the regulations constituting the type certification basis of the airplane. The tests must be conducted at the test day speeds ±3 knots. Noise values measured at the test day speeds must be corrected to the acoustic day reference speed.

(iii) During the tests conducted before the change in type design, the quietest airworthiness approved configuration available for the highest approved takeoff weight must be used.

(b) *Propeller driven small airplanes.* For propeller driven small airplanes in the normal, utility, acrobatic, transport, and restricted categories for which an acoustical change approval is applied for under § 21.93(b) of this chapter after January 1, 1975, the following apply:

(1) If the airplane was type certificated under Appendix F of this Part prior to the change in type design, it may not, after the change in type design, exceed the noise limit that was applied to that approval.

(2) If the airplane was not type certificated under Appendix F but can achieve the noise limits prescribed in § F36.301(b) of that Appendix prior to the change in type design, it may not exceed those limits, measured and corrected as prescribed in Appendix F, after the change in type design.

(3) If the airplane cannot achieve the noise limits prescribed in § F36.301(b) of Appendix E prior to the change in type design, it may not, after the change in type design, exceed the noise levels created prior to the change in type design, measured and corrected as prescribed in Appendix F.

4. A new subpart F is added to read as amended to read as follows:

Subpart B—Subsonic Transport Category Large Airplanes and Turbojet Powered Airplanes

4. A new subpart is added to read as follows:

Subpart F—Propeller Driven Small Airplanes

§ 36.501 Noise limits.

(a) Compliance with this subpart must be shown for—

(1) Propeller driven small airplanes for which application for the issuance

of a type certificate in the normal, utility, acrobatic, transport, or restricted category is made on or after October 10, 1973; and

(2) Propeller driven small airplanes for which application is made for the original issuance of a standard airworthiness certificate or restricted category airworthiness certificate, and that have not had any flight time before January 1, 1980 (regardless of date of application).

(b) Compliance with this subpart must be shown with noise levels measured and corrected as prescribed in Parts B and C of Appendix F, or under approved equivalent procedures.

(c) For airplanes covered by this section, it must be shown that the noise level of the airplane is no greater than the applicable limit prescribed in Part D of Appendix F.

5. Subpart G is amended to read as follows:

Subpart G—Operating Limitations and Information

§ 36.1501 Procedures and other information.

All procedures, and other information for the flight crew, that are employed for obtaining the noise reductions prescribed in this Part must be developed. This must include noise levels achieved during type certification.

§ 36.1581 Manuals, markings, and placards.

(a) If an Airplane Flight Manual is approved, the approved portion of the Airplane Flight Manual must contain procedures and other information approved under § 36.1501. If an Airplane Flight Manual is not approved, the procedures and information must be furnished in any combination of approved manual material, markings, and placards.

(b) The following statement must be furnished near the listed noise levels:

No determination has been made by the Federal Aviation Administration that the noise levels of this airplane are or should be acceptable or unacceptable for operation at, into, or out of, any airport.

(c) For subsonic transport category large airplanes and turbojet powered airplanes, for which the weight used in meeting the takeoff or landing noise requirements of this Part is less than the maximum weight or design landing weight, respectively, established under the applicable airworthiness requirements, those lesser weights must be furnished, as operating limitations, in the operating limitations section of the Airplane Flight Manual.

(d) For propeller driven small airplanes for which the weight used in meeting the flyover noise requirements of this Part is less than the maximum weight by an amount exceeding the amount of fuel needed to conduct the test, that lesser weight must be furnished, as an operating limitation, in the operating limitations section of an approved Airplane Flight Manual, in approved manual material, or on an approved placard.

(e) Except as provided in paragraphs (c) and (d) of this section, no operating limitations are furnished under this Part.

6. Section C36.7(a) is amended to read as follows:

Section C36.7 *Takeoff test conditions.*

(a) Except as provided in § 36.7(a)(2) of this Part, this section applies to all takeoffs conducted in showing compliance with this Part.

* * * * *

7. A new Appendix F is added to Part 36 to read as follows:

APPENDIX F—NOISE REQUIREMENTS FOR PROPELLER-DRIVEN SMALL AIRPLANES

PART A—GENERAL

Section F36.1 *Scope.* This appendix prescribes limiting noise levels, and procedures for measuring noise and correcting noise data, for the propeller driven small airplanes specified in § 36.1.

PART B—NOISE MEASUREMENT

Section F36.101 *General test conditions.*

(a) The test area must be relatively flat terrain having no excessive sound absorption characteristics such as those caused by thick, matted, or tall grass, by shrubs, or by wooded areas. No obstructions which significantly influence the sound field from the airplane may exist within a conical space above the measurement position, the cone being defined by an axis normal to the ground and by a half-angle 75 degrees from this axis.

(b) The tests must be carried out under the following conditions:

(1) There may be no precipitation.

(2) Relative humidity may not be higher than 90 percent or lower than 30 percent.

(3) Ambient temperature may not be above 86 degrees F. or below 41 degrees F. at 33' above ground. If the measurement site is within 1 n.m. of an airport thermometer the airport reported temperature may be used.

(4) Reported wind may not be above 10 knots at 33' above ground. If wind velocities of more than 4 knots are reported, the flight direction must be aligned to within ±15 degrees of wind direction and flights with tail wind and head wind must be made in equal numbers. If the measurement site is within 1 n.m. of an airport anemometer, the airport reported wind may be used.

(5) There may be no temperature inversion or anomalous wind condition that would significantly alter the noise level of the airplane when the noise is recorded at the required measuring point.

(6) The flight test procedures, measuring equipment, and noise measurement procedures must be approved by the FAA.

(7) Sound pressure level data for noise evaluation purposes must be obtained with acoustical equipment that complies with section F36.103 of this appendix.

Section F36.103 *Acoustical measurement system.* The acoustical measurement system must consist of approved equipment equivalent to the following:

(a) A microphone system with frequency response compatible with measurement and analysis system accuracy as prescribed in section F36.105 of this appendix.

(b) Tripods or similar microphone mountings that minimize interference with the sound being measured.

(c) Recording and reproducing equipment characteristics, frequency response, and dynamic range compatible with the response and accuracy requirements of section F36.105 of this appendix.

(d) Acoustic calibrators using sine wave or broadband noise of known sound pressure level. If broadband noise is used, the signal must be described in terms of its average and maximum root-mean-square (rms) value for nonoverload signal level.

Section F36.105 *Sensing, recording, and reproducing equipment.*

(a) The noise produced by the airplane must be recorded. A magnetic tape recorder is acceptable.

(b) The characteristics of the system must comply with the recommendations in International Electrotechnical Commission (IEC) Publication No. 179, dated 1973, concerning microphone and amplifier characteristics. The text and specifications of IEC Publication No. 179, dated 1973, and entitled "Precision Sound Level Meters" are incorporated by reference into this appendix and are made a part hereof as provided in 5 U.S.C. 552(a) and 1 CFR Part 51. This publication was published in 1965 and revised in 1973 by the Bureau Central de la Commission Electrotechnique Internationale in Geneva, Switzerland. It is available for purchase from the following sources: (1) Bureau Central de la Commission Electrotechnique Internationale, 1, rue de Varembe, Geneva, Switzerland; and (2) American National Standard Institute, 1430 Broadway, New York City, New York 10018. The matter is available for inspection at the following locations: (1) FAA Headquarters—DOT Branch Library, and Office of Environmental Quality, 800 Independence Avenue SW., Washington, D.C.; (2) FAA Regional Offices, in their respective cities; and (3) Office of the Federal Register, 1100 "L" Street NW., Washington, D.C.

(c) The response of the complete system to a sensibly plane progressive sinusoidal wave of constant amplitude must lie within the tolerance limits specified in IEC Publication No. 179, dated 1973, over the frequency range 45 to 11,200 Hz.

(d) If limitations of the dynamic range of the equipment make it necessary, high frequency pre-emphasis must be added to the recording channel with the converse de-emphasis on playback. The pre-emphasis must be applied such that the instantaneous recorded sound pressure level of the noise signal between 800 and 11,200 Hz does not vary more than 20 dB between the maximum and minimum one-third octave bands.

(e) If requested by the Administrator, the recorded noise signal must be read through an "A" filter with dynamic characteristics designated "slow," as defined in IEC Publication No. 179, dated 1973. The output signal from the filter must be fed to a rectifying circuit with square law rectification, integrated with time constants for charge and discharge of about 1 second or 800 milliseconds.

(f) The equipment must be acoustically calibrated using facilities for acoustic free-field calibration and if analysis of the tape recording is requested by the Administrator, the analysis equipment shall be electronically calibrated by a method approved by the FAA.

(g) A windscreen must be employed with microphone during all measurements of aircraft noise when the wind speed is in excess of 6 knots.

Section F36.107 *Noise measurement procedures.*

(a) The microphones must be oriented in a known direction so that the maximum sound received arrives as nearly as possible in the direction for which the microphones are calibrated. The microphone sensing elements must be approximately 4' above ground.

(b) Immediately prior to and after each test; a recorded acoustic calibration of the

system must be made in the field with an acoustic calibrator for the two purposes of checking system sensitivity and providing an acoustic reference level for the analysis of the sound level data.

(c) The ambient noise, including both acoustical background and electrical noise of the measurement systems, must be recorded and determined in the test area with the system gain set at levels that will be used for aircraft noise measurements. If aircraft sound pressure levels do not exceed the background sound pressure levels by at least 10 dB(A), approved corrections for the contribution of background sound pressure level to the observed sound pressure level must be applied.

Section F36.109 *Data recording, reporting, and approval.*

(a) Data representing physical measurements or corrections to measured data must be recorded in permanent form and appended to the record except that corrections to measurements for normal equipment response deviations need not be reported. All other corrections must be approved. Estimates must be made of the individual errors inherent in each of the operations employed in obtaining the final data.

(b) Measured and corrected sound pressure levels obtained with equipment conforming to the specifications described in section F36.105 of this appendix must be reported.

(c) The type of equipment used for measurement and analysis of all acoustic, airplane performance, and meteorological data must be reported.

(d) The following atmospheric data, measured immediately before, after, or during each test at the observation points prescribed in section F36.101 of this appendix must be reported:

(1) Air temperature and relative humidity.

(2) Maximum, minimum, and average wind velocities.

(e) Comments on local topography, ground cover, and events that might interfere with sound recordings must be reported.

(f) The following airplane information must be reported:

(1) Type, model and serial numbers (if any) of airplanes, engines, and propellers.

(2) Any modifications or nonstandard equipment likely to affect the noise characteristics of the airplane.

(3) Maximum certificated takeoff weights.

(4) Airspeed in knots for each overflight of the measuring point.

(5) Engine performance in terms of revolutions per minute and other relevant parameters for each overflight.

(6) aircraft height in feet determined by a calibrated altimeter in the aircraft, approved photographic techniques, or approved tracking facilities.

(g) Aircraft speed and position and engine performance parameters must be recorded at an approved sampling rate sufficient to ensure compliance with the test procedures and conditions of this appendix.

Section F36.111 *Flight procedures.*

(a) Tests to demonstrate compliance with the noise level requirements of this appendix must include at least six level flights over the measuring station at a height of 1,000' ±30' and ±10 degress from the zenith when passing overhead.

(b) Overflight must be performed at rated maximum continuous power, stabilized speed with propellers synchronized and with the airplane in the cruise configuration except that, if the speed at maximum continuous power would exceed the maximum speed authorized in level flight, accelerated flight is acceptable.

PART C—DATA CORRECTION

Section F36.201 *Correction of data.*

(a) Noise data obtained when the temperature is outside the range of 68 degrees F. ±9 degrees F., or the relative humidity is above 90 percent or below 40 percent, must be corrected to 77 degrees F. and 70 percent relative humidity by a method approved by the FAA.

(b) The performance correction prescribed in paragraph (c) of this section must be used. It must be determined by the method described in this appendix, and must be added algebraically to the measured value. It is limited to 5 dB(A).

(c) The performance correction must be computed by using the following formula:

$$\Delta dB = 60 - 20 \log_{10}\left\{\frac{(11{,}430 - D_{50})\,R/C + 50}{V_y}\right\}$$

Where:

D_{50} = Takeoff distance to 50 feet at maximum certificated takeoff weight.

R/C = Certificated best rate of climb (fpm).

V_y = Speed for best rate of climb in the same units as rate of climb.

(d) When takeoff distance to 50' is not listed as approved performance information, the figures of 1375' for single-engine airplanes and 1600' for multi-engine airplanes must be used.

Section F36.203 *Validity of results.*

(a) The test results must produce an average dB(A) and its 90 percent confidence limtis, the noise level being the arithmetic average of the corrected acoustical measurements for all valid test runs over the measuring point.

(b) The samples must be large enough to establish statistically a 90 percent confidence limit not to exceed ±1.5 dB(A). No test result may be omitted from the averaging process, unless omission is approved by the FAA.

PART D—NOISE LIMITS

Section F36.301 *Aircraft noise limits.*

(a) Compliance with this section must be shown with noise data measured and corrected as prescribed in Parts B and C of this appendix.

(b) For airplanes for which application for a type certificate is made on or after October 10, 1973, the noise level must not exceed 68 dB(A) up to and including aircraft weights of 1,320 pounds (600 kg.). For weights greater than 1,320 pounds up to and including 3,630 pounds (1,650 kg.) the limit increases at the rate of 1 dB/165 pounds (1 dB/75 kg.) to 82 dB(A) at 3,630 pounds, after which it is constant at 82 dB(A) up to and including 12,500 pounds. However, airplanes produced under type certificates covered by this paragraph must also meet paragraph (d) of this section for the original issuance of standard airworthiness certificates or restricted category airworthiness certificates if those airplanes have not had flight time before the date specified in that paragraph.

(c) For airplanes for which application for a type certificate is made on or after January 1, 1975, the noise levels may not exceed the noise limit curve prescribed in paragraph (b) of this section, except that 80 dB(A) may not be exceeded at weights from and including 3,300 pounds to and including 12,500 pounds.

(d) For airplanes for which application is made for a standard airworthiness certificate or for a restricted category airworthiness certificate, and that have not had any flight time before January 1, 1980, the requirements of paragraph (c) of this section apply, regardless of date of application, to the original issuance of the certificate for that airplane.

Issued in Washington, D.C. on December 31, 1974.

ALEXANDER P. BUTTERFIELD,
Administrator.

NOTE.—The incorporation by reference provisions in this document was approved by the Director of the Federal Register on November 8, 1974.

[FR Doc.74-30537 Filed 12-31-74;3:58 pm]

[Airworthiness Docket No. 74-NE-54-AD; Amdt. 39-2064]

PART 39—AIRWORTHINESS DIRECTIVES

AiResearch Model GTCP660-4 and -4R Auxiliary Power Units (APU)

There have been fatigue cracks in the fuel pump body, P/N 968502-2 and -3 of the AiResearch Model GTCP660-4 and -4R Auxiliary Power Units (APU's) which can result in high pressure fuel leakage into the APU compartment.

Since this condition is likely to exist or develop in other APU's of the same design, an airworthiness directive is being issued to require the installation of a placard restricting use of the APU during taxi or flight, to check the adjustment of the fuel pump ultimate relief valve and perform an initial and recurring inspection of the fuel pump body for presence of fatigue cracks. The operating restriction may be discontinued after completion of the initial inspection of the fuel pump body and/or the check of the adjustment of the ultimate relief valve based on the number of operating cycles in service. The recurring inspection may be discontinued when the units are modified by the installation of a fuel pump relief bleed-down valve.

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

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended as follows:

AIRESEARCH MANUFACTURING COMPANY OF ARIZONA. Applies to Model GTCP660-4 (prior to Serial No. 37807) and GTCP660-4R (prior to Serial No. 132) Auxiliary Power Units, installed in, but not limited to, Boeing B-747 airplanes, certificated in all categories

To detect fatigue cracks in the fuel pump body, P/N 968502-2 and -3, and provide for replacement of assemblies, accomplish the following.

Compliance required as indicated.

(a) For APU fuel pump bodies, P/N 968502-2 or -3, with less than 7500 operating cycles time in service on the effective date of this AD, unless already accomplished, accomplish the following:

(1) Within 15 days time in service after the effective date of this AD, install a placard in view of the flight crew to prohibit all taxi and inflight operation of the APU. Thereafter, the APU may not be used during

taxi or flight but may be used for static ground operations.

(2) Within 500 APU operating cycles after the effective date of this AD, check the fuel pump ultimate relief valve setting in accordance with paragraph 2.B. and C. of Airesearch Service Bulletin GTCP660-49-A3673, dated December 13, 1974, or later FAA approved revisions.

NOTE 1. For the purposes of this AD, a fuel pump body operating cycle is any operation consisting of an APU start and shutdown. The number of cycles may be determined by actual count, or subject to acceptance by the assigned FAA maintenance inspector, may be calculated by dividing the fuel pump assembly time in service by the operator's fleet average APU operating time per APU cycle. If the actual fuel pump total time is unknown, APU operating time on which this pump is installed may be substituted for this figure.

(3) If the relief valve setting determined in (a)(2) above is in excess of the limits shown on line one, table one, of the above referenced service bulletin, inspect the fuel pump body, P/N 968502-2 or -3, for cracks in accordance with paragraph 2.E. of the above referenced service bulletin.

(4) Units found to be cracked per (a)(3) above must be rendered unserviceable and must be replaced with a new or serviceable fuel pump body, P/N 968502-2, -3, or -4, which has been inspected per paragraph 2.E. of the above referenced service bulletin prior to further operation.

NOTE 2. Observe fuel pump body interchangeability restrictions detailed in paragraph 2.E. of the above referenced service bulletin.

(5) Units found to be free of cracks per (a)(3) above may be returned to, or placed in, service after having determined that the relief valve has been properly adjusted and recording the total operating cycles on the pump body in accordance with paragraph 2.F. of the above referenced service bulletin.

(6) New or serviceable units returned to service in accordance with those requirements described in (a)(5), above, must be inspected for cracks before accumulating 7,500 cycles total time in service, and at intervals not to exceed 2,500 cycles thereafter.

(7) Operators whose maintenance records show verification that they have been correctly setting this fuel pump ultimate relief valve using a procedure corresponding with paragraphs 2.B. and C. of the above referenced service bulletin are not required to install the placard or perform the pressure setting check required by (a)(1) and (a)(2) above.

(8) The operating restriction prescribed in (a)(1) above may be discontinued and the placard may be removed when the ultimate relief valve pressure check is conducted in accordance with (a)(2) through (a)(6) above.

(b) For fuel pump bodies, P/N 968502-2 or -3, with 7500 or more cycles in service on the effective date of this AD, unless already accomplished, accomplish the following:

(1) Within 15 days time in service after the effective date of this AD install a placard in view of the flight crew to prohibit all taxi and inflight operation of the APU. Thereafter, the APU may not be used during taxi or flight but may be used for static ground operation.

(2) Within 500 APU operating cycles in service after the effective date of this AD, unless already accomplished, inspect the fuel pump body, P/N 968502-2 or -3, for cracks in accordance with paragraph 2.E. of the above referenced service bulletin.

(3) Units found to contain cracks must be rendered unserviceable and must be replaced with a new or serviceable fuel pump body, P/N 968502-2, -3, or -4 which has been inspected per paragraph 2.E. of the above referenced service bulletin prior to further operation. Prior to the installation of these units, it must be determined that the ultimate relief valve has been properly adjusted and the total operating cycles must be recorded on the pump body in accordance with paragraph 2.F. of the above referenced service bulletin.

(4) Units found to be free of cracks per (b)(2) above may be returned to, or placed in service after having determined that the ultimate relief valve has been properly set in accordance with paragraphs 2.B. and C. of the above referenced service bulletin.

(5) For crack free units returned to service in accordance with (b)(4) above, repeat the fuel pump body crack inspections at intervals not to exceed 2,500 cycles thereafter. If cracks are found, remove from service and replace the unit as prescribed in (b)(3) above.

(6) New or serviceable crack free units installed to replace cracked units in accordance with those requirements described in (b)(3), above, must be inspected for cracks at or before accumulating 7500 total cycles, and at or before 2500 cycle intervals thereafter.

(7) The operating restriction prescribed in (b)(1), above, may be discontinued and the placard may be removed when the fuel pump body inspection is conducted in accordance with (b)(2) through (b)(6) above.

(c) Fuel pump bodies may be continued in service beyond 7,500 cycles, and the recurring inspections and operational restrictions required by paragraphs (a) and (b) above may be discontinued, when:

(1) A relief bleed down valve, P/N 3603770-1, is incorporated per Service Bulletin GTCP660-49-3662, with either a new fuel pump body or a serviceable fuel pump body which has been inspected and determined to be crack free.

(2) An APU log book entry describing this modification must be made.

(d) Equivalent procedures may be approved by the Chief, Aircraft Engineering Division, FAA Western Region, upon submission of adequate substantiation data.

(e) Aircraft may be flown to a base for the accomplishment of maintenance required by this AD, per FAR's 21.197 and 21.199.

This amendment becomes effective January 13, 1975.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Los Angeles, California on December 27, 1974.

JAMES V. NIELSEN,
Acting Director,
FAA Western Region.

[FR Doc.75-177 Filed 1-3-75;8:45 am]

[Airworthiness Docket No. 74-WE-55-AD; Amdt. 39-2065]

PART 39—AIRWORTHINESS DIRECTIVES

Beech 35 Series Airplanes

There have been exhaust system failures and resultant engine compartment fires on Beech V35A and V35B aircraft that incorporate turbosupercharged Continental TS10-520-D engines. Since this condition is likely to exist or develop in other airplanes of the same design, an airworthiness directive is being issued to require improved exhaust system integrity on Beech S35, V35, V35A and V35B airplanes modified in accordance with Supplemental Type Certificate No. SA1035WE or Beech Drawing No. 35-910028.

The National Transportation Safety Board has recommended certain action to minimize exhaust failures of this nature. This recommendation, which is contained in Safety Recommendation A-74-117 dated December 13, 1974, has been considered by the Federal Aviation Administration. The FAA has determined, however, that additional action is necessary. This Airworthiness Directive, therefore, goes beyond the scope of the NTSB recommendation.

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

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

BEECH. Applies to Beech Models S35, V35, V35A and V35B airplanes certificated in all categories with Continental TS10-520-D engines installed in accordance with STC SA1035WE or Beech Drawing No. 35-910028.

Compliance required as indicated, unless previously accomplished.

To minimize exhaust system failures, accomplish the following:

(a) Within the next 10 hours time in service after the effective date of this airworthiness directive, conduct a visual inspection of the bellows portion of the exhaust wastegate elbow assembly, AiResearch Part Number 286-S35-074-137. If a crack is found, the elbow assembly must be modified per paragraph (b) below prior to further flight.

(b) Within the next 100 hours time in service after the effective date of this airworthiness directive, but not later than July 1, 1975, remove the exhaust wastegate elbow assembly, AiResearch Part Number 286-S35-074-137 and cut off the bellows portion in accordance with AiResearch Aviation Company Service Bulletin No. 14.1.12 dated December 24, 1974 or later FAA approved revision thereto. Reinstall the elbow using adapter sleeve, AiResearch Part Number 286-S35-074-141.

Equivalent modification may be approved by the Chief, Aircraft Engineering Division, FAA Western Region.

NOTE: For the requirements regarding the listing of compliance of and method of compliance with this airworthiness directive in the permanent record of the airplane, see FAR 91.173.

This amendment becomes effective January 13, 1975.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Los Angeles, California on December 27, 1974.

JAMES V. NIELSON,
Acting Director,
FAA Western Region.

[FR Doc.75-176 Filed 1-3-75;8:45 am]

[Airspace Docket No. 74-WA-39]

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

Alteration of Continental Control Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to add R-3601A Brookville, Kans., to the list of restricted areas included in the continental control area.

R-3601A is a joint use restricted area which is released to other users when the designated using agency has no requirement for it. Adding the restricted area to the list of those included in the continental control area will define the airspace within R-3601A above 14,500 feet MSL as controlled airspace for the occasions when it is released.

Since this amendment is minor in nature and is one in which members of the public are not particularly interested, notice and public procedure thereon are unnecessary. However, since it is necessary to identify all restricted areas included in the continental control area, good cause exists for making this amendment effective immediately.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective January 6, 1975, as hereinafter set forth.

In § 71.151 (40 FR 343) the following restricted area is added:

R-3601A Brookville, Kans.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Washington, D.C., on December 30, 1974.

GORDON E. KEWER,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.75-178 Filed 1-3-75;8:45 am]

[Airspace Docket No. 74-SO-120]

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

Alteration of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Covington, Ky., control zone and the Cincinnati, Ohio, transition area.

The Covington control zone is described in § 71.171 (40 FR 354) and the Cincinnati transition area is described in § 71.181 (40 FR 441). In both descriptions, an extension is predicated on Cincinnati VORTAC 223° radial. Since the VOR-A Standard Instrument Approach Procedure has been cancelled, these extensions are no longer required. It is necessary to amend the descriptions to delete these extensions. Since these amendments are less restrictive in nature, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.171 (40 FR 354), the Covington, Ky., control zone is amended as follows:

"within 4.5 miles each side of Cincinnati VORTAC 223° radial, extending from the 5-mile radius zone to 10.5 miles southwest of the VORTAC;" is deleted from the description.

In § 71.181 (40 FR 441), the Cincinnati, Ohio, transition area is amended as follows:

"within 5 miles each side of Cincinnati VORTAC 223° radial, extending from the 11.5-mile radius area to 11.5 miles southwest of the VORTAC;" is deleted from the description.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in East Point, Ga., on December 24, 1974.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.75-182 Filed 1-3-75;8:45 am]

[Airspace Docket No. 74-SO-117]

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

Alteration of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the London, Ky., control zone and transition area.

The London control zone is described in § 71.171 (40 FR 354) and the London transition area is described in § 71.181 (40 FR 441). In each description, reference is made to Corbin-London War Memorial Airport. Since the name of this airport has been changed to "London-Corbin Airport, Magee Field," it is necessary to amend the descriptions to reflect this change.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.171 (40 FR 354) and § 71.181 (40 FR 441), the London, Ky., control zone and transition area are amended as follows:

". . . Corbin-London War Memorial Airport . . ." is deleted and ". . . London-Corbin Airport, Magee Field . . ." is substituted therefor.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in East Point, Ga., on December 24, 1974.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.75-181 Filed 1-3-75;8:45 am]

[Airspace Docket No. 74-NW-23]

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

Alteration of Federal Airway

On October 15, 1974, a notice of proposed rule making (NPRM) was published in the FEDERAL REGISTER (39 FR 36862) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would realign V-101 in the vicinity of Burley, Idaho.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., February 27, 1975, as hereinafter set forth.

§ 71.123 (40 FR 307) is amended as follows:

In V-101 "INT Burley 323°" is deleted and "INT Burley 344°" is substituted therefor.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on December 26, 1974.

GORDON E. KEWER,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.75-180 Filed 1-3-75;8:45 am]

[Airspace No. Docket 74-SO-114]

PART 73—SPECIAL USE AIRSPACE

Revocation of Restricted Area

The purpose of this amendment to Part 73 or the Federal Aviation Regulations is to revoke Restricted Area R-3006 Townsend, Ga.

Revocation of R-3006 is appropriate because the Department of the Navy has determined that it no longer requires the restricted area.

Since this amendment restores airspace to the public use and relieves a restriction, notice and public procedure thereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, this amendment will become effective more than 30 days after publication.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., February 27, 1975, as hereinafter set forth.

In § 73.30 (40 FR 669) Restricted Area R-3006 Townsend, Ga., is revoked.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on December 30, 1974.

GORDON E. KEWE,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.75-179 Filed 1-3-75;8:45 am]

[Docket No. 13994; Amdt. No. 121-115]

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

First-Aid Kits

The purpose of this amendment to Appendix A of Part 121 of the Federal Aviation Regulations is to provide for the use of FAA approved items in required first-aid kits that are not included in Federal Specification GG-K-391a, permit certain required arm and leg splints to be stowed outside the first-aid kits, and to make certain clarifying changes in the regulation.

This amendment is based on a notice of proposed rule making (Notice No. 74-31), issued on September 5, 1974, and published in the FEDERAL REGISTER on September 12, 1974 (39 FR 32920).

Interested persons have been afforded an opportunity to participate in the making of this amendment, and due consideration has been given to all comments received in response to the notice.

In response to a comment requesting a clarification of the regulation, it should be pointed out that paragraph (4) of the Appendix specifies, as a minimum, the kind and quantity of items that each first-aid kit must contain. The Appendix does not prohibit the use of a first-aid kit that contains any of the items specified in paragraph (4) in quantities exceeding the minimums specified in that paragraph. However, as required by paragraph (1) of the Appendix, all of the contents of a first-aid kit must either meet Federal Specification GG-K-391a or be approved by the FAA.

The FAA is unable to agree with comments that objected to the proposal to substitute the word "aircraft" for "cabin" in paragraph (2) of Appendix A so that a first-aid kit, when more than one is required, can be located in the flight crewmember compartment. As stated in § 121.309(d), the purpose of requiring approved first-aid kits on the aircraft is to provide means for the treatment of injuries likely to occur in flight or in minor, as opposed to catastrophic, accidents. The FAA believes a first-aid kit located in the flight crew compartment, when more than one is required by Appendix A, will be readily available for use consistent with the purpose of § 121.309(d). Furthermore, as stated by one commentator, there is reason to believe the kit located in the flight crewmember compartment is less likely to be pilfered than those located in the passenger compartment. Accordingly, this amendment adopts the change in wording proposed.

As proposed, this amendment deletes the "10 MM" specification for antiseptic swabs and the "6 MM" specification for ammonia inhalants. Those references are considered unnecessary, since Federal Specification GG-K-391a specifies the minimum portion required for each item set forth in paragraph (4) and each approved substitute for any of those items would also have to meet the same minimum portion requirement.

As explained in the proposal, one purpose of this amendment is to make the provisions of Appendix A more flexible by permitting FAA approved first-aid kit items to be substituted for those specified in paragraph (4) of the Appendix. Interested persons can be assured that appropriate medical advice will be available within the agency for the guidance of FAA personnel in approving items for use in first-aid kits.

Paragraph (5) of the Appendix permits arm and leg splints which do not fit within a first-aid kit to be stowed in a readily accessible location as near as practicable to the kit. While certain comments were opposed to proposed paragraph (5), it has been adopted as proposed, since the FAA believes it will adequately ensure the availability during an emergency of arm and leg splints that cannot be stowed within a kit. These arm and leg splints, as in the case of all other approved first-aid equipment, must be clearly identified, marked, and inspected in accordance with the current provisions of § 121.309.

Certain comments recommended the use of inflatable splints. However, as explained in the preamble to Amendment 121-107, consideration was given to permitting the use of inflatable splints, but tests conducted during decompression have revealed that this type of splint can be hazardous for use in airplanes due to changes in the cabin pressure.

Comments were also received which recommended the adoption of requirements for first-aid equipment and crewmember training that are considered outside the scope of the Notice concerning this amendment. However, those comments may be considered in future FAA regulatory action.

Since this amendment is relaxatory and clarifying in nature and requires an effective date that coincides with the January 1, 1975, effective date established by Amendment No. 121-109, I find that good cause exists for making this amendment effective on less than 30 days notice.

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

In consideration of the foregoing, Appendix A of Part 121 of the Federal Aviation Regulations, as amended by Amendment No. 121-107 (38 FR 35233) and Amendment No. 121-109 (39 FR 20590) is amended, effective January 1, 1975, as follows:

Appendix A [Amended]

1. By revising paragraph (1) to read as follows:

* * * * *

(1) Each first-aid kit must be dust and moisture proof, and contain only materials that either meet Federal Specification GG-K-391a, as revised, or are approved.

* * * * *

2. By amending paragraph (2) by striking out the word "cabin" after the phrase "throughout the" and before the word "and" and by substituting therefor the word "aircraft."

3. By amending the introductory language of paragraph (4) to read as follows:

* * * * *

(4) Except as provided in paragraph (5), each first-aid kit must contain at least the following or other approved contents:

* * * * *

4. By amending paragraph (4) by striking out the phrase ", 10 MM" after the phrase "Antiseptic swabs" and the phrase ", 6 MM" after the phrase "Ammonia inhalants."

5. By adding a new paragraph (5) to read as follows:

* * * * *

(5) Arm and leg splints which do not fit within a first-aid kit may be stowed in a readily accessible location that is as near as practicable to the kit.

* * * * *

Issued in Washington, D.C., on December 26, 1974.

ALEXANDER P. BUTTERFIELD,
Administrator.

[FR Doc.75-247 Filed 1-3-75;8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Regulation ER-893, Amdt. 5]

PART 239—REPORTING DATA PERTAINING TO FREIGHT LOSS AND DAMAGE CLAIMS BY CERTAIN AIR CARRIERS AND FOREIGN ROUTE AIR CARRIERS

Miscellaneous Amendments

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. November 13, 1974.

By notice of proposed rulemaking EDR-270, dated June 4, 1974,[1] the Board proposed certain amendments to Part 239. The proposed amendments, representing some modification of suggested amendments set forth in a petition submitted by the Air Transport Association (ATA), were designed to make more meaningful the data reported by carriers. Comments were received from the Atomic Energy Commission, NOVO Air-Freight Corporation (NOVO), The Flying Tiger Line Inc. and Air Transport Association of America (ATA). The comments generally support adoption of the proposed rule.[2]

Upon consideration of the comments, the Board has determined to adopt the proposed amendment and to make final the tentative findings and conclusions on which it was based. However, in amending the part in order to clarify that in

[1] Docket 26391, 39 FR 20400, June 10, 1974.

[2] Insofar as NOVO pointed out an inadvertent discrepancy between the text of the proposed rule set forth in EDR-270 and its described purpose in the Explanatory Statement, we have corrected the discrepancy by revising the text of the rules.

cases of interline claims each carrier shall report only the portion of actual shipper loss attributable to its portion of the interline settlement, we have decided to effect this clarification by revising the instructions to Schedule A, rather than by revising the definition of "actual shipper loss."[2]

Finally, the Board takes this occasion to make three editorial amendments to § 239.7: (1) to conform the column descriptions in paragraphs (d), (e), and (f) of the rule to the heading used in the schedule to which they relate; (2) to require a shipment to be identified by year as well as month in Schedule B; and (3) to amend paragraph (f) by correcting the reference therein from "cargo" to "freight," inasmuch as Part 239 deals only with freight, whereas "cargo" includes mail and express as well.

Since the within amendment affects recordkeeping as well as reporting, it will become applicable only to the first full calendar quarter commencing subsequent to its effective date.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 239 of the Economic Regulations (14 CFR Part 239) effective February 6, 1975, to read as follows:

1. Amend § 239.1, by revising the definition of "Actual shipper loss," the amended definition to read as follows:

§ 239.1 Definitions.

* * * * *

"Actual shipper loss" means the total dollar amount on each claim actually suffered by claimant because of loss, damage, delay, etc., based on the invoice value (per pound, per unit, etc.) at destination, or origin invoice value plus freight charges, and including customs duty paid where such amounts are properly included in the measure of damages: *Provided, however,* That (1) for claims involving shipments where no invoices exist, such as personal effects and used household goods, the actual shipper loss shall be the negotiated settlement, or the amount claimed less reasonable depreciation based upon prior use and age, whichever is greater; or (2) for claims made by an air freight forwarder, the actual shipper loss to be reported by a direct air carrier shall be the amount claimed by the forwarder.

* * * * *

2. Amend § 239.6(j), the amended paragraph to read as follows:

§ 239.6 Schedule A—Report of freight loss and damage claims paid.

* * * * *

(j) Column (20)—For each commodity reported in column (2), show the whole-dollar amounts of the actual shipper losses. For interline claims, each participating direct air carrier shall report such actual shipper losses in the same ratio to the total actual shipper losses as its share in the interline claim settlement bore to the total settlement, computed in the manner described in paragraph (e) of this section.

* * * * *

3. Amend § 239.7 (c), (d), (e) and (f), the amended paragraphs to read as follows:

§ 239.7 Schedule B—Analysis of Shortage.

* * * * *

(c) Columns (1) and (2)—List individually each claim payment during the reporting period in the amount of $100 or more as the result of shortage. Use the commodity code numbers provided in Appendix A in column (1). In column (2), use the carrier claim file number of the reporting carrier. For carriers using airbill/Airwaybill numbers as claim file numbers, files shall be maintained in such fashion as to insure retrieval at a later date with minimum effort and time.

(d) Columns (3), (4), (5), (6), and (9), (10), (11), (12)—For each claim reported in column (2), show the dollar amounts borne by the reporting carrier which are attributable to "Pilferage," "Robbery," "Theft," and "Other Shortage," respectively, and separated as appropriate under either Scheduled or Nonscheduled operations.

(e) Columns (7) and (13)—Identify the airport where the shortage occurred using the three-letter airport codes shown in the Official Airline Guide. If the airport is not known, allocate claim amount in same proportion as used to allocate to other airports involved in the transportation of the shipment. For example, if Los Angeles and Philadelphia alone were involved, a single commodity entry would show 50 percent of the claim against each—

$_____ LAX $_____PHL.

(f) Columns (8) and (14)—Show by means of a four-digit code (*e.g.*, 0174–1274) the month and year of shipment of the air freight covered by the report.

4. Amend Schedules A and B of CAB Form 239 in the form attached to this amendment.[4]

(Sections 101(3), 204(a), 401, 402 and 407 of the Federal Aviation Act of 1958, as amended 72 Stat. 737, 743, 754, 757 and 766, as amended; 49 U.S.C. 1301, 1324, 1371, 1372 and 1377.)

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, *Secretary.*

[FR Doc.75-298 Filed 1-3-75;8:45 am]

[Regulation ER-894, Amdt. 35]

PART 288—EXEMPTION OF AIR CARRIERS FOR MILITARY TRANSPORTATION

Commercial Fuel Prices Surcharge Provisions

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., December 31, 1974.

In accordance with established procedure and methodology, the Board having completed its review of commercial fuel prices for foreign and overseas MAC air transportation services as of December 1, 1974, is herein amending the surcharge provisions in Part 288 of its Economic Regulations (14 CFR Part 288) applicable to the rates established for those services.[1]

We have compared fuel price information reported as of December 1, 1974, to the base-period fuel costs for the year ended June 30, 1974. Based on the computations set out in Appendices A and B,[2] we will amend the fuel surcharge rates effective December 1, 1974, as follows: the long-range Category B and Category A rate from 6.08 to 6.09 percent, the Pacific interisland short-range Category B rate from 1.79 to 1.75 percent, and the "all other' 'short-range Category B rates from 3.28 to 3.45 percent.

Under established procedures, the surcharge rates resulting from our monthly review of commercial fuel prices are made effective as adjusted final rates, retroactive to the first day of the month under review, and also as temporary surcharges rates (subject to final adjustment) for the period beginning the first day of the following month.

Accordingly, we find good cause exists to make the within final and temporary rates effective on less than thirty (30) days' notice.

In consideration of the foregoing, the Board hereby amends Part 288 of its Economic Regulations (14 CFR Part 288) as follows:

1. Amend § 288.7(a)(1) by amending the second proviso following the tables to read as follows:

§ 288.7 Reasonable level of compensation.

* * * * *

(a) * * *

(1) * * *; *And, provided further,* That (i) effective December 1 through December 31, 1974, the total minimum compensation pursuant to the rates specified in subparagraph (1) of this paragraph for (a) services performed with regular jet, wide-bodied jet and DC-8F-61-63 aircraft, (b) Pacific interisland services performed with B-727 aircraft, and (c) all other services performed with B-727 aircraft shall be further increased by surcharges of 6.09 percent, 1.75 percent and 3.45 percent, respectively; and (ii) on and after January 1, 1975, the total minimum compensation pursuant to the rates specified on subparagraph (1) of this paragraph for (a) services performed with regular jet, wide-bodied jet and DC-8F-61-63 aircraft, (b) Pacific interisland services performed with B-727 aircraft, and (c) all other services performed with B-727 aircraft shall be further increased by temporary surcharges of 6.09 percent, 1.75 percent and 3.45 percent, respectively, subject to

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[2] Insofar as ATA's comment suggests an additional amendment to the Schedule A instructions in § 239.6, with respect to forwarder claims against direct air carriers, we shall not adopt the suggestion, because it appears to be impracticable and, in any event, is outside the scope of this proceeding.

[4] Filed as part of the original.

[1] ER-879, effective October 29, 1974.

[2] Appendices filed as part of original document.

amendment (upward or downward) upon final determination by the board.[8]

* * * * *

2. Amend § 288.7(d) by amending the proviso to read as follows:

§ 288.7 Reasonable level of compensation.

* * * * *

(d) For Category A transportation * * *

(1) * * *

(2) * * *

Provided, however, That (i) effective December 1 through December 31, 1974, the total minimum compensation specified in subparagraphs (1) and (2) above shall be further increased by a surcharge of 6.09 percent; and (ii) on and after January 1, 1975, the total minimum compensation specified in subparagraphs (1) and (2) above shall be further increased by a temporary surcharge of 6.09 percent, subject to amendment (upward or downward) upon final determination by the Board.

(Secs. 204, 403 and 416 of the Federal Aviation Act of 1958, as amended; 72 Stats. 743, 758 and 771, as amended; 49 U.S.C. 1324, 1373 and 1386.)

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, *Secretary.*

[FR Doc.75-302 Filed 1-3-75;8:45 am]

[8] The surcharge provisions for services performed with B-727 aircraft will be applied to all other common-rated aircraft types.

Title 15—Commerce and Foreign Trade

CHAPTER III—DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 377—SHORT SUPPLY CONTROLS

PART 399—COMMODITY CONTROL LIST AND RELATED MATTERS

Discontinue Short Supply Export Controls on Ferrous Scrap

The purpose of this issuance is to announce discontinuance of short supply controls on ferrous scrap as of midnight December 31, 1974. The ferrous scrap commodities listed below will no longer require a validated license for export to Canada and Country Groups Q, T, V, W, and Y. Effective 12:01 a.m. e.s.t. January 1, 1975, these commodities may be exported to the above named destinations under the provisions of General License G-DEST:

282.0010	No. 1 heavy-melting steel scrap, except stainless.
282.0020	No. 2 heavy-melting steel scrap, except stainless.
282.0030	No. 1 bundles steel scrap, except stainless.
282.0040	No. 2 bundles steel scrap, except stainless.
282.0050	Borings, shovelings, and turnings, iron or steel, except stainless.
282.0060	Stainless steel scrap.
282.0065	Shredded steel scrap.
282.0078	Other steel scrap, including tinplated and terne plate.
282.0080	Iron scrap, except borings, shovelings, and turnings.
282.0090	Rerolling material of iron or steel.

On July 2, 1973, the Department of Commerce imposed validated license controls on ferrous scrap to all destinations, including Canada. These controls were imposed to assure adequate availability of scrap for domestic iron and steel production.

Recent surveys indicate that inventories have returned to more normal levels, and prices have returned substantially to the level of a year ago. In view of these developments, the legal requirements for short supply export controls on ferrous scrap are no longer present.

Accordingly, § 377.4 and Supplement No. 1 to Part 377 are deleted, and the Commodity Control List (§ 399.1 of the Export Administration Regulations) is revised to delete entry no. 28(1a).

Effective date of action: 12:01 a.m. January 1, 1975.

RAUER H. MEYER, *Director, Office of Export Administration.*

[FR Doc.75-306 Filed 1-3-75;8:45 am]

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 307-4]

PART 120—WATER QUALITY STANDARDS

Navigable Waters of the Territory of Guam

The purpose of this notice is to amend 40 CFR Part 120 to establish Federal Water Quality Standards for the Territory of Guam pursuant to section 303(b) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1313(b); 86 Stat. 816 et seq., Pub. L. 92-500 (the Act)). A notice proposing such water quality standards was issued on June 11, 1974 (39 FR 20513-20514).

Section 303 of the Act establishes a procedure for Environmental Protection Agency (EPA) review of State's water quality standards. When a State fails to respond to requests of the EPA to bring its water quality standards into conformance with the requirements of the Act, the EPA Administrator is authorized to promulgate Federal standards to be implemented in the State's water quality control programs. The Territory of Guam did not respond to EPA letters of January 18, 1973 and March 12, 1973 by correcting its water quality standards in accordance with EPA recommendations. The EPA therefore published a notice on June 11, 1974 (39 FR 20513-20514) proposing to establish Federal standards pursuant to section 303(b) of the Act.

It is the policy of the Environmental Protection Agency that all waters shall be protected for recreational uses in and/or on the water and for the preservation and propagation of aquatic biota as part of the national water quality standards program. Several of the port and harbor areas have less stringent use classifications. Therefore, it was proposed to extend the protection of these beneficial uses throughout Guam's navigable waters.

In addition, quantitative limitations on toxic substances were required. A general toxicity standard based on an acute bioassay test was proposed to fulfill this need.

Section 303(b)(2) of the Act requires the Administrator to promulgate standards no later than 190 days after the date of publication of the notice of proposed rulemaking, unless by such time the State shall have adopted water quality standards which the Administrator determines to be in accordance with the requirements of section 303(a) of the Act. However, the Administrator is not required to await State action for the entire 190 day period prior to promulgation. Thus, these standards may be promulgated by the Administrator at any time following the expiration of the public comment period. The date for expiration of the 90 day public comment period on the proposed establishment of Federal standards for the Territory of Guam was September 9, 1974. No comments have been received.

The Territory of Guam has expended considerable effort toward developing a complete revision of their water quality standards including criteria for toxic substances and revised beneficial use classifications. These revisions will lead ultimately to a set of standards expected to be fully consistent with the Act. It is necessary, however, to immediately finalize the proposed standards (39 FR 20513-20514) as they are needed by the NPDES program in order to complete the permit process by December 31, 1974.

Except as provided in this regulation, the "Standards for Water Quality for Waters of the Territory of Guam" previously adopted by the Territory of Guam in April, 1968, are the effective water quality standards under section 303 of the Act for interstate and intrastate waters within that Territory. Where the regulations set forth below are inconsistent with the referenced State standards, these regulations will supersede such standards to the extent of the inconsistency.

The standards document is available for inspection and copying at the U.S. Environmental Protection Agency, 100 California Street, San Francisco, California 94111. U.S. EPA information regulation 40 CFR Part 2 provides that a fee may be charged for making copies.

In consideration of the foregoing, 40 CFR Part 120 is hereby amended by deleting from § 120.10 the paragraph entitled "Territory of Guam," and adding a new § 120.22, to read as set forth below. Since there were no comments on the proposed standards, and since effective standards are needed to complete the permit process by December 31, 1974, it has been determined that good cause exists for making the new § 120.22 effective upon publication.

§ 120.22 Guam Water Quality Standards.

Water quality standards included in the document entitled "Standards of

Water Quality for Waters of the Territory of Guam, April 1968," are the approved water quality standards for the Territory of Guam, except as amended as follows:

(a) For clarification purposes, corrected terminology shall be read into the Standards as follows:

(1) References to "the Department of Interior" and "the Federal Water Pollution Control Administration" will be taken to mean "the Environmental Protection Agency."

(2) References to "the Secretary" or "the Secretary of Interior" will be taken to mean "the Administrator of the Environmental Protection Agency."

(3) References to the "Water Pollution Control Commission" or "the Commission" will be taken to mean, as appropriate, "the Guam Environmental Protection Agency" or "the Guam Environmental Protection Board."

(4) References to State and Federal laws will be replaced by references to current equivalent laws.

(b) The first two paragraphs of *"WATER USES*, Identification of waters and beneficial uses" (pp. 9 and 10 of the Guam standards), shall be replaced with the following paragraph:

(1) *Near-shore coastal waters.* All near-shore coastal waters shall be protected for present and future uses of industrial water supply, propagation of fish and other aquatic life and wildlife (including waters reserved for conservation of native marine biota, shellfish propagation, and commercial and sports fishing), esthetic enjoyment, and recreation. The following near-shore waters will also be protection for uses of navigation in addition to uses listed above: Pago Bay, Ylig Bay, Talofofo Bay, Agfayan Bay, Manell and Mamaon Channels, Port Emnzo (Merizo), Umatac Bay, Outer Apra Harbor, Agana Small Craft Harbor, Inner Apra Harbor and the areas immediately adjacent to docks, piers, wharves, and loading facilities of the new Apra commercial docks, oil and ammunition docks, and Piti channel.

(c) The following provision shall be added to *"STANDARDS FOR WATER QUALITY, Additional Requirements"* (p. 9 of the Guam standards):

(5) In all the waters of the Territory at all times, toxic substances shall be kept below levels which are deleterious to human, animal, plant or aquatic life, or in amounts sufficient to interfere with the beneficial uses of the water. The presence of toxic substances in a water shall be evaluated by use of a 96-hour bioassay, guided by the document "Standard Methods for the Examination of Water and Wastewater," 13th edition. The survival of the test organisms shall not be less than that in controls which utilize appropriate experimental water. Experimental water shall be obtained from a nearby location having water quality representative of natural conditions at the test location, or other appropriate experimental water defined by the Territory and concurred in by EPA. Failure to determine presence of toxic substances by this method shall not preclude determination of excessive levels of toxic substances on the basis of other criteria or methods.

(Section 303, Federal Water Pollution Control Act, as amended, 33 U.S.C. 1313, 86 Stat. 816 et seq., Pub. L. 92-500.)

Effective date: January 6, 1975.

Issued on: December 30, 1974.

JOHN QUARLES,
Acting Administrator.

[FR Doc.75-278 Filed 1-3-75;8:45 am]

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 315-1]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Formaldehyde

A petition (PP 4F1488) was filed (39 FR 25973) by the Celanese Chemical Co., 1211 Avenue of the Americas, New York, NY 10036, in accordance with provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), proposing establishment of tolerances for residues of the fungicide formaldehyde in or on the raw agricultural commodities grains of barley, corn, oats, sorghum, and wheat and the forages of alfalfa, Bermuda grass, bluegrass, brome grass, clover, cowpea hay, fescue, lespedeza, lupines, orchard grass, peanut hay, peavine hay, rye grass, soybean hay, sudan grass, timothy, and vetch as animal feed only at 2,000 parts per million from postharvest application.

Subsequently, the petitioner amended the petition by proposing an exemption from the requirement of a tolerance for residues of formaldehyde in or on the raw agricultural commodities grains of barley, corn, oats, sorghum, and wheat and the forages of alfalfa, Bermuda grass, bluegrass, brome grass, clover, cowpea hay, fescue, lespedeza, lupines, orchard grass, peanut hay, peavine hay, rye grass, soybean hay, sudan grass, timothy, and vetch as animal feed only from postharvest application.

Based on consideration given the data submitted in the petition and other relevant material, it is concluded that:

1. The fungicide is useful for the purpose for which the exemption is being established.

2. There is no reasonable expectation of residues (over the naturally occurring endogenous levels) in eggs, meat, milk, or poultry, and § 180.6(a)(3) applies.

3. The exemption established by this order will protect the public health.

4. The mixture of methylene bispropionate and oxy(bismethylene) bispropionate degrades to formaldehyde and propionic acid. Thus, this exemption should include residues of the fungicide formaldehyde resulting from postharvest application of either formaldehyde or a mixture of methylene bispropionate and oxy(bismethylene)bispropionate.

5. Similarly, the established exemption (§ 180.1023) for residues of propionic acid in or on various grains and forages should be revised to include residues of the fungicide propionic acid resulting from postharvest application of either propionic acid or a mixture of methylene bispropionate and oxy(bismethylene) bispropionate.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (39 FR 18805), Part 180 is amended as follows:

1. In Subpart D, by adding a new section as follows:

§ 180.1032 Formaldehyde, exemption from the requirement of a tolerance.

Formaldehyde is exempt from the requirement of a tolerance for residues in or on the grains of barley, corn, oats, sorghum, and wheat and the forages of alfalfa, Bermuda grass, bluegrass, brome grass, clover, cowpea hay, fescue, lespedeza, lupines, orchard grass, peanut hay, peavine hay, rye grass, soybean hay, sudan grass, timothy, and vetch from postharvest application of formaldehyde or a mixture of methylene bispropionate and oxy(bismethylene)bispropionate when used as a fungicide. These raw agricultural commodities are for use only as animal feeds.

2. Section 180.1023 is revised to read as follows:

§ 180.1023 Propionic acid; exemption from the requirement of a tolerance.

Propionic acid is exempt from the requirement of a tolerance for residues in or on alfalfa, barley grain, Bermuda grass, bluegrass, brome grass, clover, corn grain, soybean hay, sudan grass, timothy, vetch, and wheat grain from postharvest application of propionic acid or a mixture of methylene bispropionate and oxy (bismethylene) bisproprionate when use as a fungicide.

Any person who will be adversely affected by the foregoing order may by February 5, 1975 file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets SW., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective January 6, 1975.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a (d)(2))

Dated: December 30, 1974.

LOWELL E. MILLER,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.75-273 Filed 1-3-75;8:45 am]

[FR 314-8]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Paraquat

In response to a petition (PP 5E1549) submitted by Dr. C. C. Compton, Coordinator, Interregional Research Project No. 4, State Agricultural Experiment Station, Rutgers University, New Brunswick, NJ 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Texas and Oklahoma, a notice was published by the Environmental Protection Agency in the FEDERAL REGISTER of October 31, 1974 (39 FR 38394), proposing establishment of a tolerance for residues of the desiccant paraquat (1,1'-dimethyl-4,4'-bipyridinium), from application of the dichloride salt, in or on the raw agricultural commodity guar beans at 0.5 part per million. No comments or requests for referral to an advisory committee were received.

It is concluded that the proposal should be adopted.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (39 FR 18805), § 180.205 is amended by revising the paragraph "0.5 part per million * * *" to read as follows:

§ 180.205 Paraquat; tolerances for residues.

* * * * *

0.5 part per million in or on almond hulls, cottonseed, guar beans, potatoes, sugar beets, sugar beet tops, and sugarcane.

* * * * *

Any person who will be adversely affected by the foregoing order may at any time by February 5, 1975 file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets, SW., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on January 6, 1975.

(Sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e))

Dated: December 30, 1974.

LOWELL E. MILLER,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.75-274 Filed 1-3-75;8:45 am]

proposed rules

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1, 301]

SELF-EMPLOYMENT TAX

Inclusion in Estimated Tax and Increase of Applicable Percentage From 70 Percent to 80 Percent

Notice is hereby given that the regulations set forth in tentative form in this document are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by February 5, 1975. Pursuant to 26 CFR 601.601(b), designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, a person submitting written comments should not include therein material that he considers to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to this notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d)(9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner, by February 5, 1975. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 817; 26 U.S.C. 7805).

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

This document contains proposed amendments to the Income Tax regulations (26 CFR Part 1) and the regulations on procedure and administration (26 CFR Part 301) in order to conform such regulations to the provisions of sections 102 and 103 of the Tax Adjustment Act of 1966 (80 Stat. 62, 64) (relating to the inclusion of the self-employment tax in the estimated tax and relating to the increase of the percentage which estimated tax must be of actual tax in order for an individual to avoid having an underpayment of estimated tax), and to minor amendments made by sections 102(a) and 104(a) of the Revenue and Expenditure Control Act of 1968 (82 Stat. 251, 264); section 301(b) (12) and (13) of the Tax Reform Act of 1969 (83 Stat. 586); section 203(b)(7) of the Act of March 17, 1971 (Pub. L. 92-5, 85 Stat. 11); section 203(b)(7) of the Act of July 1, 1972 (Pub. L. 92-336, 86 Stat. 420); section 203 (b)(7) and (d) of the Act of July 9, 1973 (Pub. L. 93-66, 87 Stat. 153); section 5 (b)(7), (d), and (f) of the Act of December 31, 1973 (Pub. L. 93-233, 87 Stat. 954).

Prior to the enactment of the Tax Adjustment Act of 1966 an individual could include payment of his self-employment tax in his estimated tax payments but was not required to do so. The 1966 Act redefined the term "estimated tax" for taxable years beginning after December 31, 1966, to include the amount which an individual estimates as the amount of self-employment tax imposed for the taxable year by chapter 2 of the Internal Revenue Code of 1954. Thus, an individual whose combined estimated income tax and estimated self-employment tax can reasonably be expected to equal or exceed the statutory floor ($100, or, for taxable years beginning before January 1, 1972, $40) is now required to file a declaration if he otherwise meets the requirements of section 6015(a). For example, assume that a self-employed individual (other than a farmer or fisherman) estimates that his income and self-employment tax liability for the calendar year 1973 will be $1,600 and $400, respectively. He should make a declaration of estimated tax of $2,000 and pay the estimated tax in four equal installments of $500.

The Tax Adjustment Act further amended section 6654(a) of the Code (relating to addition to the tax for underpayment of estimated tax by an individual) to provide that an addition to the tax be imposed for an underpayment of estimated tax with respect to the sum of the income tax under chapter 1 (if any) and the self-employment tax under chapter 2, except as provided in sestion 6654(d).

Under prior law the amount of any underpayment of estimated tax by an individual (other than a farmer or fisherman) was restricted by section 6654(b) of the Code to the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to 70 percent of the tax shown on the return for the taxable year or, if no return was filed, 70 percent of the tax for the year, over the amount, if any, of the installment paid on or before the last date prescribed for the payment. The Tax Adjustment Act increased the prescribed percentage from 70 to 80.

Prior to the enactment of the Tax Adjustment Act section 6654(d) (relating to exception from the addition to the tax for underpayment of estimated tax by individuals) provided that the addition to the tax would not be imposed with respect to any installment (even if the 70-percent requirement was not met) where the installment payment was not less than an amount based on (1) the previous year's tax; (2) the tax based on the facts shown on the previous year's return but computed on the basis of current rates and current exemptions; (3) 70 percent (66⅔ percent in the case of farmers and fishermen) of the tax computed on the basis of annualized taxable income for the months of the taxable year preceding the month in which the installment is due; or (4) 90 percent of the tax computed on the actual taxable income for the months of the taxable year preceding the month in which the installment is due as if such months constituted the taxable year. The Tax Adjustment Act modified these exceptions to the imposition of an addition to the tax with respect to taxable years beginning after December 31, 1966, to reflect the redefinition of the word "tax" for purposes of section 6654 to include both chapter 1 and chapter 2 taxes and the increase in the percentage referred to in the determination of the amount of any underpayment.

Proposed amendments to the regulations. In order to conform the Income Tax regulations (26 CFR Part 1) under sections 170, 1403, 6015, 6017, and 6654 of the Internal Revenue Code of 1954, and the regulations on procedure and administration (26 CFR Part 301) under sections 6015, 6211, and 6654 of the Internal Revenue Code of 1954, to sections 102 and 103 of the Tax Adjustment Act of 1966 (80 Stat. 62, 64), sections 102(a) and 104(a) of the Revenue and Expenditure Control Act of 1968 (82 Stat. 251, 264), section 301(b) (12) and (13) of the Tax Reform Act of 1969 (83 Stat. 586), section 203(b)(7) of the Act of March 17, 1971 (Pub L. 92-5, 85 Stat. 11), section 203(b)(7) of the Act of July 1, 1972 (Pub. L. 92-336, 86 Stat. 420), section 203 (b)(7) and (d) of the Act of July 9, 1973 (Pub. L. 93-66, 87 Stat. 153), section 5 (b)(7), (d), and (f) of the Act of December 31, 1973 (Pub. L. 93-233, 87

Stat. 954), such regulations are amended as follows:

INCOME TAX REGULATIONS

PARAGRAPH 1. Paragraph (c) of § 1.170-2 is amended by revising subparagraphs (1)(i) and (2)(iv). These amended provisions read as follows:

§ 1.170-2 Charitable deductions by individuals; limitations (before amendment by Tax Reform Act of 1969).

* * * * *

(c) *Unlimited deduction for individuals*—(1) *In general.* (i) The deduction for charitable contributions made by an individual is not subject to the 10- and 20-percent limitations of section 170(b) if in the taxable year and each of 8 of the 10 preceding taxable years the sum of his charitable contributions paid during the year, plus his payments during the year on account of Federal income taxes, is more than 90 percent of his taxable income for the year (or net income, in years governed by the Internal Revenue Code of 1939). In determining the applicability of the 10- and 20-percent limitations of section 170(b) for taxable years beginning after December 31, 1957, there may be substituted, in lieu of the amount of income tax paid during any year, the amount of income tax paid in respect of such year, provided that any amount so included for the year in respect of which payment was made shall not be included for any other year. For the purpose of the first sentence of this paragraph, taxable income under the 1954 Code is determined without regard to the deductions for charitable contributions under section 170, for personal exemptions under section 151, or for a net operating loss carryback under section 172. On the other hand, for this purpose net income under the 1939 Code is computed without the benefit only of the deduction for charitable contributions. See section 120 of the Internal Revenue Code of 1939. The term "income tax" as used in section 170(b)(1)(C) means only Federal income taxes, and does not include the taxes imposed on self-employment income, on employees under the Federal Insurance Contributions Act, and on railroad employees and their representatives under the Railroad Retirement Tax Act by chapters 2, 21, and 22, respectively, or corresponding provisions of the Internal Revenue Code of 1939. For purposes of section 170(b)(1)(C) and this paragraph, the amount of income tax paid during a taxable year shall be determined (except as provided in subdivision (ii) of this subparagraph) by including all payments made by the taxpayer during such taxable year on account of his Federal income taxes (whether for the taxable year or for preceding taxable years). Such payments would include any amount paid during the taxable year as estimated tax (exclusive of any portion of such amount for taxable years beginning after December 31, 1966, which is attributable to the self-employment tax imposed by chapter 2) for that year, payment of the final installment of estimated tax (exclusive of any portion of such installment, for taxable years beginning after December 31, 1966, which is attributable to the self-employment tax imposed by chapter 2) for the preceding taxable year, final payment for the preceding taxable year, and any payment of a deficiency for an earlier taxable year, to the extent that such payments do not exceed the tax for the taxable year for which payment is made. Any payment of income tax with respect to which the taxpayer receives a refund or credit shall be reduced by the amount of such refund or credit. Any such refund or credit shall be applied against the most recent payments for the taxable year in respect of which the refund or credit arose.

* * * * *

(2) *Joint returns.* * * *

(iv) *Allocation.* Whenever it is necessary to allocate the joint tax liability or the combined taxable income, or both, for a taxable year for which a joint return was filed, a computation shall be made for the taxpayer and for his spouse or former spouse showing for each of them the Federal income taxes and taxable income which would be determined if separate returns had been filed by them for such taxable year. The joint tax liability and combined taxable income for such taxable year shall then be allocated proportionately to the income taxes and taxable income, respectively, so computed. Whenever it is necessary to determine the separate payments made by a taxpayer in respect of a joint tax liability, the amount paid by him during the taxable year as estimated tax (exclusive of any portion of such amount for taxable years beginning after December 31, 1966, which is attributable to the self-employment tax imposed by chapter 2) for that year shall be included to the extent it does not exceed his allocable portion of the joint tax under chapter 1 (exclusive of tax under section 56) for the taxable year, and any amount paid by him for a prior year (whether as the final installment of estimated tax—exclusive of any portion of such installment, for taxable years beginning after December 31, 1966, which is attributable to the self-employment tax imposed by chapter 2—for the preceding taxable year, or a final payment for the preceding year, or the payment of a deficiency for an earlier year) shall be included to the extent such amount, when added to amounts previously paid by him for such prior year, does not exceed his allocable portion of the joint tax liability for the prior year.

* * * * *

PAR. 2. Section 1.1403 is amended by adding a paragraph (3) to section 1.1403 (b) and by revising the historical note. These added and amended provisions read as follows:

§ 1.1403 Statutory provisions; miscellaneous provisions.

Sec. 1403. *Miscellaneous provisions.* * * *

(b) *Cross references.* * * *

(3) For provisions relating to declarations of estimated tax on self-employment income, see section 6015.

[Sec. 1403 as amended by sec. 103(m), Social Security Amendments 1960 (74 Stat. 938); sec. 102(b)(6), Tax Adjustment Act 1966 (80 Stat. 64)]

PAR. 3. Section 1.1403-1 is amended to read as follows:

§ 1.1403-1 Cross references.

For provisions relating to the requirement for filing returns with respect to net earnings from self-employment, see § 1.6017-1. For provisions relating to declarations of estimated tax on self-employment income, see §§ 1.6015(a) to 1.6015(j)-1, inclusive. For other administrative provisions relating to the tax on self-employment income, see the applicable sections of the regulations in this part (§ 1.6001-1 et seq.) and the applicable sections of the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).

PAR. 4. Section 1.6015(b)-1 is amended by revising paragraphs (a), (b), and (c). These amended provisions read as follows:

§ 1.6015(b)-1 Joint declaration by husband and wife.

(a) *In general.* A husband and wife may make a joint declaration of estimated tax even though they are not living together. However, a joint declaration may not be made if they are separated under a decree of divorce or of separate maintenance. A joint declaration may not be made if the taxpayer's spouse is a nonresident alien (including a nonresident alien who is a bona fide resident of Puerto Rico during the entire taxable year) or if his spouse has a different taxable year. If the gross income of each spouse meets the requirements of section 6015(a), either a joint declaration must be made or a separate declaration must be made by each. If a joint declaration is made, the amount estimated as the income tax imposed by chapter 1 (other than by section 56) must be computed on the aggregate estimated taxable income of the spouses (see section 6013(d)(3) and § 1.2-1), while (for taxable years beginning after December 31, 1966) the amount estimated as the self-employment tax imposed by chapter 2 must be computed on the separate estimated self-employment income of each spouse. See sections 1401 and 1402 and § 1.6017-1(b)(1). The liability with respect to the estimated tax, in the case of a joint declaration, shall be joint and several.

(b) *Application to separate returns.* The fact that a joint declaration of estimated tax is made by them will not preclude a husband and his wife from filing separate returns. In case a joint declaration is made but a joint return is not made for the same taxable year, the payments made on account of the estimated tax for such year may be treated as payments on account of the tax liability of either the husband or wife for

the taxable year or may be divided between them in such manner as they may agree. In the event the husband and wife fail to agree to a division, such payments shall be allocated between them in accordance with the following rule. The portion of such payments to be allocated to a spouse shall be that portion of the aggregate of all such payments as the amount of tax imposed by chapter 1 (other than by section 56) shown on the separate return of the taxpayer (plus, for taxable years beginning after December 31, 1966, the amount of tax imposed by chapter 2 shown on the return of the taxpayer) bears to the sum of the taxes imposed by chapter 1 (other than by section 56) shown on the separate returns of the taxpayer and his spouse (plus, for taxable years beginning after December 31, 1966, the sum of the taxes imposed by chapter 2 shown on the returns of the taxpayer and his spouse). For example, assume that for calendar year 1972 H and his spouse W make a joint declaration of estimated tax and, pursuant thereto, pay a total of $19,500 of estimated tax. H and W subsequently file separate returns for 1972 showing tax imposed by chapter 1 (other than by section 56) in the amount of $11,500 and $8,000, respectively. In addition, H's return shows a tax imposed by chapter 2 in the amount of $500. H and W fail to agree to a division of the estimated tax paid. The amount of the aggregate estimated tax payments allocated to H is computed as follows:

(1) Amount of tax imposed by chapter 1 (other than by section 56) shown on H's return	$11,500
(2) Plus: Amount of tax imposed by chapter 2 shown on H's return	500
(3) Total taxes imposed by chapter 1 (other than by section 56) and by chapter 2 shown on H's return	12,000
(4) Amount of tax imposed by chapter 1 (other than by section 56) shown on W's return	8,000
(5) Total taxes imposed by chapter 1 (other than by section 56) and by chapter 2 shown on both H's and W's returns	20,000
(6) Proportion of such taxes shown on H's return to total amount of such taxes shown on both H's and W's returns ($12,000 ÷ 20,000) (percent)	60
(7) Amount of estimated tax payments allocated to H (60% of $19,500)	$11,700

Accordingly, H's return would show remaining tax liability in the amount of $300 ($12,000 taxes shown less $11,700 estimated tax allocated).

(c) *Death of spouse.* (1) A joint declaration may not be made after the death of either the husband or wife. However, if it is reasonable for a surviving spouse to assume that there will be filed a joint return for himself and the deceased spouse for his taxable year and the last taxable year of the deceased spouse he may, in making a separate declaration for his taxable year which includes the period comprising such last taxable year of his spouse, estimate the amount of the tax imposed by chapter 1 (other than by section 56) on his and his spouse's taxable income on an aggregate basis and compute his estimated tax with respect to such chapter 1 tax in the same manner as though a joint declaration had been filed.

(2) If a joint declaration is made by husband and wife and thereafter one spouse dies, no further payments of estimated tax on account of such joint declaration are required from the estate of the decedent. The surviving spouse, however, shall be liable for the payment of any subsequent installments of the joint estimated tax unless an amended declaration setting forth the seperate estimated tax for the taxable year is made by such spouse. Such separate estimated tax shall be paid at the times and in the amounts determined under the rules prescribed in section 6153. For purposes of (i) the making of such an amended declaration by the surviving spouse, and (ii) the allocation of payments made pursuant to a joint declaration between the surviving spouse and the legal representative of the decedent in the event a joint return is not filed, the payments made pursuant to the joint declaration may be divided between the decedent and the surviving spouse in such proportion as the surviving spouse and the legal representative of the decedent may agree. In the event the surviving spouse and the legal representative of the decedent fail to agree to a division, such payments shall be allocated in accordance with the following rule. The portion of such payments to be allocated to the surviving spouse shall be that portion of the aggregate amount of such payments as the amount of tax imposed by chapter 1 (other than by section 56) shown on the separate return of the surviving spouse (plus, for taxable years beginning after December 31, 1966, the amount of tax imposed by chapter 2 shown on the return of the surviving spouse) bears to the sum of the taxes imposed by chapter 1 (other than by section 56) shown on the separate returns of the surviving spouse and of the decedent (plus, for taxable years beginning after December 31, 1966, the sum of the taxes imposed by chapter 2 shown on the returns of the surviving spouse and of the decedent); and the balance of such payments shall be allocated to the decedent. This rule may be illustrated by analogizing the surviving spouse described in this rule to H in the example contained in paragraph (b) of this section and the decedent in this rule to W in that example.

* * * * *

PAR. 5. Section 1.6015(c) is amended to read as follows:

§ 1.6015(c) Statutory provisions; declaration of estimated income tax by individuals; estimated tax.

SEC. 6015. *Declaration of estimated income tax by individuals.* * * *

(c) *Estimated tax.* For purposes of this title, in the case of an individual, the term "estimated tax" means—

(1) The amount which the individual estimates as the amount of the income tax imposed by chapter 1 for the taxable year (other than the tax imposed by section 56), plus

(2) The amount which the individual estimates as the amount of the self-employment tax imposed by chapter 2 for the taxable year, minus

(3) The amount which the individual estimates as the sum of any credits against tax provided by part IV of subchapter A of chapter 1.

[Sec. 6015(c) as amended by sec. 102(a), Tax Adjustment Act 1966 (80 Stat. 62); sec. 301 (b)(12), Tax Reform Act 1969 (83 Stat. 586)]

PAR. 6. Section 1.6015(c)-1 is amended to read as follows:

§ 1.6015(c)-1 Definition of estimated tax.

In the case of an individual, the term "estimated tax" means—

(a) The amount which the individual estimates as the amount of the income tax imposed by chapter 1 (other than the tax imposed by section 56 or, for taxable years ending before September 30, 1968, the tax surcharge imposed by section 51) for the taxable year, plus

(b) For taxable years beginning after December 31, 1966, the amount which the individual estimates as the amount of the self-employment tax imposed by chapter 2 for the taxable year, minus

(c) The amount which the individual estimates as the sum of any credits against tax provided by part IV of subchapter A of chapter 1. These credits are those provided by section 31 (relating to tax withheld on wages), section 32 (relating to tax withheld at source on nonresident aliens and foreign corporations and on tax-free covenant bonds), section 33 (relating to foreign taxes), section 34 (relating to the credit for dividends received on or before December 31, 1964), section 35 (relating to partially tax-exempt interest), section 37 (relating to retirement income), section 38 (relating to the investment credit), section 39 (relating to certain uses of gasoline, special fuels, and lubricating oils), section 40 (relating to expenses of work incentive programs), section 41 (relating to contributions to candidates), and section 42 (relating to overpayments of tax). An individual who expects to elect to pay the optional tax imposed by section 3, or one who expects to elect to take the standard deduction allowed by section 144, should disregard any credits otherwise allowable under sections 32, 33, and 35 in computing his estimated tax since, if he so elects, these credits are not allowed in computing his tax liability. See section 36.

For example, if a self-employed individual estimates that his liabilities for income tax and self-employment tax for 1973 will be $1,600 and $400, respectively, he is required to declare and pay an estimated tax of $2,000 for that year.

PAR. 7. Paragraph (b) of § 1.6015(d)-1 is amended to read as follows:

§ 1.6015(d)-1 Contents of declaration of estimated tax.

* * * * *

(b) *Computation of estimated tax.* In computing the estimated tax the taxpayer should take into account the following:

(1) The amount estimated as the income tax imposed by chapter 1 (other than by section 56) for the taxable year after the application of any allowable amounts estimated as the credit for foreign taxes, the dividends received credit (for dividends received on or before December 31, 1964), the credit for partially tax-exempt interest, the retirement income credit, the investment credit, the credit for expenses of work incentive programs, the credit for contributions to candidates, the credit for overpayments of tax, but without regard to the credit under section 31 for tax withheld on wages or to the credit under section 39 for certain uses of gasoline, special fuels, and lubricating oils;

(2) For taxable years beginning after December 31, 1966 (and, if the taxpayer so desires, for an earlier taxable year), the amount estimated as the tax on self-employment income imposed by chapter 2;

(3) The amounts estimated by the taxpayer as the credits under section 31 for tax withheld on wages and under section 39 for certain uses of gasoline, special fuels, and lubricating oils; and

(4) The excess, if any, of the sum of the amounts shown under subparagraphs (1) and (2) of this paragraph over the amount shown under subparagraph (3) of this paragraph, which excess shall be the estimated tax for such taxable year.

* * * * *

PAR. 8. Section 1.6015(e)-1 is amended to read as follows:

§ 1.6015(e)-1 Amendment of declaration.

In the making of a declaration of estimated tax, the taxpayer is required to take into account the then existing facts and circumstances as well as those reasonably to be anticipated relating to prospective gross income, allowable deductions, and estimated credits for the taxable year. Amended or revised declarations may be made in any case in which the taxpayer estimates that his gross income, deductions, or credits will differ from the gross income, deductions, or credits reflected in the previous declaration. An amended declaration may also be made based upon a change in the number of exemptions to which the taxpayer may be entitled for the then current taxable year. However, only one amended declaration may be filed during any interval between installment dates. See paragraph (d) of § 1.6073-1. An amended declaration may be filed jointly by husband and wife even though separate declarations have previously been filed. An amended declaration must be made on Form 1040-ES (marked "Amended"). See, however, paragraph (c) of § 1.6015(d)-1 for procedure to be followed if the prescribed form is not available.

PAR. 9. Paragraph (b) of § 1.6015(g)-1 is amended to read as follows:

§ 1.6015(g)-1 Short taxable years of individuals.

* * * * *

(b) *Income and income tax placed on annual basis.* For the purpose of determining whether the anticipated income and tax for a short taxable year resulting from a change of annual accounting period necessitates the filing of a declaration, income and income tax imposed by chapter 1 (other than by section 56) shall be placed on an annual basis in the manner prescribed in section 443(b)(1). Thus, for example, an unmarried taxpayer who changes from a fiscal year basis to a calendar year basis beginning January 1, 1973, will have a short taxable year beginning July 1, 1972, and ending December 31, 1972. If his anticipated gross income for such short taxable year consists solely of wages (as defined in section 3401(a)) in the amount of $11,000, his total gross income and his gross income from such wages for the purpose of determining whether a declaration is required is $22,000, the amount obtained by placing anticipated income of $11,000 upon an annual basis. Since the taxpayer's anticipated gross income from wages when placed upon an annual basis is in excess of $20,000, he is required to file a declaration of estimated tax for the short taxable year unless the estimated tax can reasonably be expected to be less than $100. However, for taxable years beginning after December 31, 1966, the amount which the individual estimates as the amount of self-employment tax imposed by chapter 2 shall be computed on the actual self-employment income for the short period.

* * * * *

PAR. 10. Section 1.6017-1 is amended by adding a paragraph (d) which reads as follows:

§ 1.6017-1 Self-employment tax returns.

* * * * *

(d) *Declaration of estimated tax with respect to taxable years beginning after December 31, 1966.* For taxable years beginning after December 31, 1966, section 6015 provides that the term "estimated tax" includes the amount which an individual estimates as the amount of self-employment tax imposed by chapter 2 for the taxable year. Thus, individuals upon whom self-employment tax is imposed by section 1401 must make a declaration of estimated tax if they meet the requirements of section 6015(a), except as otherwise provided under section 6015(i).

PAR. 11. Section 1.6654 is amended by revising subsections (a), (b), (d) and (f) of section 6654 and by revising the historical note. The amended provisions read as follows:

§ 1.6654 Statutory provisions; failure by individual to pay estimated income tax.

SEC. 6654. *Failure by individual to pay estimated income tax*—(a) *Addition to the tax.* In the case of any underpayment of estimated tax by an individual, except as provided in subsection (d), there shall be added to the tax under chapter 1 and the tax under chapter 2 for the taxable year an amount determined at the rate of 6 percent per annum upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)).

(b) *Amount of underpayment.* For purposes of subsection (a), the amount of the underpayment shall be the excess of—

(1) The amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent (66⅔ percent in the case of individuals referred to in section 6073 (b), relating to income from farming or fishing) of the tax shown on the return for the taxable year or, if no return was filed, 80 percent (66⅔ percent in the case of individuals referred to in section 6073 (b), relating to income from farming or fishing) of the tax for such year, over

(2) The amount, if any, of the installment paid on or before the last date prescribed for such payment.

* * * * *

(d) *Exception.* Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least—

(1) The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of 12 months.

(2) An amount equal to 80 percent (66⅔ percent in the case of individuals referred to in section 6073(b), relating to income from farming or fishing) of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid and by taking into account the adjusted self-employment income (if the net earnings from self-employment (as defined in section 1402(a)) for the taxable year equal or exceed $400). For purposes of this paragraph—

(A) The taxable income shall be placed on an annualized basis by—

(i) Multiplying by 12 (or, in the case of a taxable year of less than 12 months, the number of months in the taxable year) the taxable income (computed without deduction of personal exemptions) for the months in the taxable year ending before the month in which the installment is required to be paid,

(ii) Dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, and

(iii) Deducting from such amount the deductions for personal exemptions allowable for the taxable year (such personal exemptions being determined as of the last date prescribed for payment of the installment).

(B) The term "adjusted self-employment income" means—

(i) The net earnings from self-employment (as defined in section 1402(a)) for the

months in the taxable year ending before the month in which the installment is required to be paid, but not more than

(ii) The excess of (I) an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for the calendar year in which the taxable year begins, over (II) the amount determined by placing the wages (within the meaning of section 1402 (b)) for the months in the taxable year ending before the month in which the installment is required to be paid on an annualized basis in a manner consistent with clauses (i) and (ii) of subparagraph (A).

(3) An amount equal to 90 percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income and the actual self-employment income for the months in the taxable year ending before the month in which the installment is required to be paid as if such months constituted the taxable year.

(4) An amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to personal exemptions under section 151 for the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year.

* * * * *

(f) *Tax computed after application of credits against tax.* For purposes of subsections (b) and (d), the term "tax" means—

(1) The tax imposed by this chapter 1 (other than by section 56), plus

(2) The tax imposed by chapter 2, minus

(3) The credits against tax allowed by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages).

* * * * *

[Sec. 6654 as amended by sec. 1(a)(4), Act of Sept. 25, 1962 (Pub. L. 87-682, 76 Stat. 575); secs. 102(b) (1), (2), (3) and 103(a), Tax Adjustment Act 1966 (80 Stat. 62, 64); sec. 301(b)(13), Tax Reform Act 1969 (83 Stat. 586); sec. 203(b)(7), Act of March 17, 1971 (Pub. L. 92-5, 85 Stat. 7); sec. 203(b)(7), Act of July 1, 1972 (Pub. L. 92-336, 86 Stat. 420); sec. 203(b) (7) and (d), Act of July 9, 1973 (Pub. L. 93-66, 87 Stat. 153); sec. 5(b)(7), (d), and (f), Act of December 31, 1973 (Pub. L. 93-233, 87 Stat. 954)]

PAR. 12. Section 1.6654-1 is amended by revising paragraphs (a) (1) and (4) and by revising example (1) of paragraph (c), to read as follows:

§ 1.6654-1 Addition to the tax in the case of an individual.

(a) *In general.* (1) Section 6654 imposes an addition to the taxes under chapters 1 and 2 of the Code in the case of any underpayment of estimated tax by an individual (with certain exceptions described in section 6654(d)). This addiiton to the tax is in addition to any applicable criminal penalties and is imposed whether or not there was reasonable cause for the underpayment. The amount of the underpayment for any installment date is the excess of—

(i) The following percentages of the tax shown on the return for the taxable year or, if no return was filed, of the tax for such year, divided by the number of installment dates prescribed for such taxable year:

(A) 80 percent in the case of taxable years beginning after December 31, 1966, of individuals not referred to in section 6073(b) (relating to income from farming or fishing);

(B) 70 percent in the case of taxable years beginning before January 1, 1967, of such individuals; and

(C) 66⅔ percent in the case of individuals referred to in section 6073(b); over

(ii) The amount, if any, of the installment paid on or before the last day prescribed for such payment.

* * * * *

(4) The term "tax" when used in subparagraph (1)(i) of this paragraph shall mean—

(i) The tax imposed by chapter 1 of the Code (other than by section 56 or, for taxable years ending before September 30, 1968, the tax surcharge imposed by section 51), plus

(ii) For taxable years beginning after December 31, 1966, the tax imposed by chapter 2 of the Code, minus

(iii) All credits allowed by part IV, subchapter A of chapter 1, except the credit provided by section 31, relating to tax withheld at source on wages. For the disallowance of certain credits in the case of taxpayers who elect to use the standard deduction or to pay the optional tax imposed by section 3, see section 36.

* * * * *

(c) *Examples.* * * *

Example (1). An individual taxpayer files his return for the calendar year 1972 on April 15, 1973 showing a tax (income and self-employment tax) of $30,000. He had paid a total of $20,000 of estimated tax in four installments of $5,000 on each of the four installment dates prescribed for such year. No other payments were made prior to the date the return was filed. Since the amount of each installment paid by the last date prescribed for payment thereof is less than one-quarter of 80 percent of the tax shown on the return, the addition to the tax is applicable in respect of the underpayment existing as of each installment date and is computed as follows:

(1) Amount of tax shown on return	$30,000
(2) 80 percent of item (1)	24,000
(3) One-fourth of item (2)	6,000
(4) Deduct amount paid on each installment date	5,000
(5) Amount of underpayment for each installment date (item (3) minus item (4))	1,000
(6) Addition to the tax:	
1st installment—period 4-15-72 to 4-15-73	60
2nd installment—period 6-15-72 to 4-15-73	50
3rd installment—period 9-15-72 to 4-15-73	35
4th installment—period 1-15-73 to 4-15-73	15
Total	160

* * * * *

PAR. 13. Section 1.6654-2 is amended to read as follows:

§ 1.6654-2 Exceptions to imposition of the addition to the tax in the case of individuals.

(a) *In general.* The addition to the tax under section 6654 will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax made equals or exceeds the least of the following amounts—

(1) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were the tax shown on the return for the preceding taxable year, provided that the preceding taxable year was a year of 12 months and a return showing a liability for tax was filed for such year. However, this subparagraph shall not apply with respect to any taxable year which ends on or after September 30, 1968, for which a tax is imposed by section 51 (relating to tax surcharge), in the case of a payment of estimated tax the time prescribed for payment of which is on or after September 15, 1968.

(2) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to a percentage of the tax computed by placing on an annual basis the taxable income for the calendar months in the taxable year ending before the month in which the installment is required to be paid. That percentage is 80 percent in the case of taxable years beginning after December 31, 1966, of individuals not referred to in section 6073(b) (relating to income from farming or fishing), 70 percent in the case of taxable years beginning before January 1, 1967, of such individuals, and 66⅔ percent in the case individuals referred to in section 6073(b). With respect to taxable years beginning after December 31, 1966, the adjusted self-employment income shall be taken into account in determining the amount referred to in this subparagraph if net earnings from self-employment (as defined in section 1402(a)) for the taxable year equal or exceed $400. For purposes of this subparagraph—

(i) Taxable income shall be placed on an annual basis by—

(A) Multiplying by 12 (or the number of months in the taxable year if less than 12) the taxable income (computed without the standard deduction and without the deduction for personal exemptions), or the adjusted gross income if the standard deduction is to be used, for the calendar months in the taxable year ending before the month in which the installment is required to be paid,

(B) Dividing the resulting amount by the number of such calendar months, and

(C) Deducting from such amount the standard deduction, if applicable, and the deduction for personal exemptions (such personal exemptions being determined as of the date prescribed for payment of the installment).

(ii) The term "adjusted self-employment income" means—

(A) The net earnings from self-employment (as defined in section 1402 (a)) for the calendar months in the taxable year ending before the month in which the installment is required to be paid, computed as if such months constituted the taxable year, but not more than

(B) The excess of—

(1) For taxable years beginning after 1966, $6,600,

(2) For taxable years beginning after 1971, $9,000,

(3) For taxable years beginning after 1972, $10,800,

(4) For taxable years beginning after 1973, $13,200 and

(5) For taxable years beginning after 1974, an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for the calendar year in which the taxable year begins,

over the amount of the wages (within the meaning of section 1402 (b)) for such calendar months placed on an annual basis. For this purpose, wages are annualized in a manner consistent with subdivision (i) (A) and (B) of this subparagraph, that is, by multiplying by 12 (or the number of months in the taxable year in the case of a taxable year of less than 12 months) the wages for such calendar months and dividing the resulting amount by the number of such months.

(3) An amount equal to 90 percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the calendar months in the taxable year ending before the month in which the installment is required to be paid, as if such months constituted the entire taxable year. For taxable years beginning after December 31, 1966, such computation shall include the tax imposed by chapter 2 on the actual self-employment income for such months. For purposes of this subparagraph, the term "actual self-employment income" means—

(i) The net earnings from self-employment (as defined in section 1402 (a)) for such calendar months, computed as if such months constituted the taxable year, but not more than

(ii) The excess of—

(A) For taxable years beginning after 1966, $6,600,

(B) For taxable years beginning after 1971, $9,000,

(C) For taxable years beginning after 1972, $10,800,

(D) For taxable years beginning after 1973, $13,200, and

(E) For taxable years beginning after 1974, an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for the calendar year in which the taxable year begins,

over the amount of wages (within the meaning of section 1402 (b)) for such months.

(4) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to a tax determined on the basis of the tax rates and the taxpayer's status with respect to personal exemptions under section 151 for the taxable year, but otherwise on the basis of the facts shown on the return for the preceding taxable year and the law applicable to such year, in the case of an individual required to file a return for such preceding taxable year.

In the case of a taxpayer whose taxable year consists of 52 or 53 weeks in accordance with section 441 (f), the rules prescribed by paragraph (b) of § 1.441-2 shall be applicable in determining, for purposes of subparagraph (1) of this paragraph, whether a taxable year was a year of 12 months and, for purposes of subparagraphs (2) and (3) of this paragraph, the number of calendar months in a taxable year preceding the date prescribed for payment of an installment of estimated tax. For the rules to be applied in determining taxable income for any period described in subparagraphs (2) and (3) of this paragraph in the case of a taxpayer who employs accounting periods (e.g., thirteen 4-week periods or four 13-week periods) none of which terminates with the end of the applicable period described in subparagraph (2) or (3) of this paragraph, see paragraph (a) (5) of § 1.6655-2.

(b) *Meaning of terms.* As used in this section and § 1.6654-3—

(1) The term "tax" means—

(i) The tax imposed by chapter 1 of the Code (other than by section 56), plus

(ii) For taxable years beginning after December 31, 1966, the tax imposed by chapter 2 of the Code, minus

(iii) The credits against tax allowed by part IV, subchapter A, chapter 1 of the Code, other than the credit against tax provided by section 31 (relating to tax withheld on wages), and without reduction for any payments of estimated tax.

(2) The credits against tax allowed by part IV, subchapter A, chapter 1 of the Code, are—

(i) In the case of the exception described in paragraph (a) (1) of this section, the credits shown on the return for the preceding taxable year,

(ii) In the case of the exceptions described in paragraph (a) (2) and (3) of this section, the credits computed under the law and rates applicable to the current taxable year, and

(iii) In the case of the exception described in paragraph (a) (4) of this section, the credits shown on the return for the preceding taxable year, except that if the amount of any such credit would be affected by any change in rates or status with respect to personal exemptions, the credits shall be determined by reference to the rates and status applicable to the current taxable year.

A change in rate may be either a change in the rate of tax, such as a change in the rate of tax imposed by section 1 or section 1401, or a change in a percentage affecting the computation of a credit, such as a change in the rate of withholding under chapter 3 of the Code or a change in the percentage of a qualified investment which is specified in section 46 for use in determining the amount of the investment credit allowed by section 38.

(3) The term "return for the preceding taxable year" means the income tax return for such year which is required by section 6012(a) (1) and, in the case of taxable years beginning after December 31, 1966, the self-employment tax return for such year which is required by section 6017.

(c) *Examples.* The following examples illustrate the application of the exceptions to the imposition of the addition to the tax for an underpayment of estimated tax, in the case of an individual whose taxable year is the calendar year:

Example (1). A, a married man with one child and a dependent parent, files a joint return with his spouse, B, for 1955 on April 15, 1956, showing taxable income of $44,000 and a tax of $16,760. A and B had filed a joint declaration of estimated tax on April 15, 1955, showing an estimated tax of $10,000 which was paid in four equal installments of $2,500 each on April 15, June 15, and September 15, 1955, and January 15, 1956. The balance of $6,760 was paid with the return. A and B have an underpayment of estimated tax of $433 (¼ of 70 percent of $16,760, less $2,500) for each installment date. The 1954 calendar year return of A and B showed a liability of $10,000. Since the total amount of estimated tax paid by each installment date equalled the amount that would have been required to be paid on or before each of such dates if the estimated tax were the tax shown on the return for the preceding year, the exception described in paragraph (a) (1) of this section applies and no addition to the tax will be imposed.

Example (2). Assume the same facts as in example (1), except that the joint return of A and B for 1954 showed taxable income of $32,000 and a tax liability of $10,400. Assume further that only two personal exemptions under section 151 appeared on the 1954 return. The exception described in paragraph (a) (1) of this section would not apply. However, A and B are entitled to four exemptions under section 151 for 1955. Taxable income for 1954 based on four exemptions, but otherwise on the basis of the facts shown on the 1954 return, would be $30,800. The tax on such amount in the case of a joint return would be $9,836. Since the total amount of estimated tax paid by each installment date exceeds the amount which would have been required to be paid on or before each of such dates if the estimated tax were $9,836, the exception described in paragraph (a) (4) of this section applies and no addition to the tax will be imposed.

Example (3). C, who is self-employed (other than as a farmer or fisherman), has annualized taxable income of $6,900 for the period January 1, 1967, through August 31, 1967, the income tax on which is $1,171. For the same period his net earnings from self-employment are $5,000 and his wages are $2,000. The estimated tax payments made by C for 1967 on or before September 15, 1967, total $1,200. For the purposes of the exception described in paragraph (a) (2) of this section, the adjusted self-employment income is $3,600, computed as follows:

(1) Net earnings from self-employment	$5,000
(2) $6,600 minus annualized wages ($6,600-3,000 ($2,000×12÷8))	3,600
(3) Lesser of (1) or (2)	3,600

The tax on C's adjusted self-employment income would be $230.40 ($3,600×6.4 percent). Since the total amount of estimated tax paid on or before September 15, 1967, exceeds $1,121.12, that is, 80 percent of $1,401.40 ($1,171÷230.40), the exception described in paragraph (a) (2) of this section applies and no addition to tax will be imposed.

Example (4). D, who is self-employed (other than as a farmer or fisherman), has actual taxable income of $3,800 for the period January 1, 1967, through August 31, 1967, the income tax on which is $586. For the same period his net earnings from self-employment are $5,000 and his wages are $2,000. The estimated tax payments made by D for 1967 on or before September 15, 1967, total $840. For the purposes of the exception described in paragraph (a)(3) of this section, the actual self-employment income for this period is $4,600, computed as follows:

(1) Net earnings from self-employment	$5,000
(2) $6,600 minus wages ($6,600−2,000)	4,600
(3) Lesser of (1) or (2)	4,600

The tax on D's actual self-employment income would be $294.40 ($4,600×6.4 percent). Since the total amount of estimated tax paid by September 15, 1967, exceeds $792.36, that, is, 90 percent of $880.40 (586+294.40), the exception described in paragraph (a)(3) of this section applies and no addition to tax will be imposed.

Example (5). E and F, his spouse, filed a joint return for the calendar year 1967 showing a tax liability of $10,000. The liability, attributable primarily to income received during the last quarter of the year, included both income and self-employment tax. Their aggregate payments of estimated tax on or before September 15, 1967, total $1,350, representing three installments of $450 paid on each of the first three installment dates prescribed for the taxable year. Since each installment paid, $450, was less than $2,000 (¼ of 80 percent of $10,000), there was an underpayment on each of the installment dates. Assume that the exceptions described in paragraph (a) (1) and (4) of this section do not apply. Actual taxable income for the three months ending March 31, was $2,000 and for the five months ending May 31, 1967, was $4,500. Actual self-employment income, for the same periods, was $2,000 and $4,000, respectively. Since the amounts paid by the April 15 and June 15 installment dates, $450 and $900, respectively, exceed $376.20 and $873.90, respectively (90 percent of the income tax on the actual taxable income of $2,000 and $4,500, respectively, determined on the basis of a joint return, and the self-employment tax on the actual self-employment income of $2,000 and $4,000, respectively), the exception described in paragraph (a)(3) of this section applies and no addition to the tax will be imposed for the underpayments on the April 15 and June 15 installment dates. For the eight months ending August 31, 1967, actual taxable income, assuming E and F did not elect to use the standard deduction, was $7,500; net earnings from self-employment were $6,000; and wages were $2,700. Since the total amount paid by the September 15 installment date, $1,350, was less than $1,381.14 (90 percent of the income tax on the actual taxable income of $7,500 determined on the basis of a joint return and the self-employment tax on actual self-employment income of $3,900 ($6,600−2,700)), the exception described in paragraph (a)(3) of this section does not apply to the September 15 installment. Furthermore, the exception described in paragraph (a)(2) of this section does not apply, as illustrated by the following computation.

(1) Income tax:	
Taxable income for the period ending August 31, 1967 (without deduction for personal exemptions) on an annual basis ($8,700×12÷8)	$13,050.00
Deduction for two personal exemptions	1,200.00
	11,850.00
Tax on $11,850 (on the basis of a joint return)	2,227.00
(2) Self-employment tax:	
Net earnings from self-employment	6,000.00
Adjusted self-employment income ($6,600−4,050 annualized wages (2,700×12÷8))	2,550.00
Tax on adjusted self-employment income ($2,550×6.4 percent)	163.20
(3) Total tax ($2,227.00+163.20)	2,390.20
(4) ¾ of 80 percent of $2,390.20	1,434.12
Amount paid by Sept. 15, 1967	1,350.00

An addition to the tax will thus be imposed for the underpayment of $1,550 ($2,000—450) on the September 15 installment.

Example (6). Assume the same facts as in example (5) and assume further that adjusted gross income for the eight months ending August 31, 1967, was $9,200 and the amount of deductions (other than the deduction for personal exemptions) not allowable in determining adjusted gross income aggregated only $500. If E and F elect, they may use the standard deduction in computing the tax for purposes of the exceptions described in paragraph (a) (2) and (3) of this section. Taxable income for purposes of the exception described in paragraph (a)(3) of this section would be reduced to $7,080 ($9,200 less $1,200 for two personal exemptions and $920 for the standard deduction). The income tax thereon is $1,205.20; income tax and self-employment tax total $1,454.80 ($1,205.20 + $249.60 ($3,900 × 6.4 percent)). Since the amount paid by the September 15 installment date, $1,350, exceeds $1,309.32 (90 percent of $1,454.80), the exception described in paragraph (a)(3) of this section applies. However, the exception described in paragraph (a)(2) of this section does not apply, as illustrated by the following computation:

Adjusted gross income for the period ending August 31, 1967	$9,200.00
Adjusted gross income annualized ($9,200 × 12 ÷ 8)	13,800.00
Taxable income annualized ($13,800 minus $1,200 for two personal exemptions and $1,000 for the standard deduction)	11,600.00
Income tax on $11,600 (on basis of a joint return)	2,172.00
Self-employment tax on adjusted self-employment income ($2,550 × 6.4 percent)	163.20
Total tax ($2,172.00 + 163.20)	2,335.20
¾ of 80 percent of $2,335.20	1,401.12
Amount paid by Sept. 15, 1967	1,350.00

Example (7). G was a married individual, 73 years of age, who filed a joint return with his wife, H, for the calendar year 1956. H, who was 70 years of age, had no income during the year. G had taxable income in the amount of $7,000 for the eight-month period ending on August 31, 1956, which included $2,000 of dividend income (after excluding $50 under section 116) and $900 of rental income. The $7,000 figure also reflected a deduction of $2,400 for personal exemptions ($600 × 4), since G and H are both over 65 years of age. The application of the exception described in paragraph (a)(2) of this section to an underpayment of estimated tax on the September 15th installment date may be illustrated by the following computation:

Taxable income for the period ending August 31, 1956 (without deduction for personal exemptions) on an annual basis ($9,400×12÷8)	$14,100.00
Deduction for persinal exemptions	2,400.00
Taxable income on an annual basis	11,700.00
Tax (on the basis of a joint return	2,642.00
Dividends received for 8-month period	2,050
Less: Amount excluded from gross income under section 116	50
Dividends included in gross income	2,000
Dividend income annualized ($2,000×12÷8)	
Dividends received credit under section 34 (4 percent of $3,000)	120.00
Tax less dividends received credit	2,522.00
Retirement income (as defined in section 37 (c)) includes:	
Dividend income (to extent included in gross income)	2,000
Rental income	900
Total retirement income	2,900
Limit on amount of retirement income under section 37(d)	1,200
Retirement income credit under section 37 (20 percent of $1,200)	240.00
Tax less credits under section 34 and section 37	2,288.00
Amount determined under the exception described in paragraph (a) (2) of this section (3/4 of 70 percent of $2,282)	1,198.05

(d) *Determination of taxable income for installment periods*—(1) *In general.* (i) In determining the applicability of the exceptions described in paragraph (a) (2) and (3) of this section, there must be an accurate determination of the amount of income and deductions for the calendar months in the taxable year preceding the installment date as of which the determination is made, that is, for the period terminating with the last day of the third, fifth, or eighth month of the taxable year. For example, a taxpayer distributes year-end bonuses to his employees but does not determine the amount of the bonuses until the last month of the taxable year. He may not deduct any portion of such year-end bonuses in determining his taxable in-last day of the third, fifth, or eighth than the final installment period for the taxable year, since deductions are not allowable until paid or accrued, depending on the taxpayer's method of accounting.

(ii) If a taxpayer on an accrual method of accounting wishes to use either of the exceptions described in paragraph (a) (2) and (3) of this section, he must establish the amount of income and deductions for each applicable period. If his income is derived from a business in which the production, purchase, or sale of merchandise is an income-producing factor requiring the use of inventories, he will be unable to determine accurately the amount of his taxable income for the applicable period unless he can establish, with reasonable accuracy, his cost of

goods sold for the applicable installment period. The cost of goods sold for such period shall be considered, unless a more exact determination is available, as such part of the cost of goods sold during the entire taxable year as the gross receipts from sales for such installment period is of gross receipts from sales for the entire taxable year.

(2) *Members of partnerships.* The provisions of this subparagraph shall apply in determining the applicability of the exceptions described in paragraph (a)(2) and (3) of this section to an underpayment of estimated tax by a taxpayer who is a member of a partnership.

(i) For purposes of determining taxable income, there shall be taken into account—

(A) The partner's distributive share of partnership items set forth under section 702,

(B) The amount of any guaranteed payments under section 707(c), and

(C) Gains or losses on partnership distributions which are treated as gains or losses on sales of property.

(ii) For purposes of determining net earnings from self-employment (for taxable years beginning after December 31, 1966) there shall be taken into account—

(A) The partner's distributive share of income or loss, described in section 702(a)(9), subject to the special rules set forth in section 1402(a) and §§ 1.1402(a)-1 to 1.1402(a)-16, inclusive, and

(B) The amount of any guaranteed payments under section 707(c), except for payments received from a partnership not engaged in a trade or business within the meaning of section 1402(c) and § 1.1402(c)-1.

In determining a partner's taxable income and, for taxable years beginning after December 31, 1966, net earnings from self-employment, for the months in his taxable year which precede the month in which the installment date falls, the partner shall take into account items set forth in sections 702 and 1402(a) for any partnership taxable year ending with or within his taxable year to the extent that such items are attributable to months in such partnership taxable year which precede the month in which the installment date falls. For special rules used in computing a partner's net earnings from self-employment in the case of the termination of his taxable year as a result of death, see section 1402(f) and § 1.1402(f)-1. In addition, a partner shall include in his taxable income and, for taxable years beginning after December 31, 1966, net earning from self-employment, for the months in his taxable year which precede the month in which the installment date falls guaranteed payments from the partnership to the extent that such guaranteed payments are includible in his taxable income for such months. See section 706(a), section 707(c), paragraph (c) of § 1.707-1 and section 1402(a).

(iii) The provisions of subdivision (i)(A) and (B) and subdivision (ii) of this subparagraph may be illustrated by the following examples:

Example (1). A, whose taxable year is the calendar year, is a member of a partnership whose taxable year ends on January 31st. A must take into account, in determining his taxable income for the installment due on April 15, 1973, all of his distributive share of partnership items described in section 702 and the amount of any guaranteed payments made to him which were deductible by the partnership in the partnership taxable year beginning on February 1, 1972, and ending on January 31, 1973. A must take into account, in determining his net earnings from self-employment, his distributive share of partnership income or loss described in section 702(a)(9), subject to the special rules set forth in section 1402(a) and §§ 1.1402(a)-1 to 1.1402(a)-16, inclusive.

Example (2). Assume that the taxable year of the partnership of which A, a calendar year taxpayer, is a member ends on June 30th. A must take into account in the determination of his taxable income and net earnings from self-employment for the installment due on April 15, 1973, his distributive share of partnership items for the period July 1, 1972, through March 31, 1973; for the installment due on June 15, 1973, he must take into account such amounts for the period July 1, 1972, through May 31, 1973; and for the installment due on September 15, 1973, he must take into account such amounts for the entire partnership taxable year of July 1, 1972, through June 30, 1973 (the date on which the partnership taxable year ends).

(3) *Beneficiaries of estates and trusts.* In determining the applicability of the exceptions described in paragraph (a)(2) and (3) of this section as of any installment date, the beneficiary of an estate or trust must take into account his distributable share of income from the estate or trust for the applicable period (whether or not actually distributed) if the trust or estate is required to distribute income to him currently. If the estate or trust is not required to distribute income currently, only the amounts actually distributed to the beneficiary during such period must be taken into account. If the taxable year of the beneficiary and the taxable year of the estate or trust are different, there shall be taken into account the beneficiary's distributable share of income, or the amount actually distributed to him as the case may be, during the months in the taxable year of the estate or trust ending within the taxable year of the beneficiary which precede the month in which the installment date falls. See subparagraph (2) of this paragraph for examples of a similar rule which is applied when a partner and the partnership of which he is a member have different taxable years.

(e) *Special rule in case of change from joint return or separate return for the preceding taxable year*—(1) *Joint return to separate returns.* In determining the applicability of the exceptions described in paragraph (a)(1) and (4) of this section to an underpayment of estimated tax, a taxpayer filing a separate return who filed a joint return for the preceding taxable year shall be subject to the following rule: The tax—

(i) Shown on the return for the preceding taxable year, or

(ii) Based on the tax rates and personal exemptions for the current taxable year but otherwise determined on the basis of the facts shown on the return for the preceding taxable year, and the law applicable to such year,

shall be that portion of the tax which bears the same ratio to the whole of the tax as the amount of the tax for which the taxpayer would have been liable bears to the sum of the taxes for which the taxpayer and his spouse would have been liable had each spouse filed a separate return for the preceding taxable year. For rules with respect to the allocation of joint payments of estimated tax, see section 6015(b) and § 1.6015(b)-1(b).

(2) *Examples.* The rule in subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). H and W filed a joint return for the calendar year 1955 showing taxable income of $20,000 and a tax of $5,280. Of the $20,000 taxable income, $18,000 was attributable to H, and $2,000 was attributable to W. H and W filed separate returns for 1956. The tax shown on the return for the preceding taxable year, for purposes of determining the applicability of the exception described in paragraph (a)(1) of this section to an underpayment of estimated tax by H for 1956, is determined as follows:

Taxable income of H for 1955	$18,000
Tax on $18,000 (on basis of separate return)	6,200
Taxable income of W for 1955	2,000
Tax on $2,000 (on basis of separate return)	400
Aggregate tax of H and W (on basis of separate returns)	6,600
Portion of 1955 tax shown on joint return attributable to H (6200/6600×5280)	4,960

Example (2). Assume the same facts as in example (1) and that H and W file a joint declaration of estimated tax for 1956 and pay estimated tax in amounts determined on the basis of their eligibility for three rather than two exemptions for 1956. H and W ultimately file separate income tax returns for 1956. Assume further that the exception described in paragraph (a)(1) of this section does not apply. The tax based on the tax rates and personal exemptions for 1956 but otherwise determined on the basis of the facts shown on the return for 1955 and the law applicable to 1955, for purposes of determining the applicability of the exception described in paragraph (a)(4) of this section to an underpayment of estimated tax by H for 1956, is determined as follows:

Taxable income of H and W for 1955 based on additional personal exemption for 1956	$19,400
Tax on 1955 income based on joint return rate for 1956	5,076
Portion of 1955 tax attributable to H (computed as in example (1) but allowing benefit of additional exemption to H	5,900/6,300
Portion of tax attributable to H based on tax rates and personal exemptions for 1956 but otherwise on facts on 1955 return (5,900/6,300×$5,076)	4,754

Example (3). Assume that H and W had the same taxable income in 1972 as in 1955, and that they filed a joint return for 1972 and separate returns for 1973. Assume further that H's taxable income for 1972 included net earnings from self-employment in excess of the $9,000 maximum base for the self-employment tax for 1972, and that the joint return filed by H and W for 1972

showed tax under chapter 1 (other than section 56) and tax under chapter 2 (totaling $5,055. The tax shown on the return for 1972, for purposes of determining the applicability of the exception described in paragraph (a)(1) of this section to an underpayment of estimated tax by H for 1973, is determined as follows:

Taxable income of H for 1972	$18,000
Chapter 1 tax (other than section 56 tax) on $18,000 (on basis of separate return)	5,170
Self-employment income of H for 1972	9,000
Chapter 2 tax on $9,000	675
Total of such taxes	5,845
Taxable income of W for 1972	2,000
Chapter 1 tax (other than section 56 tax) on $2,000 (on basis of separate return)	310
Aggregate tax of H and W (on basis of separate returns)	6,155
Portion of 1972 tax shown on joint return attributable to H (5845/6155×$5,055)	4,800.40

(3) *Separate return to joint return.* In the case of a taxpayer who files a joint return for the taxable year with respect to which there is an underpayment of estimated tax and who filed a separate return for the preceding taxable year—

(i) The tax shown on the return for the preceding taxable year, for purposes of determining the applicability of the exception described in paragraph (a)(1) of this section, shall be the sum of both the tax shown on the return of the taxpayer and the tax shown on the return of the taxpayer's spouse for such preceding year, and

(ii) The facts shown on both the taxpayer's return and the return of his spouse for the preceding taxable year shall be taken into account for purposes of determining the applicability of the exception described in paragraph (a)(4) of this section.

(4) *Example.* The rules described in subparagraph (3) of this paragraph may be illustrated by the following example:

Example. H and W filed separate income tax returns for the calendar year 1954 showing tax liabilities of $2,640 and $350, respectively. In 1955 they married and participated in the filing of a joint return for that year. Thus, for the purpose of determining the applicability of the exceptions described in paragraph (a)(1) and (4) of this section to an underpayment of estimated tax for the year 1955, the tax shown on the return for the preceding taxable year is $2,990 ($2,640 plus $350).

PAR. 14. Section 1.6654–3 is amended by revising paragraph (b) to read as follows:

§ 1.6654–3 Short taxable years of individuals.

* * * * *

(b) *Rules as to application of section 6654(d).*

(1) In any case in which the taxable year for which an underpayment of estimated tax exists is a short taxable year due to a change in annual accounting periods, in determining the tax—

(i) Shown on the return for the preceding taxable year (for purposes of section 6654(d)(1)), or

(ii) Based on the personal exemptions and rates for the current taxable year but otherwise on the basis of the facts shown on the return for the preceding taxable year, and the law applicable to such year (for purposes of section 6654(d)(4)),

the tax will be reduced by multiplying it by the number of months in the short taxable year and dividing the resulting amount by 12.

(2) If the taxable year for which an underpayment of estimated tax exists is a short taxable year due to a change in annual accounting periods, in annualizing the taxable income for the months in the taxable year preceding an installment date, for purposes of section 6654(d)(2), the personal exemptions allowed as deductions under section 151 shall be reduced to the same extent that they are reduced under section 443(c) in computing the tax for a short taxable year.

(3) If "the preceding taxable year" referred to in section 6654(d)(4) was a short taxable year, for purposes of determining the applicability of the exception described in section 6654(d)(4), the tax, computed on the basis of the facts shown on the return for the preceding year, shall be the tax computed on the annual basis in the manner described in section 443(b)(1) (prior to its reduction in the manner described in the last sentence thereof). If the tax rates or the taxpayer's status with respect to personal exemptions for the taxable year with respect to which the underpayment occurs differs from such rates or status applicable to the preceding taxable year, the tax determined in accordance with this subparagraph shall be recomputed to reflect the rates and status applicable to the year with respect to which the underpayment occurs.

REGULATIONS AND PROCEDURE AND ADMINISTRATION

PAR. 15. Section 301.6015–1 is amended to read as follows:

§ 301.6015–1 Declaration of estimated income tax by individuals.

For provisions relating to requirements of declarations of estimated income tax by individuals, see § 1.6015 of this chapter (Income Tax Regulations).

PAR. 16. Section 301.6211 is amended by revising subsection (b)(1) of section 6211 and by adding a historical note. The amended and added provisions read as follows:

§ 301.6211 Statutory provisions; definition of a deficiency.

SEC. 6211. *Definition of a deficiency.* * * *

(b) *Rules for application of subsection (a).* For purposes of this section—

(1) The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, and without regard to so much of the credit under section 32 as exceeds 2 percent of the interest on obligations described in section 1451.

* * * * *

[Section 6211 as amended by sec. 102(b)(4), Tax Adjustment Act 1966 (80 Stat 64)]

PAR. 17. Section 301.6654 is amended by revising subsections (a), (b), (d) and (f) of section 6654 and by revising the historical note. The amended provisions read as follows:

§ 301.6654 Statutory provisions; failure by individual to pay estimated income tax.

SEC. 6654. *Failure by individual to pay estimated income tax*—(a) *Addition to the tax.* In the case of any underpayment of estimated tax by an individual, except as provided in subsection (d), there shall be added to the tax under chapter 1 and the tax under chapter 2 for the taxable year an amount determined at the rate of 6 percent per annum upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)).

(b) *Amount of underpayment.* For purposes of subsection (a), the amount of the underpayment shall be the excess of—

(1) The amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent (66⅔ percent in the case of individuals referred to in section 6073 (b), relating to income from farming or fishing) of the tax shown on the return for the taxable year or, if no return was filed, 80 percent (66⅔ percent in the case of individuals referred to in section 6073 (b), relating to income from farming or fishing) of the tax for such year, over

(2) The amount, if any, of the installment paid on or before the last date prescribed for such payment.

* * * * *

(d) *Exception.* Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least—

(1) The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of 12 months.

(2) An amount equal to 80 percent (66⅔ percent in the case of individuals referred to in section 6073(b), relating to income from farming or fishing) of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid and by taking into account the adjusted self-employment income (if the net earnings from self-employment (as defined in section 1402 (a)) for the taxable year equal or exceed $400). For purposes of this paragraph—

(A) The taxable income shall be placed on an annualized basis by—

(i) Multiplying by 12 (or, in the case of a taxable year of less than 12 months, the number of months in the taxable year) the taxable income (computed without deduction of personal exemptions) for the months in the taxable year ending before the month in which the installment is required to be paid,

(ii) Dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, and

(iii) Deducting from such amount the deductions for personal exemptions allowable for the taxable year (such personal exemptions being determined as of the last date

prescribed for payment of the installment).

(B) The term "adjusted self-employment income" means—

(i) The net earnings from self-employment (as defined in section 1402(a)) for the months in the taxable year ending before the month in which the installment is required to be paid, but not more than

(ii) The excess of (I) an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for the calendar year in which the taxable year begins, over (II) the amount determined by placing the wages (within the meaning of section 1402(b)) for the months in the taxable year ending before the month in which the installment is required to be paid on an annualized basis in a manner consistent with clauses (i) and (ii) of subparagraph (A).

(3) An amount equal to 90 percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income and the actual self-employment income for the months in the taxable year ending before the month in which the installment is required to be paid as if such months constituted the taxable year.

(4) An amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to personal exemptions under section 151 for the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year.

* * * * *

(f) *Tax computed after application of credits against tax.* For purposes of subsections (b) and (d), the term "tax" means—

(1) The tax imposed by this chapter 1 (other than by section 56), plus

(2) The tax imposed by chapter 2, minus

(3) The credits against tax allowed by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages).

* * * * *

[Sec. 6654 as amended by sec. 1 (a) (4), Act of Sept. 25, 1962 (Pub. L. 87-682, 76 Stat. 575); secs. 102 (b) (1), (2), (3) and 103 (a), Tax Adjustment Act 1966 (80 Stat. 62, 64); sec. 301 (b) (13), Tax Reform Act 1969 (83 Stat. 586); sec. 203 (b) (7), Act of March 17, 1971 (Pub. L. 92-5, 85 Stat. 7); sec. 203 (b) (7), Act of July 1, 1972 (Pub. L. 92-336, 86 Stat. 420); sec. 203 (b) (7) and (d), Act of July 9, 1973 (Pub. L. 93-66, 87 Stat. 153); sec. 5(b) (7), (d), and (f), Act of December 31, 1973 (Pub. L. 93-233, 87 Stat. 954)]

[FR Doc.74-30278 Filed 12-31-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 189]

VETERANS' COST-OF-INSTRUCTION PAYMENTS TO INSTITUTIONS OF HIGHER EDUCATION

Program Amendments

Pursuant to the authority contained in section 420 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070e-1, notice is hereby given that the Commissioner of Education and the Administrator of Veterans' Affairs, with the approval of the Secretary of Health, Education, and Welfare, propose to amend the regulations for the veterans' cost-of-instruction program [45 CFR Part 189] as set forth below.

Amendments made to the program statute by section 834 of the Education Amendments of 1974, Pub. L. 93-380, give rise to the following proposed regulatory amendments:

1. Provision for additional bases for institutional eligibility. (§ 189.2(b) and (c))

2. The limitation of eligibility to institutions enrolling at least 25 veterans. (§ 189.2(b))

3. A maximum institutional award of $135,000. (§ 189.3(c))

4. Provision for the distribution of funds which become available by reason of the limitation on payments cited above. (§ 189.3(c))

5. A provision that at least 75% of an institution's award must be used to implement services to veterans. (§ 189.17 (a))

Program experience to date further suggests that provision be made for full-time equivalent staffing of the office of veterans' affairs for schools enrolling fewer than 2,500 students and no more than 70 veterans (see § 189.11(a)) and that several other minor administrative changes be made.

Interested persons are invited to submit written comments, suggestions, or objections regarding this notice to the Veterans' Programs Branch, Bureau of Postsecondary Education, U.S. Office of Education, ROB #3, Room 4616, 400 Maryland Avenue SW., Washington, D.C. 20202. Comments received in response to this notice will be available for public inspection at the above office on Mondays through Fridays between 8:30 a.m. and 4:30 p.m. All relevant material must be received on or before February 5, 1975.

(Catalog of Federal Domestic Assistance Program No. 13.540, Higher Education—Cost of Veterans' Instruction (VCIP)).

Dated: December 11, 1974.

T. H. BELL,
U.S. Commissioner of Education.

Dated: December 19, 1974.

ODELL W. VAUGHN,
Acting Administrator of Veterans' Affairs.

Approved: December 30, 1974.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Part 189 is amended to read as follows:

Subpart A—General Provisions

Sec.
189.1 Definitions.
189.2 Institutional eligibility.
189.3 Calculation of cost-of-instruction payment.
189.4 Applicability of civil rights provisions.

Subpart B—Required Services and Use of Funds

189.11 Special definitions.
189.12 Office of veterans' affairs.
189.13 Related veterans' services.
189.14 Institutions with small number of students and veterans.
189.15 Consortium agreements.
189.16 Criteria for assessing adequacy of veterans' programs.
189.17 Expenditure requirements.

Subpart C—Application Process

189.21 Submission of application by individual institutions.
189.22 Submission of applications by parties to consortium agreements.

Subpart D—Fiscal and Reporting Requirements

189.31 Maintenance of records.
189.32 Audits.
189.33 Fiscal operations reports.
189.34 Limitations on costs.
189.35 Reporting requirements.

AUTHORITY.—Section 420, Higher Education Act of 1965, as added by section 1001(a) of Pub. L. 92-318, 86 Stat. 378 (20 U.S.C. 1070e-1), as amended, unless otherwise noted.

Subpart A—General Provisions

§ 189.1 Definitions.

As used in this part:

"Academic year" means a period beginning on July 1 and ending on the following June 30.

"Cost-of-instruction payment," or "payment," means an amount calculated with respect to an institution of higher education for an academic year on the basis of undergraduate veteran student enrollment.

"Institution of higher education," or "institution," means an educational institution in any State which: (a) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (b) is legally authorized within such State to provide a program of education beyond secondary education, (c) provides an educational program for which it awards a bachelor's degree or provides not less than a 2-year program which is acceptable for full credit toward such a degree, (d) is a public or other nonprofit institution, and (e) is accredited by a nationally recognized accrediting agency or association as determined by the Commissioner or, if not so accredited, (1) is an institution with respect to which the Commissioner has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or (2) is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited, or (3) is an institution which has been approved by a state agency recognized by the Commissioner pursuant to § 438(b) of the Higher Education Act of 1965, as amended. Such term also includes any school which provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (a), (b), (d), and (e) of this definition.

"Instructional expenses in academically related programs" means the expenditures of instructional departments of an institution of higher education for

salaries, office expenses, equipment, and research.

"School or department of divinity" means an institution or a department or a branch of an institution the program of instruction of which is designed for the education of students (a) to prepare them to become ministers of religion or to enter upon some other religious vocation (or to provide continuing training for any such vocation), or (b) to prepare them to teach theological subjects.

"State" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"Student" means a person in attendance as at least a half-time student at an institution of higher education. The term is further defined as follows:

(a) "Full-time student" means a student who (1) is enrolled for the equivalent of at least 14 semester hours or (2) is enrolled for the equivalent of not less than 12 semester hours and is being charged on the basis of the institution's normal full-time fee schedule.

(b) "Three-quarter time student" means a student who (1) is enrolled for the equivalent of 10 through 13 semester hours or (2) is enrolled for the equivalent of not less than 9 semester hours and is being charged at least three-quarters of the institution's normal full-time fees.

(c) "Half-time student" means a student who (1) is enrolled for the equivalent of 7 through 9 semester hours or (2) is enrolled for the equivalent of not less than 6 semester hours and is being charged at least one-half of the institution's normal full-time fees.

"Undergraduate" refers to a student who (a) has not earned his first bachelor's degree or professional degree, and (b) (1) is pursuing a program of studies leading to a certificate or diploma or (2) is receiving or has received educational assistance under subchapter V or subchapter VI of chapter 34 of title 38, United States Code. A student who has not earned his first bachelor's or professional degree and who is enrolled in a program of study at the postsecondary level which is designed to extend for more than four academic years shall not be considered as an undergraduate student in that portion of the program that involves study beyond the fourth academic year unless that program leads to a first degree and is designed to extend for a period of five academic years.

"Veteran" means a person receiving benefits under chapter 31 or chapter 34 of title 38, United States Code, or who, if enrolled in an institution of higher education, would be eligible for such benefits.

(20 U.S.C. 1070e, 1070e-1, 1087-1(b), 1088, 1141.)

§ 189.2 Institutional eligibility.

(a) To apply for assistance under this part, an applicant must be an institution of higher education, and must meet the requirements specified in paragraph (b) or (c) of this section.

(b) In order for an institution of higher education to apply for assistance under this part during an academic year following one during which it was not eligible for or did not apply for such assistance, it must have in attendance on April 16 of such academic year (or, where such date falls between academic terms of the institution, the end of the previous academic term), a number of undergraduate veteran students receiving benefits under chapter 31 or chapter 34 of title 38, United States Code (or who have received benefits under subchapter V or subchapter VI of such chapter 34 while attending such institution during that academic year) equal to at least 25 and to at least (1) 110 percent of the number of undergraduate veteran students who were in attendance on the first counting date adopted under this part for the preceding academic year and were at that time receiving benefits under chapter 31 or chapter 34 of title 38, United States Code (or had received benefits under subchapter V or subchapter VI of such chapter 34 while attending such institution during that academic year), or (2) 10 per centum of the total number of undergraduate students in attendance at such institution during such current academic year, if such number does not constitute a per centum of such undergraduate students which is less than such per centum for the preceding academic year.

(c) In order for an institution of higher education to apply for assistance under this part during an academic year following one during which it has received such assistance, it must have in attendance on April 16 of such academic year (or, where such date falls between academic terms of the institution, the end of the previous academic term), a number of undergraduate veteran students receiving benefits under chapter 31 or chapter 34 of title 38, United States Code (or who have received benefits under subchapter V or subchapter VI of such subchapter 34 while attending such institution during that academic year) equal to at least (1) the number of undergraduate veteran students who were in attendance on the first counting date adopted under this part for the preceding academic year and were at that time receiving benefits under chapter 31 or chapter 34 of title 38, United States Code (or had received benefits under subchapter V or subchapter VI of such chapter 34 while attending such institution during that academic year), or (2) the minimum number of such persons which was necessary for such institution to establish eligibility for assistance under this part during the preceding academic year, whichever is less.

(d) Schools or departments of divinity and proprietary institutions (i.e., organized for profit) are not eligible to apply for assistance under this part.

(20 U.S.C. 1070e-1.)

§ 189.3 Calculation of cost-of-instruction payment.

(a) To compute an institution's cost-of-instruction payment under this part, the Commisisoner of Education shall determine, on the basis of data provided by the institution:

(1) The number of undergraduate veteran students in attendance on the applicable dates specified in paragraph (b) of this section who are at those times recipients of vocational rehabilitation subsistence under chapter 31 of title 38, United States Code, or of educational assistance under chapter 34 of title 38, United States Code, and to whom the services required by §§ 189.12 and 189.13 will be reasonably accessible, and

(2) The number of undergraduate veteran students in attendance on the applicable dates specified in paragraph (b) of this section who have ever received educational assistance under subchapter V or subchapter VI of chapter 34 of title 38, United States Code, and to whom the services required by §§ 189.12 and 189.13 will be reasonably accessible.

(b) A cost-of-instruction payment for a given academic year shall, by reason of paragraph (d) of this section, be based on the number of students in attendance on April 16 of the preceding academic year and October 16 and February 16 of the given year (or, where such dates fall between academic terms of the institution, the end of the previous academic term), and shall, subject to the availability of funds, be computed at the following annual rate:

(1) For students described in paragraph (a) (1) of this section:

(i) $300 per full-time student;

(ii) $225 per three-quarter time student;

(iii) $150 per half-time student; and

(iv) No payment for students not enrolled as at least half-time students.

(2) For students described in paragraph (a) (2) of this section:

(i) $150 per full-time student;

(ii) $112.50 per three-quarter time student;

(iii) $75 per half-time student; and

(iv) No payment for students not enrolled as at least half-time students.

(c) (1) Notwithstanding any other provision of this section, the maximum amount of payments in any fiscal year to any institution of higher education, or any branch thereof which is located in a community which is different from that in which the parent institution is located, shall be $135,000.

(2) Funds which become available as a result of the limitation on payments set forth in subparagraph (c) (1) shall be apportioned in such a manner as will result in the receipt by institutions of a uniform minimum amount of first up to $9,000, and then in excess of $9,000, to the extent that funds remain available, except that no institution shall receive funds in excess of the amounts calculated according to paragraph (b) of this section.

(d) One third of the program funds available for a given academic year shall be used for payment to institutions based on enrollment data for April 16 of the preceding academic year. Funds obligated to an individual institution which

remain after the payment to such institution based on the April 16 enrollment data shall be paid to such institution on the basis of enrollment data for October 16 and February 16 of the given year at rates per undergraduate veteran student in the categories set forth in § 189.3 (a) (1) and (2) equal to the rates for such students at which the payment based on April 16 enrollment data was made.

(e) Notwithstanding any other provision of this section, the sum of the second and third payments to an institution for any academic year may not exceed twice the amount of the first payment to such institution for such year.

(20 U.S.C. 1007e-1, 31 U.S.C. 701)

§ 189.4 Applicability of civil rights provisions.

(a) Federal financial assistance under this part is subject to the regulations in part 80 of this title, issued by the Secretary of Health, Education, and Welfare and approved by the President, to effectuate the provisions of title VI of the Civil Rights Act of 1964 (Pub. L. 88-352).

(42 U.S.C. 2000d.)

(b) Federal financial assistance under this part is also subject to the provisions of title IX of the Education Amendments of 1972 (prohibition of sex discrimination) and any regulations issued thereunder.

(20 U.S.C. 1681-86; Pub. L. 92-318, section 906.)

Subpart B—Required Services and Use of Funds

§ 189.11 Special definitions.

For purposes of this subpart:

(a) "Full-time," with respect to an office of veterans' affairs, means that the office of veterans' affairs (1) is staffed by at least one person who is employed by an institution on a full-time basis and whose sole institutional responsibility is that of coordinating the activities of the office (except that an institution described in § 189.14 may employ part-time employees for this purpose who together assume the responsibility of at least one full-time employee) and (2) provides services at times and places convenient to the veterans being served.

(b) "Outreach" means an extensive, coordinated, communitywide program of reaching veterans within the institution's normal service area, determining their needs, and making appropriate referral and follow-up arrangements with relevant service agencies.

(c) "Recruitment" means a concerted effort to interest veterans in taking advantage of opportunities for a wide variety of postsecondary training experiences at the institution.

(d) "Special education programs" means specially designed remedial, tutorial, and motivational programs designed to promote success in the postsecondary experience.

(e) "Counseling" means professional assistance available to veterans for consulation on personal, family, educational, and career problems.

(20 U.S.C. 1070e-1.)

§ 189.12 Office of veterans' affairs.

Except as provided in § 189.14, an application for assistance under this part shall be approved only if the Commissioner is satisfied that the applicant will maintain, during the period for which the award is made, a full-time office of veterans' affairs with adequate services, in light of the criteria set forth in § 189.16, in the areas of outreach, recruitment, special education programs, and counseling.

(20 U.S.C. 1070e-1.)

§ 189.13 Related veterans' services.

Except as provided in § 189.14, an application for assistance under this part shall be approved only if the Commissioner is satisfied that the applicant will, during the period for which the award is made, make an adequate effort, as measured by the criteria set forth in § 189.16, to carry out:

(a) Programs designed to prepare educationally disadvantaged veterans for postsecondary education (1) under subchapter V of chapter 34 of title 38, United States Code, and (2) in the case of any institution located near a military installation, under subchapter VI of such chapter 34;

(b) Active outreach, recruiting, and counseling activities through the use of other funds such as those available under federally assisted work-study programs; and

(c) An active tutorial assistance program (including dissemination of information regarding such program) in order to make maximum use of the benefits available under section 1692 of title 38, United States Code.

(20 U.S.C. 1070e-1.)

§ 189.14 Institutions with small numbers of students and veterans.

An institution with less than 2,500 students and no more than 70 undergraduate veteran students in attendance on April 16 (or, where such date falls between academic terms of the institution, the end of the previous academic term) of an academic year during which assistance under this part is sought need provide the services described in § 189.12 only to the extent of maintaining a full-time office of veterans' affairs with adequate services in the areas of recruitment and counseling, and need not provide the services described in § 189.13.

(20 U.S.C. 1070e-1.)

§ 189.15 Consortium agreements.

In the case of an institution with less than 2,500 students in attendance on April 16 (or, where such date falls between academic terms of the institution, the end of the previous academic term) of an academic year during which assistance under this part is sought, the Commissioner may permit one or more of the functions set forth in §§ 189.12 and 189.13 to be carried out under a consortium agreement between that institution and one or more other such institutions located within a reasonable commuting distance therefrom if he finds that (a) such institution cannot feasibly carry out such functions by itself, and (b) the benefits of such functions will be readily accessible to veterans attending, and to veterans in the community served by, each of the institutions which are parties to the agreement.

(20 U.S.C. 1070e-1.)

§ 189.16 Criteria for assessing adequacy of veterans' programs.

An applicant institution's assurance pursuant to § 189.21(b)(6), with respect to the requirements of §§ 189.12 and 189.13 and to the extent that such requirements are not waived pursuant to § 189.14, shall be made in light of the following criteria, which criteria shall also be used by the Commissioner in evaluating the adequacy of the institution's veterans' programs:

(a) *In general.*—(1) Adequate identification and assessment of the veteran population in the institution's normal service area;

(2) Appropriate consideration, in terms of programs and services, of the number of veterans enrolled at the institution;

(3) The establishment of an advisory mechanism involving community and institutional personnel to assist in the institution's decisionmaking process with respect to veterans' services and through which the institution may become aware of the views of the institution's administrative and academic staff, its veteran student population, and relevant community organizations;

(4) The use of qualified Vietnam-era veterans in staffing the institution's office of veterans' affairs and in providing related services;

(5) The employment of a sufficient number of qualified staff members in order to adequately support required veterans' activities and services;

(6) The provision of adequate, visible and accessible housing for the institution's office of veterans' affairs, in light of the institution's veteran student enrollment and physical environment; and

(7) The coordination of veterans' services with other campus services available to veterans, such as admissions, student financial aid, counseling, and job placement.

(b) With respect to outreach, the establishment and maintenance of—

(1) Contact with veterans in the institution's normal service area;

(2) A procedure for assessing veterans' needs, problems, and interests; and

(3) A coordinated and extensive referral service involving agencies providing assistance in areas such as housing, employment, health, recreation, vocational and technical training, and financial assistance;

(c) With respect to recruitment, the establishment and maintenance of a process of bringing the maximum number of veterans into purposeful systematic programs of postsecondary education most suited to their educational and career aspirations, including such techniques as publications, use of mass media, and personal contacts;

(d) With respect to special education programs, the establishment and maintenance of—

(1) Support from appropriate departments of the institution for launching special education programs for the veteran student of a remedial, motivational, and tutorial nature;

(2) Support throughout the institution for appropriate changes in rules, policies, and procedures that will accommodate the special needs and problems of the veteran student; and

(3) Adequate guidance for individual veteran students that will insure the highest possible rate of their retention in educational programs; and

(e) With respect to counseling, the establishment and maintenance of—

(1) Ease of access of veteran students to professional assistance for consultation on personal, family, educational, and career problems as appropriate and necessary; and

(2) Frequent and scheduled liaison of the office of veterans' affairs with the institution's academic departments, counseling service, and central administration.

(20 U.S.C. 1070e-1)

§ 189.17 Expenditure requirements.

(a) Not less than (1) 75 percent of funds awarded to an institution under this part or (2) the amount of funds needed to implement the required services set forth in §§ 189.12 and 189.13, whichever is greater, shall be used by the institution to implement such services. Any remaining awarded funds may be used solely to defray instructional expenses in academically related programs of such institution.

(b) All assistance received under this part must be expended or obligated for the foregoing purposes not later than the end of the period for which the award is made. Obligations will be considered to have been incurred by a recipient on the basis of documentary evidence of binding commitments for the acquisition of goods or property or for the performance of work, except that funds for personal services, for services performed by public utilities, for travel, and for the rental of facilities, shall be considered to have been obligated as of the time such services were rendered, such travel was performed, and such rented facilities were used, respectively.

(c) Travel expenditures shall be restricted to recruitment and outreach activities, attendance at Office of Education sponsored meetings providing technical assistance for this part, and attendance at Office of Education approved professional meetings.

(20 U.S.C. 1070e, 1070-1, 1232c(b)(2); 31 U.S.C. 200)

Subpart C—Application Process

§ 189.21 Submission of application by individual institutions.

(a) Assistance under this part will be provided only on the basis of an application submitted by an institution which sets forth all information necessary to determine the institution's eligibility and payment amount.

(b) Each application must be submitted on a form to be provided by the Commissioner and contain the following:

(1) Information necessary to show that the institution is eligible for assistance under this part;

(2) Information necessary to determine the amount of the institution's payment, in accordance with § 189.3;

(3) An assurance that any funds received by the institution under this part will not be used for a school or department of divinity or for any religious worship or sectarian activity;

(4) An assurance that any funds received by the institution under this part which are not required pursuant to § 189.17 to be used to implement the requirements of §§ 189.12 and 189.13 will be used solely to defray instructional expenses in academically related programs of the institution;

(5) An assurance that the institution will expend during the period for which the award is made, for all academically related programs of the institution, an amount equal, in terms of either total or per student expenditure, to at least the average amount so expended during the 3 academic years preceding such period, together with such supporting data as the Commissioner may require;

(6) An assurance that the institution will carry out the required services set forth in §§ 189.12 and 189.13;

(7) An assurance that the institution will initiate the services required by §§ 189.12 and 189.13, and will submit a proposed budget for the operation of the office of veterans' affairs, not later than 90 days after the date of award notification;

(8) An assurance that the services required by §§ 189.12 and 189.13 will be reasonably accessible to all undergraduate veteran students on behalf of whom funds are received by the institution under this part; and

(9) If the institution is seeking a waiver of any of the required activities specified in §§ 189.12 and 189.13 pursuant to § 189.14, information necessary to show that it has less than 2,500 students and not more than 70 undergraduate veteran students in attendance on April 16 (or, where such date falls between academic terms of the institution, the end of the previous academic term) of the academic year during which assistance under this part is sought.

(20 U.S.C. 1070e-1.)

§ 189.22 Submission of applications by parties to consortium agreements.

Institutions proposing to carry out the activities required under this part through a consortium agreement, pursuant to § 189.15, must submit their applications on a form to be provided by the Commissioner, and each such institution must provide all information and assurances required pursuant to § 189.21 as well as information and assurances necessary to a finding by the Commissioner that the conditions for a consortium agreement set forth in § 189.15 have been met.

(20 U.S.C. 1070e-1.)

Subpart D—Fiscal and Reporting Requirements

§ 189.31 Maintenance of records.

(a) *Records.* Each institution and consortium of institutions shall keep intact and accessible records relating to the receipt and expenditure of Federal funds in accordance with section 434(a) of the General Education Provisions Act, including all accounting records and related original and supporting documents that substantiate direct costs charged to the award. Records must be maintained so as to reflect (1) expenditures made for veterans' services provided for under this part, and (2) expenditures made for instructional costs in academically related programs.

(b) *Period of retention.* (1) Except as provided in paragraph (b)(2) or (b)(3) of this section, the records specified in paragraph (a) of this section shall be retained for 3 years after the date of the submission of the fiscal operations report, pursuant to § 189.33, to which they pertain.

(2) Records for nonexpendable personal property which was acquired with Federal funds shall be retained for 3 years after it is no longer needed for program purposes.

(3) The records involved in any claim or expenditure which has been questioned by Federal audit shall be further retained until resolution of any such audit questions.

(c) *Microfilm copies.* Institutions may substitute microfilm copies in lieu of original records in meeting the requirements of this section.

(20 U.S.C. 1232c(a).)

§ 189.32 Audits.

(a) *Audit and examination.* The Secretary of Health, Education, and Welfare and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to all records required pursuant to § 189.31(a) and to any other pertinent books, documents, papers, and records of the institution or consortium of institutions. The Commissioner may, at any time before or after making a payment under this part, review the data supplied by an institution with respect to such payment and take appropriate action as a result thereof, including that of requiring the institution to return funds received on the basis of inaccurate data submitted by the institution.

(b) *Audit responsibilities.* All expenditures by recipient institutions or consortiums thereof shall be audited by the

recipient or at the recipient's direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws and regulations. Such audits shall be scheduled with reasonable frequency, usually annually, but not less frequently than once every two years, considering the nature, size, and complexity of the activity.

(20 U.S.C. 1232c (a), (b) (2).)

§ 189.33 Fiscal operations reports.

(a) In addition to such other accounting as the Commissioner may require, an institution or consortium shall render annually, with respect to the assistance awarded under this part, a full account of funds expended, obligated, and remaining.

(b) A report of such accounting in a format approved by the Commissioner shall be submitted to the Commissioner within 90 days of the expiration of the academic year for which such assistance was awarded, and the institution or consortium shall remit within 30 days of the receipt of a written request therefor any amounts found by the Commissioner to be due. Such period may, upon written request, be extended at the discretion of the Commissioner.

(20 U.S.C. 1232c(b)(3); 31 U.S.C. 628)

§ 189.34 Limitations on costs.

(a) The maximum amount of a payment under this part shall be set forth in the award document. The total payment from the Federal Government will not exceed the amount so set forth.

(b) Institutions will be governed by the cost principles set forth in Part II of Appendix D of 45 CFR Part 74 (Part II of Appendix C of 45 CFR Subchapter A).

(31 U.S.C. 200; 20 U.S.C. 1070e-1.)

§ 189.35 Reporting requirements.

(a) Institutions of higher education, and consortiums thereof, receiving assistance under this part must submit to the Commissioner no more than 30 days after the close of each academic year, a report describing the manner in which the required veterans' services were provided during such academic year. Such a report shall be in a format approved by the Commissioner and shall make specific reference to the extent to which the criteria set forth in § 189.16 of this part have been met.

(b) Interim reports describing the progress being made in providing the veterans' services required pursuant to §§ 189.12 and 189.13 of this part shall be submitted if, and at such times as, the Commissioner deems such reports necessary.

(20 U.S.C. 1070e-1.)

[FR Doc.75-246 Filed 1-3-75;8:45 am]

Social Security Administration

[20 CFR Part 405]

[Regulations No. 5]

FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Outpatient Physical Therapy and Speech Pathology Services

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 553) that the amendments to the regulations set forth in tentative form below are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. The amendments to the regulations implement sections 251(b) and 283 of Pub. L. 92-603, the Social Security Amendments of 1972, enacted October 30, 1972, to reflect the option available to patients under a home health plan to have speech pathology services reimbursed under either the home health benefit or outpatient speech pathology benefit, just as physical therapy services may be reimbursed under either the outpatient physical therapy benefit or the home health benefit, and set forth physician certification and plan of treatment requirements for outpatient physical therapy services.

Prior to the final adoption of the proposed amendments to the regulations, consideration will be given to any data, comments, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue, SW., Washington, D.C. 20201, on or before February 5, 1975.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue SW., Washington, D.C. 20201.

The proposed amendments are to be issued under the authority contained in sections 1102, 1835, 1861, and 1871 of the Social Security Act as amended, 49 Stat. 647, as amended, 79 Stat. 303, as amended, 79 Stat. 313, as amended, 79 Stat. 331; 42 U.S.C. 1302, 1395n, 1395x, and 1395hh.

(Catalog of Federal Domestic Assistance Program No. 13.801, Health Insurance for the Aged—Supplementary Medical Insurance.)

Dated: November 13, 1974.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: December 30, 1974.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Regulations No. 5 of the Social Security Administration (20 CFR Part 405) are further amended as follows:

1. Paragraphs (a)(2) and (a)(5) of § 405.230 are revised to read as follows:

§ 405.230 Supplementary medical insurance benefits.

(a) *Benefits provided.* Any individual who is enrolled under the supplementary medical insurance plan established by Part B of title XVIII of the Act is, subject to the conditions, limitations, and exclusions described in this Part 405, entitled to have:

* * * * *

(2) Payment made to him, or on his behalf, for medical and other health services other than outpatient physical therapy and speech pathology services (see § 405.231(l) and (m)) furnished by other than a participating provider of services (in the case of certain nonparticipating hospitals which have elected to claim payment with respect to emergency outpatient services—see § 405.249);

* * * * *

(5) Payment made on his behalf to a participating clinic, rehabilitation agency, public health agency, or other provider of services (see § 405.231 (l) and (m)) for outpatient physical therapy services furnished to him after June 30, 1968, and for outpatient speech pathology services furnished to him after December 31, 1972.

* * * * *

2. In § 405.231, paragraph (l) is revised and new paragraph (m) is added to read as follows:

§ 405.231 Medical and other health services; included items and services.

Subject to the conditions, limitations, and exclusions set forth in § 405.232, the term "medical and other health services" means the following items or services:

* * * * *

(l) Outpatient physical therapy services which are furnished:

(1) By or under arrangements made by a participating clinic, rehabilitation agency, public health agency (see Subpart Q of this part) or other provider of services (see Subparts J, K, and L of this part), or

(2) After June 30, 1973, by or under the direct supervision of a qualified physical therapist in independent practice in his office or in the individual's home (see § 405.232(e)(2)); or

(3) By or under arrangements made by a hospital or skilled nursing facility (see Subparts J and K of this part) to its inpatients (see § 405.232(e)(3)); and

(m) Outpatient speech pathology services which are furnished:

(1) By or under arrangements made by a participating clinic, rehabilitation agency, public health agency (see Subpart Q of this part), or other provider of

services (see Subparts J, K, and L of this part) to an individual as an outpatient; and

(2) By or under arrangements made by a hospital or skilled nursing facility (see Subparts J and K of this part) to its inpatients (see § 405.232(j)).

3. In § 405.232, paragraph (e) is revised and new paragraph (j) is added to read as follows:

§ 405.232 Medical and other health services; conditions, limitations, and exclusions.

In addition to the general exclusions described in Subpart C of this part, the following conditions, limitations, and exclusions shall apply with respect to the "medical and other health services" described in § 405.231:

* * * * *

(e) *Outpatient physical therapy services.* (1) There shall be excluded from the outpatient physical therapy services described in § 405.231(l)(1) any item or service which:

(i) Is furnished before July 1, 1968 (with respect to services furnished before such date, see § 405.231(c)); or

(ii) Would not be included as inpatient hospital services if furnished to an inpatient of a hospital.

(2) The outpatient physical therapy services described in § 405.231(l)(2) shall include only those items and services:

(i) The incurred expenses for which do not exceed $100 in any calendar year; and

(ii) Furnished by a physical therapist in independent practice, i.e., he renders services on his own responsibility and free of the administrative and professional control of an employer; the individuals he treats are his own patients and he has the right to collect the fee or other compensation for the services he renders; he maintains at his own expense an office or office space and the necessary equipment to provide an adequate program of physical therapy; he is engaged in such practice on a regular basis; and

(iii) Furnished by a physical therapist licensed by the State in which the items and services were furnished and who meets the other qualifications set out in § 405.1720(e).

(3) There shall be excluded from the outpatient physical therapy services described in § 405.231(l)(3) any item or service which is furnished before October 30, 1972.

* * * * *

(j) *Outpatient speech pathology services.* There shall be excluded from the outpatient speech pathology services described in § 405.231(m) (1) and (2) any item or service which:

(1) Is furnished before January 1, 1973 (with respect to services furnished before such date—see § 405.231(c)); or

(2) Would not be included as inpatient hospital services if furnished to an inpatient of a hospital.

4. Paragraph (b) of § 405.236 is revised to read as follows:

§ 405.236 Home health services; items and services included.

Subject to the provisions described in § 405.237, "home health services" means the following items and services furnished to an individual in accordance with §§ 405.234 and 405.235:

* * * * *

(b) Physical, occupational, or speech therapy (see § 405.239);

* * * * *

5. Section 405.239 is revised to read as follows:

§ 405.239 Option available to patients under a home health plan who require physical therapy or speech therapy services.

A patient under a home health plan may elect to receive required physical or speech therapy services (also known as speech pathology services) as a "medical and other health service" (see § 405.231 (l) and (m)) rather than as a home health service (see § 405.236(b)) and thereby save home health visits for other covered home health services.

6. Paragraph (b)(3) of § 405.250 is revised to read as follows:

§ 405.250 Procedures for payment; medical and other health services furnished by participating provider; home health services.

Payment for medical and other health services (see §§ 405.230.(a)(3), 405.231, and 405.232), and for home health services (see §§ 405.230(a)(4), 405.233 through 405.236), furnished by a participating provider of services is made to such provider only if:

* * * * *

(b) A physician certifies, and recertifies (see Subpart P of his part) when required, that: * * *

(3) In the case of outpatient physical therapy and speech pathology services:

(i) Such services were required because the individual needed physical therapy or speech pathology services (and with respect to outpatient physical therapy services furnished before October 30, 1972, such services were required because the individual needed physical therapy services on an outpatient basis—see § 405.231(l)(1)); and

(ii) A written plan for furnishing such services has been established, and is periodically reviewed, by a physician (see § 405.250a); and

(iii) Such services were furnished while the individual was under the care of a physician.

7. Following § 405.250, a new § 405.250a is added to read as follows:

§ 405.250a Outpatient physical therapy and speech pathology services furnished by participating provider; plan of treatment requirements.

Outpatient physical therapy and speech pathology services furnished by a participating provider of services (see § 405.230(a)(5) and § 405.231(l)(1), (l)(3), and (m)), must be furnished under a written plan, established and periodically reviewed by a physician, which meets the following requirements:

(a) The plan must be established (i.e., put into writing) before treatment is begun and promptly signed by the ordering physician; and

(b) The plan must prescribe the type, amount, frequency, and duration of the physical therapy or speech pathology services that are to be furnished the individual and indicate the diagnosis and anticipated goals. Any changes to this plan must be made in writing and signed by the physician, or by a qualified physical therapist (in the case of physical therapy services), a qualified speech pathologist (in the case of speech pathology services), a registered professional nurse, or a physician on the staff of the provider, pursuant to the physician's oral orders; and

(c) The plan must be reviewed by the physician, at such intervals as the severity of the individual's condition requires, but at least once every 30 days. Each review of the plan should contain the initials of the physician and the date performed.

8. Section 405.1634 is revised to read as follows:

§ 405.1634 Medical and other health services covered by the supplementary medical insurance program furnished by a provider of services; certification and recertification.

(a) Except as provided in paragraphs (b) and (c) of this section, the certification statement should indicate that the medical and other health services furnished by, or under arrangements made by, the provider were medically required, and should be signed by a physician who has knowledge of the case. The certification may be made on a record retained by the provider, or a special form may be used; also a physician's written order designating the medical and other health services required would be acceptable. The certification statement should be obtained at the time covered medical and other health services are furnished, or as soon thereafter as is reasonable and practicable. No recertification of the continued need for covered services is required. Where covered services are provided on a continuing basis, the physician certification can be obtained either at the beginning or end of the series of visits.

(b) With respect to outpatient physical therapy and speech pathology services described in paragraphs (l)(1), (l)(3), and (m) of § 405.231:

(1) The required physician's statement should certify that:

(i) outpatient physical therapy or speech pathology services were required because the individual needed such services; (ii) a plan for furnishing such services was established and periodically reviewed by the physician; and (iii) such services were furnished while the patient was under the care of a physician. The certification statement should be obtained at the time the plan of treatment is established or as soon thereafter as possible, and should be signed by the

same physician who establishes the plan of treatment (see § 405.250a).

(2) When outpatient physical therapy or speech pathology services are continued under the same plan of treatment for a period of time, a recertification of the continued need for such services is required. The recertification statement should contain the following information: (i) that there is a continuing need for such services; and (ii) an estimate of how long the services will be required. The physician must recertify at intervals of at least once every 30 days and the recertification should be made at the same time the plan of treatment is reviewed. The same physician who reviews the plan of treatment must sign the recertification.

(c) Certification with respect to the medical and other health services described in § 405.231(c) and (k) is not required for such services furnished on or after June 30, 1968.

[FR Doc.75-243 Filed 1-3-75;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 74-WA-38]

TERMINAL CONTROL AREA

Proposed Alteration at St. Louis, Missouri

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the St. Louis, Mo., Terminal Control Area (TCA) by redefining certain lateral boundaries and floor altitudes in the vicinity of Webster Groves, Mo.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 601 E. 12th Street, Kansas City, Mo. 64106. All communications received on or before February 5, 1975 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

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

Flight beneath the 2,000-foot floor of the TCA south of the airport has proven restrictive to general aviation due to the height of TV antennas located in the Webster Groves area.

As a result of a general aviation meeting, the following changes to the TCA configuration are proposed as means of providing some relief to the user.

It is proposed to enlarge the Area C floor to include that area south of the Maryland Heights 097° radial presently located in Area B.

This action would release to the user an additional thousand feet of altitude in an area of considerable size.

In consideration of the foregoing, and for reasons stated in Docket No. 9880 (35 FR 7782), it is proposed to amend Part 71 of the Federal Aviation Regulations by amending the following to § 71.401(b) of Group III Terminal Control Areas.[1]

Area B: That airspace extending upward from 2,000 feet MSL to and including 8,000 feet MSL within a 10-mile radius of the St. Louis International Airport ASR Antenna excluding Area A previously described and the area within and underlying Area C hereinafter described.

Area C: That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL within a 15-mile radius of the St. Louis International Airport ASR Antenna, and that area which lies south of the Maryland Heights 097° radial which is contained within the 10-mile radius of the St. Louis International Airport ASR Antenna, excluding Areas A and B previously described, and the area within and underlying Area E hereinafter described.

[Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and sec 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).]

Issued in Washington, D.C., on December 26, 1974.

GORDON E. KEWER,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.75-30 Filed 1-3-75;8:45 am]

[14 CFR Part 71]

[Aispace Docket No. 74-SO-118]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Fort Myers, Fla., control zone and transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, P.O. Box 20636, Atlanta, Ga. 30320. All communications received February 5, 1975, will be considered before action is taken on the proposed amendment. No 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 light of comments received.

[1] Diagram of control area filed as part of the original.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 645, 3400 Whipple Street, East Point, Ga.

The Fort Myers control zone described in § 71.171 (40 FR 354) would be amended as follows:

"* * * VORTAC 126° * * *" and "* * * southeast * * *" would be deleted and "* * * VORTAC 062° * * *" and "* * * northeast * * *" would be substituted therefor.

The Fort Myers transition area described in § 71.181 (40 FR 441) would be amended as follows:

All after "southwest of the RBN;" would be deleted and "within 3.5 miles each side of Fort Myers VORTAC 062° radial, extending from the 8.5-mile radius area to 10 miles northeast of the VORTAC; within 3 miles each side of the 220° bearing from Tice RBN, extending from the 8.5-mile radius area to 8.5 miles southwest of the RBN." would be substituted therefor.

The proposed alterations are required to provide controlled airspace protection for IFR aircraft executing the new VOR RWY 23 Instrument Approach Procedure; revoke controlled airspace designated to protect IFR aircraft executing the VOR RWY 31 Instrument Approach Procedure, which is to be cancelled concurrent with the publication of the new procedure, and adjust controlled airspace designated to protect IFR aircraft executing VOR RWY 5 and 13 Instrument Approach Procedures.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in East Point, Ga., on December 24, 1974.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.75-186 Filed 1-3-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 74-GL-49]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Jacksonville, Illinois.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before February 5, 1975, 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 Regional Air Traffic Division Chief. 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.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A new instrument approach procedure has been developed for the Jacksonville Municipal Airport, Jacksonville, Illinois. Accordingly, additional controlled airspace is required to protect the procedure.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (39 FR 440), the following transition area is amended to read:

JACKSONVILLE, ILLINOIS

That airspace extending upward from 700 feet above the surface within a 5 mile radius of Jacksonville Municipal Airport (Latitude 39°46'30'' N., Longitude 90°14'15'' W.); within 3 miles each side of the 311° bearing from the airport, extending from the 5 mile radius area to 8 miles northwest of the airport; and within 3 miles each side of the 136° bearing from the airport, extending from the 5 mile radius area to 6 miles southeast of the airport.

(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 Des Plaines, Illinois, on December 12, 1974.

R. O. ZIEGLER,
Acting Director, Great Lakes Region.

[FR Doc.75-183 Filed 1-3-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 74-GL-43]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at New Castle, Indiana.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before February 5, 1975 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 Regional Air Traffic Division Chief. 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.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A new instrument approach procedure has been developed for the New Castle, Henry County Municipal, Sky Castle Airport, New Castle, Indiana. Accordingly, it is necessary to alter the New Castle transition area to adequately protect the aircraft executing this new instrument approach procedure.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (39 FR 440), the following transition area is amended to read:

NEW CASTLE, INDIANA

That airspace extending upward from 700 feet above the surface within 5 mile radius of the New Castle-Henry County Municipal, Sky Castle Airport (Latitude 39°52'35'' N., Longitude 85°19'35'' W.); within 3 miles each side of the 110° bearing from the airport, extending from the airport to 8 miles east.

(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 Des Plaines, Illinois, on December 12, 1974.

R. O. ZIEGLER,
Acting Director, Great Lakes Region.

[FR Doc.75-184 Filed 1-3-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 74-GL-50]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Deckerville, Michigan.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before February 5, 1975 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 Regional Air Traffic Division Chief. 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.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Two new instrument approach procedures have been developed for the Lamont Airport, Deckerville, Michigan. Consequently, it is necessary to provide controlled airspace protection for aircraft executing these new approach procedures by designating a transition area at Deckerville, Michigan.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (39 FR 440), the following transition area is added:

DECKERVILLE, MICHIGAN

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the Lamont Airport (Latitude 43°34'35'' N., Longitude 82°39'10'' W.); within 3 miles each side of the 076° bearing from the airport, extending from the 5.5-mile radius area to 8.5 miles east of the airport; within 3 miles each side of the 285° bearing from the airport, extending from the 5.5 mile radius area to 8.5 miles west of the airport.

(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 Des Plaines, Illinois, on December 12, 1974.

R. O. ZIEGLER,
Acting Director, Great Lakes Region.

[FR Doc.75-185 Filed 1-3-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 74-WA-31]

VOR FEDERAL AIRWAY

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would realign V-37 from Erie, Pa., to Ash, Ontario, Canada.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, Ill. 60018. All communications received on or before February 5, 1975 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the

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

The proposed amendment would realign V-37 from Erie, Pa., direct to Ash, Ontario, Canada.

Canada recently commissioned a VOR/DME installation at Ash, Ontario. The realignment of V-37 from Erie to Ash would improve air traffic control procedures for traffic serving Toronto, Ontario, Canada.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on December 26, 1974.

GORDON E. KEWER,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.75-187 Filed 1-3-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 74-GL-51]

VOR FEDERAL AIRWAY

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of V-170 Airway by the addition of a north alternate between Worthington, Minn., and Fairmont, Minn.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, Ill. 60018. All communications received on or before February 5, 1975 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

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

The proposed amendment would add V-170N from Worthington, Minn., to Fairmont, Minn., via the INT of Worthington 064°T (056°M) and Fairmont 285°T (278°M) radials.

The proposed alternate airway would decrease flight delays and ease traffic control in the immediate area.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on December 26, 1974.

GORDON E. KEWER,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.75-188 Filed 1-3-75;8:45 am]

[14 CFR Parts 21, 36]

[Docket No. 13243; Notice No. 74-39]

NOISE STANDARDS FOR PROPELLER DRIVEN SMALL AIRPLANES

Proposed Regulations Submitted to the FAA by the Environmental Protection Agency

This notice of proposed rule making contains proposed regulations submitted by the Environmental Protection Agency (EPA) to the Federal Aviation Administration (FAA) pursuant to § 611(c)(1) of the Federal Aviation Act of 1958, as amended by the Noise Control Act of 1972 (Pub. L. 92-574). Section 611(c)(1) of the Federal Aviation Act of 1958 provides that EPA shall submit to the FAA proposed regulations to provide such control and abatement of aircraft noise and sonic boom as EPA determines is necessary to protect the public health and welfare. That section also provides that the FAA "shall consider such proposed regulations submitted by EPA under this paragraph and shall, within thirty days of its submission to the FAA, publish the proposed regulations in a Notice of Proposed Rule Making." This Notice is published pursuant to this provision of law.

The EPA proposals contained herein would prescribe noise standards for the issue of normal, utility, acrobatic, transport, and restricted category type certificates for propeller driven small airplanes; prescribe noise standards for the issue of standard airworthiness certificates and restricted category airworthiness certificates for newly produced propeller driven small airplanes of older type designs; and prohibit "acoustical changes," in the type design of those airplanes, that increase their noise levels beyond specified limits.

More than a year prior to receiving these proposals from EPA, FAA issued a notice of proposed rule making covering the same aircraft (Notice 73-26, published in the FEDERAL REGISTER on October 10, 1973 (38 FR 28016)). Since then, the FAA has completed an exhaustive review of comments received in response to Notice 73-26 (including comments submitted by EPA for the regulatory docket), and, by the time that the EPA proposals contained herein were received, had prepared a final regulation covering the noise of propeller driven small airplanes. Since receiving the EPA proposals, the FAA has conducted a comparative study of the FAA regulatory concepts developed on the basis of Notice 73-26 and those now proposed by EPA. This study was conducted to determine whether promulgation of the FAA regulation at this time would in any manner commit the FAA to a course of action that would conflict with an objective review of the EPA proposals under the procedures prescribed in section 611(c) of the Federal Aviation Act of 1958. Based on this review, the FAA is confident that there is no provision of the EPA proposals that could not be adopted later, as an amendment to an FAA regulation based on notice 73-26, if justified on the basis of public participation and comment in response to the instant notice of proposed rule making. The FAA has also considered the importance of timely regulatory action to solution of the aircraft noise problem associated with propeller driven small airplanes. Considering the public need for rapid action and the fact that all of the provisions of the EPA proposals contained herein that are shown to be valid can be fully and objectively considered for subsequent FAA rule making, the FAA believes that it would be contrary to the public interest, and to the intent of the Noise Control Act of 1972, to delay the immediately available regulatory relief until the regulatory process prescribed in section 611(c) is completed anew with respect to the recent EPA proposals. Accordingly, the FAA is issuing its final regulation simultaneously with the issuance of this notice. As the preamble of that amendment states, the issuance of that amendment was coordinated with EPA, and while EPA does not concur in all respects in the substance of that amendment, it has no objection to its issuance at this time.

Interested persons are invited to participate in the making of the proposed rules 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 Chief Counsel, Attention: Rules Docket, AGC-24. Comments on the overall environmental aspects of the proposed rules are specifically invited. All communications received by the FAA on or before March 7, 1975, will be considered by the FAA Administrator before taking action upon the proposed rules. 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 FAA Rules Docket for examination by interested persons. EPA has also indicated that information copies of public comments may be sent to: Director, Standards and Regulations Division, Office of Noise Abatement and Control (AW-571), U.S. Environmental Protection Agency.

Pursuant to section 611(c) of the Federal Aviation Act of 1958, the FAA will hold one or more hearings with respect to the proposals contained in this notice. A separate notice of hearing will be published in the FEDERAL REGISTER in the near future. As required by section 611(c), these hearings will be held no later than March 7, 1975.

The following EPA opinions, conclusions, and proposed regulatory language are published verbatim as received by the FAA on December 6, 1974.

EPA PROPOSAL TO FAA

Under the requirements of section 7(a) of the Noise Control Act of 1972 (Pub. L. 92-574, 86 Stat. 1234) the Administrator of the Environmental Protection Agency conducted a study of aircraft and airport noise and submitted a report thereon to the Congress. (Report on Aircraft/Airport Noise, Senate Committee on Public Works, Serial No. 93-8, Aug. 1973). Under section 611 of the Federal Aviation Act, as amended by the Noise Control Act of 1972, the Administrator of the EPA is also required, not earlier than the date of submission of his report to the Congress, to submit to the Federal Aviation Administration proposed regulations to provide such control and abatement of aircraft noise and sonic boom (including control and abatement of aircraft noise through the exercise of any of the FAA's regulatory authority over air commerce or transportation or over aircraft or airport operations) as the Administrator of the EPA determines is necessary to protect the health and welfare. In accordance with the foregoing requirement, the EPA published in the FEDERAL REGISTER on February 19, 1974 (39 FR 6112), a notice of public comment period containing a synopsis of the proposed rules it is considering to achieve a satisfactory level of aircraft noise control and abatement for the protection of the public health and welfare.

The proposed rules and the type of control which each rule would implement are as follows:

Flight procedures noise control

(1) Takeoff procedures.
(2) Approach procedures.
(3) Minimum altitudes.

Source noise control

(4) Retrofit/fleet noise level.
(5) Supersonic civil aircraft noise.
(6) Modifications to Part 36 of the Federal Aviation Regulations.
(7) Propeller driven small airplanes.
(8) Short haul aircraft.

Airport operations noise control

(9) Airport goals, mechanisms and processes by which noise exposure of communities around airports can be limited to levels consistent with public health and welfare requirements.

This proposed rule, identified as Item (7), is one of the five whose purpose is to implement engineering noise control at the source. As proposed herein the EPA believes that the rule, if adopted, would control the noise of propeller driven small airplanes to levels as low as is consistent with safe technological capability, without (1) imposing unreasonable economic burdens on the users of those airplanes, (2) degrading the environment in any manner, and (3) any significant increase in fuel consumption. In substance, the proposed rule would provide for the following changes in the aircraft noise standards of Part 36 of the Federal Aviation Regulations.

(1) Noise standards for propeller driven small airplanes in the normal, utility, acrobatic, transport and restricted categories would be added to that Part. Agricultural and firefighting airplanes, however, would be excluded from the standards when operated in compliance with a current noise abatement flight plan.

(2) The noise evaluation requirement for the standards would be Effective Perceived Noise Level (EPNL) in units of EPNdB, as now required under Part 36 for transport category airplanes and turbojet powered airplanes.

(3) Compliance with the noise limits prescribed in this proposed rule would be achieved in the following stages based upon implementation of the current, available, and future noise control technology:

(a) *Current technology.* An application for a type certificate on or after the date of publication of NPRM 73-26 on October 10, 1973, would be subject to the current technology noise standards.

(b) *Available technology.* An application for a type certificate on or after January 1, 1975, would be subject to the available technology noise standards. These standards would also apply to an airplane of an older type design manufactured on or after January 1, 1977.

(c) *Future technology.* An application for a type certificate on or after January 1, 1980, would be subject to the future technology standards.

A. *Regulatory Background.* Part 36, "Noise Standards: Aircraft Type Certification," was effective on Dec. 1, 1969, (34 FR 18355), prescribing noise measurement, noise evaluation, and noise levels for the type certification, and changes to those certificates, for subsonic transport category airplanes, and for subsonic turbojet powered airplanes regardless of category. Although propeller driven small airplanes (as defined in Part 1 a small aircraft means an aircraft of 12,500 pounds or less, maximum certificated takeoff weight) have not created noise problems as severe as that of the turbojet or large transport category airplanes, it was deemed appropriate to take regulatory action to place limits on future noise impact from this segment of aviation. Accordingly, on October 9, 1973, the FAA issued NPRM 73-26 (38 FR 28016) proposing standards and simplified procedures for measuring the noise levels for propeller driven small airplanes in the normal, utility, acrobatic, transport, and restricted categories. However, in response to the invitation for comments to the NPRM, the EPA advised the FAA that it did not concur with some of the provisions of that proposal and recommended specific changes. The recommended modifications affect four elements of the proposed rule. They are, in general: (1) the noise evaluation measure, (2) the noise compliance levels, (3) the performance correction factor, and (4) the noise data sample size. The substance of these key issues may be summarized as follows:

(1) *Flight procedures.* A minimum of only four horizontal flights with maximum continuous power, at a height of 1,000 feet over a single noise measurement station would be required under NPRM 73-26 to demonstrate compliance with the proposed noise level requirements. The EPA has no objection to this simplified procedure for small airplanes, but believes that a minimum of six flights (as required in Part 36) is necessary to properly evaluate the noise output of an airplane regardless of the airplane size. A minimum of six noise data samples will yield more reliable averages and this change is incorporated herein.

(2) *Performance correction.* The EPA believes that the climb performance correction concept as proposed in NPRM 73-26 is reasonable, but needs minor corrections and an additional factor to account for difference between the aircraft test speed and the aircraft takeoff speed. A performance correction concept incorporating minor changes to the original concept plus a speed correction factor is recommended herein.

(3) *Noise evaluation measure.* NPRM 73-26 proposed that maximum A-weighted noise level (AL) in units of AdB should be used as the measure for type certification of aircraft noise. The EPA recommends that the use of Effective Perceived Noise Level (EPNL) in units of EPNdB be used, as is required for turbojet powered airplanes and transport category airplanes under the present provisions of Part 36 of the Federal Aviation Regulations and Annex 16 of ICAO. The use of EPNL as the noise evaluation measure is incorporated in this proposed rule.

(4) *Noise compliance levels.* The EPA believes that the noise level requirements to be achieved under NPRM 73-26 are not sufficiently representative of the safe and economical noise control that can be implemented by applications of current and available technology. Furthermore, modifications are necessary to properly reflect the achievements that can be accomplished by applications of future technology.

As used here, current technology includes "shelf item" hardware and commonly known techniques and procedures that have been used effectively by some manufacturers. Available technology represents the results of research and development that have not been put into common practice but are available for implementation. Some performance testing may still be necessary, but reliability and effectiveness has been demonstrated in the laboratory and on model and full scale tests. Future technology represents the results of research now in progress that have not been fully tested but the results to date indicate high potential to a reasonable degree of confidence.

B. *References.* In the development of this proposed rule the EPA conducted its own studies and evaluated several pertinent studies made by other Federal agencies and private contractors. Those studies are listed herein for the information of all interested persons and are available for examination at the FAA Rules Docket Office, GC-24, 800 Independence Avenue SW., Washington, D.C. 20590, or the Environmental Protection

Agency, Office of Noise Control Programs, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, Va. 20460. Copies of these studies prepared by Government Agencies are also for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(1) "Aircraft Noise," Annex 16 to the Convention on International Civil Aviation, International Standards and Recommended Practices, International Civil Aviation Organization (ICAO), Amendment Number 2, April 1974.

(2) "Subjective Evaluation of General Aviation Aircraft Noise," FAA Report FAA-NO-68-35, April 1968.

(3) "Comparisons Between Subjective Ratings of Aircraft Noise," FAA Report FAA-NO-68-33, April 1968.

(4) "Aircraft Noise Evaluation," FAA Technical Report, FAA-NO-68-34, September 1968.

(5) "The Effects of Temporal and Spectral Combinations on the Judged Noisiness of Aircraft Sounds," FAA Report FAA-NO-69-3, June 1969.

(6) "Conference on STOL Transport Aircraft Noise Certification," FAA Report FAA-NO-69-1, 30 January 1969.

(7) "Effective Perceived Noise Level Evaluated For STOL and Other Aircraft Sounds," FAA Report FAA-NO-70-5, May 1970.

(8) "Report on Aircraft/Airport Noise," Report of the Administrator of the Environmental Protection Agency in Compliance with Pub. L. 92-574, Senate Committee on Public Works, Serial No. 93-8, August 1973.

(9) "Impact Characterization of Noise Including Implications of Identifying and Achieving Levels of Cumulative Noise Exposure," Report of Task Group 3, EPA NTID 73.4, 27 July 1973.

(10) "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety", EPA Technical Document No. 550/9-74-004, March 1974.

(11) "Noise Source Abatement Technology and Cost Analysis Including Retrofitting", Report of Task Group 4, EPA NTID 75.5, 27 July 1973.

(12) "Noise Levels of Propeller Driven Light Aircraft", Table 2, Working Paper No. 11, Second Meeting of the Committee on Aircraft Noise (CAN), International Civil Aviation Organization (ICAO), Federal Republic of Germany, January 1971.

(13) "Results of Noise Surveys of Seventeen General Aviation Type Aircraft", FAA Report FAA-EQ-73-1, December 1972.

(14) "Measurement and Analysis of Noise From Seventeen Aircraft in Level Flight (Military, Business Jet, and General Aviation)", FAA-RD-71-98, November 1971.

(15) "Progress Report on Quiet Propulsion", M.I.T. Summer Workshop on Low/Medium Density Air Transportation, 9 August 1973.

(16) "New Low Pressure Ratio Fans for Quiet Business Aircraft Propulsion", S.A.E. Business Aircraft Meeting, Wichita, Kansas, 3-6 April 1973.

(17) "Advanced V/STOL Propeller Technology; Far-Field Noise Investigation", Air Force Flight Dynamics Laboratory, Technical Report AFFDL-TR-88, Vol. XIII, December 1971.

C. *Introduction.* As previously stated, the rules proposed herein are based primarily upon recommendations submitted by the EPA pursuant to the mandates of section 611 of the Federal Aviation Act. It is to be noted that these rules parallel, in many respects, the provisions contained in the FAA NPRM 73-26. However, since they contain differences from that NPRM in regard to the key elements of noise evaluation measures, noise compliance levels, performance correction, and flight procedures, each of these elements is discussed herein under a separate heading.

Initially, it is to be noted that those rules do not apply to rotorcraft, balloons, dirigibles, or gliders since those aircraft are not classified as airplanes. Agricultural and firefighting airplanes would also be excepted under certain conditions from the proposed noise limit levels. The retrofit of existing airplanes would not be required. Only those airplanes manufactured in the future would be required to be noise controlled under the rule as proposed.

The EPA believes that the noise standards proposed herein will prevent an escalation of noise from propeller driven small airplanes, substantially reduce the noise for continued production of many existing models, and set standards for original type certification of future airplanes; all of which will assist in the protection of the public health and welfare from aircraft generated noise.

D. *Flight procedures.* Under NPRM 73-26, the three point (sideline, takeoff and approach) noise certification procedure prescribed in Appendix C of Part 36 would be replaced with a single point, level flight procedure at maximum continuous power. This simplified flight procedure would require a minimum of only four level flights over the measuring station at a height of 1,000 feet ±30 feet and ±10 degrees from the zenith when passing overhead.

The EPA believes that an aircraft certification concept should have two principal objectives. First, it should require that the latest state of the art of technologically practicable and economically reasonable noise control is utilized. Second, it should provide baseline noise levels suitable for use by airport and community planners and architects in planning airports, determining noise compatible land usage, and designing noise insulated structures. The ideal way of achieving those objectives would be to conduct sufficient noise measurements to be able to construct equal noise level contours for all of the potential operating modes of the aircraft. In lieu of the ideal, three strategically located noise certification measuring points are necessary and sufficient to define a rectangular boundary or box which would contain an equal noise level contour. Ordinarily a noise certification procedure that has less than three points will not provide adequate information to make a judgment as to whether the airframe and power plant combination is optimally matched for minimum noise exposure. However, if the particular aircraft has operational or noise characteristics wherein either one operational mode provides the major source of noise and the others are relatively minor, or the noise control devices or procedures effective for the major operational noise mode are equally effective for all the modes; then simpler test procedures may be adequate. The EPA believes that the propeller driven small airplane has such characteristics, and for those reasons (not those stated in NPRM 73-26) the simpler flight procedures would be acceptable.

Another important operational procedure to be considered is the choice of maximum continuous power instead of takeoff power. Takeoff power is very close to maximum continuous power in terms of noise generation, and for many of the small airplanes it is the same. Furthermore, takeoff power is used, when available, for a relatively short portion of the climb path. After clean up (landing gear and flaps) the airplane is operated at maximum continuous power. Consequently, the use of maximum continuous power in a horizontal flight procedure would also be acceptable, especially since takeoff power, when available, is extremely functional (getting the airplane off the ground) and is used for relatively short periods of time.

Notwithstanding its acceptance of the foregoing flight procedures, the EPA points out that a level flight procedure is deficient since it does not indicate (as a three-point procedure would) whether the airframe and power plant combination is optimally matched for minimum noise exposure on the ground while climbing. To correct this deficiency the EPA recommends that performance correction factors including one such as proposed in NPRM 73-26 (with certain minor changes) and another to account for differences in test and takeoff speeds be used to correct the measured data. These factors are more fully discussed in paragraph E, below.

Although it is difficult to precisely predict the exact number of test flights needed over a measuring station to make a proper evaluation of a particular type of airplane, the EPA believes that there is no evidence to indicate that the minimum of six flights now required under Part 36 should be reduced because a simplified flight procedure is used. Accordingly, the procedures proposed herein would require a minimum of six flights over the noise measuring station.

E. *Performance Correction.* A measure of the capability of an airplane to expose communities beyond the end of the takeoff runway to noise in excess of a specified level, is the land area contained within the boundary of the noise contour. (An equal noise contour is the locus of points on the ground which are exposed to a particular level of noise.) The size of the contour area is dependent upon both the noise energy and the climb performance of the aircraft. The noise energy generated will be constant for a given engine power setting (such as takeoff or maximum continuous) but the noise radiated to the ground will also be dependent upon the climb path. At a given point on the extended centerline of the runway, the steeper the climb, the higher the airplane, and the lower the noise level.

The simplified horizontal flight noise certification procedure of the type proposed in NPRM 73-26, by itself, will not provide sufficient information to make a judgment on the relationship between airplane climb performance and noise exposure on the ground. For example, two airplanes with the same power plant would be expected to produce about the same noise level over the measuring station at a height of 1,000 feet, even though the total weight of one may be substantially greater than the other. However, the higher performance airplane (greater horsepower/weight ratio) would be expected to have the capability to produce smaller contour areas and, hence, less community noise degradation.

To compensate for this deficiency in the simple flyover certification procedure, as compared with the three point procedure contained in Appendix C of Part 36, NPRM 73-26 provides a "performance correction methodology" intended to penalize airplanes with poor climb performance. As stated in the preamble to that notice, the proposed correction "reflects the importance of good climb performance in removing the airplane as a noise source from the airport environs as rapidly as possible". As proposed in that notice the climb performance correction factor would be computed by using the following formula:

$$C = 60-20 \log [(11430-D50)\ (R/C)/VY +50] \quad (1)$$

Where: C is the correction that must be added algebraically to the measured values but limited to ± 5 dB; D50 is the takeoff distance in feet to a point at which the airplane is at a height of 50 feet at maximum certificated takeoff weight; R/C is the certified best rate of climb in feet per minute; and VY is the airplane speed in feet per minute corresponding to the best rate of climb. When D50 is not listed as approved performance information, it must be taken as 1,375 and 1,600 feet for single engine and multi-engine airplanes, respectively.

The EPA believes that a climb performance correction factor proposed in NPRM 73-26, is a sound concept and with the minor changes proposed herein could be converted into a regulatory requirement which will insure that all future types of propeller driven small airplanes have climb capability and therefore community noise reduction capability at least as good as the best of the existing types.

The climb performance correction factor, however, can be made more meaningful with only a very slight change. It can be made to yield a noise incremental value which, when added algebraically to the measured noise level at 1,000 feet, approximates the noise level at a specified reference distance from brake release, assuming a normal climb.

The reference distance assumed in Equation (1) is 11,430 ft. which has no apparent significance, except possibly a poor approximation to the reference distance of 3,500 meters proposed by the International Civil Aviation Organization (ICAO) in Annex 16 (Reference 1). The concept of a reference distance is a good one because it can provide useful information for planning purposes. The particular distance, however, is not too important. Therefore, the EPA recommends that the reference distance be rounded off to 11,500 feet, which is a closer approximation of the 3,500 meters used by ICAO. This is a very slight modification that would change the correction values only a small fraction of a decibel from those computed by means of Equation (1). The revised formula is given in the following Equation (2) and plotted in attached Figure 1.

$$C=60-20 \log [(11,500-D50) \sin a+50] \quad (2)$$

Where: $= \arcsin [(R/C)/VY]$.

All airplane manufacturers should be encouraged to list the takeoff distance at maximum certificated weight from brake release to a point on the ground at which the airplane will clear an obstacle of 50 ft. in height (D50). Those manufacturers that do not choose to list this distance would be required by NPRM 73-26 to use 1,375 ft. for single engine airplanes and 1,600 ft. for multi-engine airplanes. The EPA believes that those distances are too liberal and may encourage manufacturers of low performance airplanes to choose not to list the D50 distances. Therefore, in order to encourage the manufacturers to determine climb performance correction factors based upon actual performance characteristics, the distances should be increased to 2,000 feet for single engine airplanes and 3,000 feet for multi-engine airplanes as plotted in Figure 1.

Also it is noted that the aircraft under test conditions (horizontal flight, maximum continuous power at 1,000 feet height above the test site) can be expected to fly-over the test site at a speed greater than the takeoff, climb speed. Therefore, the duration of the sound, a factor to be considered in human subjective reaction to noise, would be less under test conditions than the duration of the sound experienced under or alongside the climb path. In order to make a proper assessment of the noise measured under the simplified test conditions, the noise level corrected for climb performance must be further corrected to account for the change in speed which results in a change in noise duration. The speed correction factor appropriate for this purpose is:

$$S=10 \log VH/VY, \text{ where;}$$

VH = maximum speed in horizontal flight with maximum continuous power of maximum test speed in horizontal flight over the noise measuring point averaged for all test flights, whichever is greater, fpm, VY = best rate of climb speed at maximum takeoff weight, fpm, and S = a correction factor to be added algebraically to the measured noise level, decibels.

Thus the total correction formula, including the climb performance factor and the test speed correction factor is proposed to be:

$$P=C+S, \text{ or}$$

$$P=60-20 \log [(11,500-D50) \sin a+50]+ 10 \log (VH/VY). \quad (3)$$

F. *Noise Evaluation Measure.* The primary element in any procedure for certificating noise sources is the evaluation measure upon which the criteria is based. Aircraft noise signatures, which are the most intricate of the common noise sources, involve such complex interrelated spectral, temporal, and spatial functions of sound pressure that the search for a single number noise evaluator has been long and difficult. The end result to date, considered the best state of the art by the scientific community is Effective Perceived Noise Level (EPNL) (References (2) through (7), above). Simply stated, EPNL consists of instantaneous Perceived Noise Level (PNL) corrected for the presence of the maximum tone and the flyover duration. Both PNL and the A-weighted Level (AL) are methods for weighting the noise spectrum by deemphasizing the low and emphasizing the high frequency contributions. However, AL provides more suppression for the low and less amplification for the high frequencies than does PNL. Consequently, AL is less stringent in rating noise than is PNL, and therefore less effective in controlling noise, even before tone and duration corrections are added to PNL to form EPNL.

Most propeller driven small airplanes operating today have minimal high frequency noise content, contain only low frequency tones that would require about the same tone correction (one or two decibels at most), and have about the same noise duration time. On the surface, it appears as though it is not very important whether EPNL or AL is used for evaluating these current aircraft types because the compliance levels, in terms of either measure, could be adjusted to adequately control the noise. However, an analysis of the effects of various noise weighting factors on the noise signatures of this type of aircraft indicates that the use of the A-weighted measure, because of the massive de-emphasis of the low frequency components of the noise, may actually discourage noise reduction of propeller and engine noises. In addition, it is important that the noise evaluator chosen for a certification be versatile in the sense that it not only recognizes the annoyance effects (or any other health and welfare effects) for current aircraft, but is available (and capable of modification or refinement) for potentially obnoxious noise of future aircraft. EPNL is such a unit; not complete and not exact, but the best available at the present time. Furthermore, it is not too complex for use with modern electronic computational equipment and will be allowed, when desired and requested, by member states in international agreements (Reference 1, above).

The concept or rationale for maintaining two different aircraft noise measures (one for certification and one for community exposure or monitoring) was considered in depth by the EPA (References 8, 9 and 10, above). In the report to Congress (Reference 8), the EPA recommended a cumulative noise exposure measure which is based upon AL with the following caveat:

The use of an A-weighted sound level precludes the assessment of penalties for the

existence of tones in the noise in the interest of simplifying the measure procedure. When appropriate, penalties for tones and other subjective attributes should be made in source regulations such as FAR 36.

In reference to the problem of choosing an appropriate noise measure that would evaluate the subjective effects of tone and other signature components, the report of EPA Task Group 3 in Reference (10), above, made the following pertinent conclusion:

After consideration of this problem, the Task Group concluded that the presence of a tone penalty in certification procedures effectively encourages a manufacturer to minimize tones in the sound of aircraft. Thus, certification requirements will minimize the need to consider tones in an environmental noise measure, so long as tonal effects are properly considered under source certification.

Neglecting these characteristics in the proposed measure makes their control by other means necessary (emission/certification standards).

The absence of a pure tone penalty in the basic measure for average sound level . . . is based on the assumption that pure tone components are primarily to be controlled by noise emission control standards. As long as such standards are not effective or in cases where, for technical or other reasons, significant pure tones remain, it is advisable to consider them in the detailed prediction/land use planning procedure. . . .

If tones or other aircraft noise signature anomalies are not evaluated and controlled by noise certification standards, then simplified measures using the A-weighted noise level will not be effective for use in environmental cumulative noise exposure methodologies and monitoring procedures. In that event, the EPA believes that other, more complex, methodologies such as noise exposure forecast (NEF) will be necessary to insure maximum protection to the public health and welfare.

The EPA has devoted considerable effort in a thorough study and analysis of the various noise evaluation measures. As a result of these studies, the noise evaluation measure proposed herein is Effective Perceived Noise Level (EPNL). This measure, now required in Part 36 for transport category (including large propeller driven airplanes) and turbojet powered airplanes, would also apply to propeller driven small airplanes. The procedure in Appendix B of Part 36 would remain as the standard for converting the measured noise into EPNdB.

G. *Noise Compliance Limits.* Under NPRM 73-26, Appendix F of Part 36 would be amended to require measured noise levels corrected for climb performance of propeller driven small airplanes to comply with the following noise limits and related effective dates:

1. *Type certificate application on or after 10 October 1973.*

(a) 68 AdB up to airplane weights of 1,300 lbs.

(b) 1 dB/165 lbs. up to 82 AdB at 3,630 lbs.

(c) 82 AdB up to and including 12,500 lbs.

2. *Type certificate application on or after 1 January 1975.*

(a) 68 AdB up to airplane weights of 1,320 lbs.

(b) 1 dB/165 lbs. up to 80 AdB at 3,300 lbs.

(c) 80 AdB up to and including 12,500 lbs.

3. *New airplanes on or after 1 January 1980.*

Airplanes with no flight time, regardless of date of application of type certificate, would comply with the noise limits specified in paragraph 1, above.

The attached Figure 2, which compares the compliance noise levels proposed in NPRM 73-26 with a wide variety of existing propeller airplanes, clearly indicates that the compliance levels do not represent the quieter airplanes. As a matter of fact, a large number of the existing propeller driven small airplanes are capable of producing significantly lower noise levels than those proposed for future types in NPRM 73-26. This, in spite of the fact that the Noise Control Act of 1972 requires aircraft noise regulations to protect the public health and welfare by decreasing or controlling the noise emissions to the highest degree possible within the regulatory constraints of safety, economics, and technology.

The attached Figure 3 shows the compliance levels of this proposal compared with those of NPRM 73-26; there is an 11-dB numerical difference between the two. The upper compliance level shown in Figure 3 is 93 EPNdB which is the Part 36 requirement for all turbojet and large propeller airplanes up to 75,000 pounds maximum weight. There is no reason why propeller driven small airplanes of 12,500 pounds or less, maximum certificated takeoff weight, should be permitted to exceed that level. It must be clearly understood that the compliance levels for the propeller driven small airplanes refer to a 1,000 ft. horizontal flyover, while the Part 36 levels refer to a measuring point 3.5 nautical miles from brake release. However, for many large turbojets and propeller driven large airplanes, the height above the measuring point will be between 700 and 1,500 feet, or close enough to 1,000 ft. to make reasonable comparisons.

In addition to the foregoing current technology, considerable research effort is in progress on the development of quiet propeller propulsion systems and the results indicate that safe and economical technology should be available, some in the near future and a great deal more by 1980 (Reference Nos. 11 through 17 listed above). Accordingly, the EPA recommends adoption of lower noise compliance levels for future technology standards. In this respect, the EPA assumes that those airplanes shown in Figure 2 with the lowest noise levels have utilized all or at least some of the available noise control technology (engine covers, mufflers, reduced propeller tip speed, increased propeller efficiency, etc.) to achieve those levels. In addition, it may also be assumed that those airplanes meet the appropriate airworthiness standards of the state of registry and are competing economically in the marketplace with other propeller driven small airplanes with higher noise levels. Since those airplanes more properly reflect the requirements of the Noise Act, the lower noise levels which they have achieved should be used to the extent practicable as the starting point, or upper limit, for future propeller driven small airplanes.

The attached Figure 4 illustrates the noise compliance levels proposed in this rule for current, available, and future noise technologies and are proposed to be applied as follows:

(1) *Current.* For propeller driven small airplane type designs for which an application for a type certificate is made from October 10, 1973, to January 1, 1975, inclusive, the noise level must not exceed 79 EPNdB for airplane weights up to and including 1,320 pounds. The noise level limit increases from 79 EPNdB at a rate of 1 EPNdB/165 pounds of weight in excess of 1,320 pounds for airplane weights greater than 1,320 pounds, up to and including 3,630 pounds. However, the noise level limit remains constant at 93 EPNdB for airplane weights of 3,630 pounds or more, up to and including 12,500 pounds.

(2) *Available.* For propeller driven small airplane type designs for which an application for a type certificate is made from January 2, 1975, to January 1, 1980, inclusive, and for newly produced propeller driven small airplanes manufactured on or after January 2, 1977, the noise level must not exceed 79 EPNdB for airplane weights up to and including 1,320. The noise level limit increases from 79 EPNdB at a rate of 1 EPNdB/165 pounds of weight in excess of 1,320 pounds for airplane weights greater than 1,320 pounds, up to and including 3,300 pounds. However, the noise level limit remains constant at 91 EPNdB for airplane weights of 3,300 pounds or more, up to and including 12,500 pounds.

(3) *Future.* For propeller driven small airplane type designs for which an application for a type certificate is made on or after January 2, 1980, the noise level limit is prescribed by the following formula:

$$EPNL = 89 - 15 \log (12.5/W)$$

Where: W = airplane maximum certificated takeoff weight in thousands of pounds.

H. *Economic Considerations.* As previously stated, aircraft noise control regulations must provide protection to the public health and welfare to the highest degree possible within the regulatory constraints of safety, economics and technology. Accordingly, the EPA believes that those regulations are expected to reflect the current and future state of the art of safe technology without a prohibitive impairment of aircraft performance in regard to range, payload, field length, etc. Regulations based upon the foregoing policy are needed to insure that future community noise due to the

operation of propeller driven small aircraft will be reduced to the lowest feasible levels and smallest practical areas commensurate with the state of the art.

As proposed, these rules will not require a retrofit of existing propeller driven small airplanes. However, the rules would prohibit any acoustical changes to those airplanes that would increase noise. Additional costs to the aircraft manufacturers for the inclusion of the existing "off the shelf" noise reduction technology into newly designed airplanes, in some cases, may mean only the cost of the addition of mufflers; in others it may mean the cost of decreasing the propeller tip speed and changing or adding propeller blades. In some cases, it may also mean new design changes or the redesign of muffler and exhaust systems and propellers. In the case of turbocharged engines for which mufflers are not feasible, perhaps smaller diameter, more efficient propellers may be appropriate. An additional cost would also be incurred by the manufacturer for the aircraft type certification of the particular airplane in accordance with the procedures and standards proposed in this notice.

It is estimated that the cost of the type certification and the modifications needed for compliance with his proposal would range from $300 to $2,500 depending upon the type of airplane and the production run. This increase for an airplane ranging in price from $14,000 to $25,000 appears economically reasonable for the reduced noise benefits to be derived. In this regard, the EPA believes that the existing noise reduction technology included on some airplanes has not had a detrimental impact on the competitiveness of such airplanes.

Although it further appears that, in some cases, compliance with the noise standards contained in this proposal could result in a fuel consumption penalty, the penalty should be minor.

I. *Proposed amendments.* Many of the amendments required for the implementation of this proposal are similar to those proposed in NPRM 73-26. The principal elements of the proposal as they appear in these amendments are summarized for convenient reference. However, in order to avoid any misunderstanding, the language of each amendment to the Federal Aviation Regulations is repeated in its entirety.

1. *Part 36.* (a) The noise evaluation measure for propeller driven small airplanes would be Effective Perceived Noise Level, EPNL, in units of EPNdB as presently required in Appendix B for large transport category airplanes and turbojet powered airplanes regardless of category.

(b) The aircraft noise evaluation procedures presently required in Appendix B would remain the standard for converting the noise measured into EPNdB units.

(c) A single point level flight noise certification procedure at maximum continuous power as proposed in NPRM 73-26 is also proposed in this notice. However, a performance correction factor as proposed in Part C of Appendix F would be required and a minimum of six (not four as proposed in NPRM 73-26) level flights would be required for the tests.

(d) The noise compliance levels and the effective dates for their implementation would be changed to conform with current, available and future technology in the following manner:

(1) Current technology as prescribed in proposed § F36.301(b) and depicted in the attached Figure 4 would apply to all type certificate applications filed on or after October 10, 1973.

(2) Available technology as prescribed in § F36.301(c) and depicted in the attached Figure 4 would apply to all type certificate applications filed on or after January 2, 1975, and to newly produced airplanes of older type design manufactured on or after January 2, 1977.

(3) Future technology as prescribed in § F36.301(d) and depicted in the attached Figure 4 would apply to all type certificate applications filed on or after January 2, 1980.

2. *Subpart F.* As proposed herein a new Subpart F would also be added to Part 36 to prescribe noise limits for propeller driven small airplanes. The technical details of the proposed noise standards would be placed in a new Appendix F and made mandatory by a reference in proposed § 36.501 of the subpart.

Paragraph (c) of § 36.501 would, as proposed in NPRM 73-26, also except agricultural and firefighting airplanes from the noise limit requirements of Part D of Appendix F, but not the noise measurement and correction requirements needed to furnish noise levels under § 36.1501. An airplane excepted from the foregoing requirement would be required, however, to have a noise abatement operating limitation issued for it under proposed § 36.1583(c). This requirement would ensure that the exception of those airplanes from the noise requirements does not create a class of noise-exempt airplanes and thus defeat the purpose of the exception.

The remaining provisions of the new Subpart F as proposed in NPRM 73-26 and for the reasons stated therein are included in this proposal.

3. *Appendix F.* As proposed in NPRM 73-26, an Appendix F to Part 36 would contain the detailed noise measurement, data correction, and noise limit requirements for propeller driven small airplanes. As distinguished from the provisions in NPRM 73-26, however, § F36.-109 of the Appendix proposed herein would not provide for deviations in the data recording, reporting and approval requirements to reflect the use of the A-weighted level since EPNL would be the unit of measurement.

Proposed § F36.111 would require at least six level flights over the measuring station instead of 4 flights as proposed in NPRM 73-26.

Part C of the Appendix F proposed herein would contain a revised correction formula recommended by the EPA to compensate for the simplified flyover procedures for propeller driven small airplanes authorized in this proposal.

The noise levels proposed in § F36.301 would be based upon three categories of noise technology and would be applicable to all propeller driven small airplanes, except as provided in Subpart F for agricultural and firefighting airplanes. The noise levels for each category are also graphically depicted (Figure 4).

4. *Part 21.* It is to be noted that as proposed herein a new § 21.93(b)(3) would also be used to classify the changes in the type design of a propeller driven small airplane which would constitute an "acoustical change" in addition to a minor or major change in the type design. As distinguished from turbojet powered and large transport category airplanes, acoustical changes for propeller driven small airplanes would be expressly limited to such changes as a change to or removal of a muffler or other components designed for noise control. The remaining procedural amendments to Part 21 support the substantive amendments proposed in Part 36 and Appendix F to that Part. Since they do not differ from those contained and discussed in NPRM 73-26, any further discussion of those amendments appears repetitive and unnecessary.

(Sec. 313(a), 601, 603, 604, and 611, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1424, 1431, and 1434 as amended by the Noise Control Act of 1972 (Pub. L. 92-574); sec. 6 (c), Department of Transportation Act (49 U.S.C. 1655(c)); Title I, National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); Executive Order 11514, March 5, 1970.)

In consideration of the foregoing, it is proposed to amend Parts 21 and 36 of the Federal Aviation Regulations as follows:

A. Part 21 of the Federal Aviation Regulations would be amended as follows:

1. Section 21.17(a) (Introductory clause) would be amended to read as follows:

§ 21.17 Designation of applicable regulations.

(a) Except as provided in § 25.2 and in Part 36 of this Chapter, an applicant for a type certificate must show that the aircraft, engine, or propeller concerned meets—

* * * * *

2. Section 21.25(a) (Introductory clause) would be amended to read as follows:

§ 21.25 Issue of type certificate: restricted category aircraft.

(a) An applicant is entitled to a type certificate for an aircraft in the restricted category for special purpose operations if he shows compliance with the applicable noise requirements of Part 36 of this Chapter, and if he shows that no feature or characteristic of the aircraft makes it unsafe when it is operated under the limitations prescribed for its intended use, and that the aircraft—

* * * * *

3. Section 21.93(b) would be amended to read as follows:

§ 21.93 Classification of changes in type design.

* * * * *

(b) For the purpose of complying with Part 36 of this chapter, any voluntary change in the type design of an airplane that may increase the noise levels of that airplane is an "acoustical change" (in addition to being a minor or major change as classified in paragraph (a) of this section) for the following airplanes:

(1) Subsonic transport category large airplanes.

(2) Subsonic turbojet powered airplanes (regardless of category).

(3) Propeller-driven small airplanes in the normal, utility, acrobatic, transport, and restricted categories (except for airplanes that are designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1966, or for dispensing fire fighting materials, and for which the operating limitation prescribed in § 36.-1583(c) of this chapter is issued). For those airplanes, "acoustical changes" are limited to the following type design changes:

(i) Any change to, or removal of, a muffler or other component designed for noise control; and

(ii) Any change to, or installation of, a power plant or propeller that increases maximum continuous power or thrust at sea level, or increases the propeller tip speed at that power or thrust, over that previously approved for the airplane.

4. Section 21.101(a) (Introductory clause) would be amended to read as follows:

§ 21.101 Designation of applicable regulations.

(a) Except as provided in § 25.2 and Part 36 of this chapter, an applicant for a change to a type certificate must comply with either—

* * * * *

5. Section 21.115 (section heading and paragraph (a)) would be amended to read as follows:

§ 21.115 Applicable requirements.

(a) Each applicant for a supplemental type certificate must show that the altered product meets applicable airworthiness requirements as specified in paragraphs (a) and (b) of § 21.101 and, in the case of an acoustical change described in § 21.93(b), show compliance with the applicable noise requirements of § 36.1(c) of this chapter.

* * * * *

6. Section 21.183 would be amended by redesignating paragraph (e) as paragraph (e)(1) and adding a new paragraph (e) and (e)(2) to read as follows:

§ 21.183 Issue of standard airworthiness certificates for normal, utility, acrobatic, and transport category aircraft.

* * * * *

(e) *Noise requirements.* Notwithstanding all other provisions of this section, the following must be complied with for the issuance of a standard airworthiness certificate:

(1) * * *

(2) For normal, utility, acrobatic, or transport category propeller driven small airplanes that have not had any flight time before the applicable date specified in Part 36 of this chapter, no standard airworthiness certificate is originally issued under this section unless the applicant shows that the type design complies with the applicable noise requirements of Part 36 of this chapter in addition to the applicable airworthiness requirements in this section. For import aircraft compliance with this paragraph is shown if the country in which the aircraft was manufactured certifies, and the Administrator finds, that the applicable requirements of Part 36 of this chapter (or the applicable aircraft noise requirements of the country in which the aircraft was manufactured and any other requirements the Administrator may prescribe to provide noise levels no greater than those provided by compliance with the applicable requirements of Part 36 of this chapter) and paragraph (c) of this section are complied with. This subparagraph does not apply to airplanes that are designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1966, or for dispensing fire fighting materials, and for which the operating limitation prescribed in § 36.1583(c) of this chapter is issued.

7. Section 21.185 would be amended by adding a new paragraph (d) to read as follows:

§ 21.185 Issue of airworthiness certificates for restricted category aircraft.

* * * * *

(d) *Noise requirements.* For propeller-driven small airplanes (except airplanes designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1966, or for dispensing fire fighting materials, and for which the operating limitation prescribed in § 36.1583(c) is issued) that have not had any flight time before the applicable date specified in Part 36 of this chapter, and notwithstanding the other provisions of this section, no original restricted category airworthiness certificate is issued under this section unless the Administrator finds that the type design complies with the applicable noise requirements of Part 36 of this chapter in addition to the applicable airworthiness requirements of this section. For import aircraft, compliance with this paragraph is shown if the country in which the aircraft was manufactured certifies, and the Administrator finds, that the applicable requirements of Part 36 of this chapter (or the applicable aircraft noise requirements of the country in which the aircraft was manufactured and any other requirements the Administrator may prescribe to provide noise levels no greater than those provided by compliance with the applicable requirements of Part 36 of this chapter) and paragraph (c) of this section are complied with.

3. Section 21.257 would be amended to read as follows:

§ 21.257 Type certificates; issue.

An applicant is entitled to a type certificate for a product manufactured under a delegation option authorization if the Administrator finds that the product meets the applicable airworthiness and noise requirements (including applicable acoustical change requirements in the case of amended type certificates).

9. A new § 21.451(d) would be added to read as follows:

§ 21.451 Limits of applicability.

* * * * *

(d) Notwithstanding any other provision of this subpart, no supplemental type certificate involving the acoustical change requirements of Part 36 of this chapter may be issued until the Administrator finds that those requirements are met.

B. Part 36 of the Federal Aviation Regulations would be amended as follows:

1. Section 36.1 would be amended to read as follows:

§ 36.1 Applicability.

(a) This part prescribes noise standards for the issuance of type certificates and changes to type certificates, and for the issuance of certain airworthiness certificates, for the aircraft specified in paragraph (b) of this section.

(b) In addition to the applicable airworthiness requirements of this chapter, the following provisions of this part must be complied with by each person who applies under Part 21 of this chapter for the issuance of the following certificates:

(1) This subpart, and Subparts B, C, and G of this part must be complied with for the issuance of type certificates for subsonic transport category large airplanes and subsonic turbojet powered airplanes regardless of category.

(2) Each person who applies for the original issue of Standard Airworthiness Certificates under § 21.183, must, regardless of date of application, show compliance with this Part (including Appendix C), as effective on December 1, 1969, for airplanes that have not had any flight time before—

(i) December 1, 1973, for airplanes with maximum weights greater than 75,000 lbs., except for airplanes that are powered by Pratt and Whitney Turbo Wasp JT3D series engines;

(ii) December 31, 1974, for airplanes with maximum weights greater than 75,000 lbs. and that are powered by Pratt and Whitney Turbo Wasp JT3D series engines; and

(iii) December 31, 1974, for airplanes with maximum weights of 75,000 lbs. and less.

(3) This subpart, and Subparts F and G of this part must be complied with for the issuance of—

(i) Type certificates for propeller driven small airplanes in the normal, utility, acrobatic, transport, and restricted categories; and

(ii) Standard airworthiness certificates and restricted category airworthiness certificates for propeller-driven small airplanes.

(c) Each person who applies under Part 21 of this chapter for an approval of an acoustical change described in § 21.93(b) of this chapter must show that the airplane meets the following requirements in addition to the applicable airworthiness requirements of this chapter:

(1) For subsonic transport category large airplanes and turbojet powered airplanes that can achieve the applicable noise limits prescribed in Appendix C of this part (or lower noise levels) prior to the change in type design, that appendix must be complied with. For airplanes that cannot achieve the applicable noise limits prescribed in Appendix C of this part prior to the change in type design, the noise levels created by the airplane prior to the change in type design, measured and evaluated as prescribed in Appendices A and B of this part, may not be exceeded.

(2) On or after January 2, 1975, for propeller-driven small airplanes in the normal, utility, acrobatic, transport, and restricted categories that can achieve the applicable noise limit prescribed in Appendix F of this part (or a lower noise level) prior to the change in type design, that limit may not be exceeded. For airplanes that cannot achieve the applicable noise limit prescribed in Appendix F of this part prior to the change in type design, the noise level created by the airplane prior to the change in type design, measured and corrected as prescribed in Parts B and C of Appendix F, may not be exceeded. For the purpose of this subparagraph, the "applicable noise limit prescribed in Appendix F" means—

(i) For airplanes type certificated under Appendix F prior to the type design change, the noise limit that was applied to that approval; and

(ii) For other airplanes, the noise limit prescribed in § F36.301(b).

2. The heading of Subpart B would be amended to read as follows:

Subpart B—Transport Category Large Airplanes and Turbojet Powered Airplanes

3. A new Subpart F would be added to read as follows:

Subpart F—Propeller Driven Small Airplanes

§ 36.501 Noise limits.

(a) Compliance with this subpart must be shown for—

(1) Propeller-driven small airplanes for which application for the issuance of a type certificate in the normal, utility, acrobatic, transport, or restricted category is made on or after October 10, 1973 (the effective date of NPRM 73-26); and

(2) Propeller-driven small airplanes for which application is made for the issuance of a standard airworthiness certificate or restricted category airworthiness certificate, and that have not had any flight time on or before January 2, 1977, regardless of date of application.

(b) Compliance with this subpart must be shown with noise levels measured and corrected as prescribed in Parts B and C of Appendix F, or under approved equivalent procedures.

(c) For airplanes covered by this section, it must be shown that the noise level of the airplane is no greater than the applicable limit prescribed in Part D of Appendix F. This paragraph does not apply to airplanes that are designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter as effective on January 1, 1966, or for dispensing fire fighting materials, and for which the operation limitation prescribed in § 36.1583(c) is issued.

4. Section 36.1581(a) would be amended to read as follows:

§ 36.1581 Manuals, markings, and placards.

(a) For airplanes that are required to have an Airplane Flight Manual, the approved portion of that manual must contain the flight procedures, performance information, and noise levels approved under § 36.1501. For other airplanes, this data must be furnished in the approved portion of an Airplane Flight Manual or in any combination of approved manual material, markings, and placards.

* * * * *

5. A new § 36.1583 would be added to read as follows:

§ 36.1583 Operating limitations.

(a) Operating limitations prescribed in this section must be furnished in the form and manner prescribed for operating limitations in the applicable airworthiness regulations of this chapter. Except as provided in this section, no operating limitations are prescribed under this part.

(b) If a weight used in showing compliance with this part is less than a limiting weight established under the applicable airworthiness requirements of this chapter, that lesser weight must be furnished as an operating limitation.

(c) For airplanes that are designed for "agricultural aircraft operation" as defined in § 137.3 of this chapter as effective on January 1, 1966, or for dispensing fire fighting materials, and that do not comply with the noise limits in Part D of Appendix F, the following operating limitation must be furnished.

This airplane does not comply with the applicable noise limits in Part 36 of the Federal Aviation Regulations and may not be operated, for any purpose, except in compliance with a current noise abatement flight plan and noise route approved by the FAA and issued to the operator.

6. A new Appendix F would be added to read as follows:

APPENDIX F—NOISE REQUIREMENTS FOR PROPELLER-DRIVEN SMALL AIRPLANES

PART A—GENERAL

Section F36.1 *Scope.* This appendix prescribes limiting noise levels, and procedures for measuring noise and correcting noise data, for propeller-driven small airplanes.

PART B—NOISE MEASUREMENT

Section F36.101. *General test conditions.* (a) The test area must be surrounded by relatively flat terrain having no excessive sound absorption characteristics such as those caused by thick, matted, or tall grass, by shrubs, or by wooded areas. No obstructions which significantly influence the sound field from the airplane may exist within a conical space above the measurement position, the cone being defined by an axis normal to the ground and by a half-angle 75° from this axis.

(b) The tests must be carried out under the following atmospheric conditions:

(1) There may be no precipitation.

(2) Relative humidity may not be higher than 90 percent or lower than 30 percent.

(3) Ambient tempertaure may not be above 86 F or below 41 F at 33' above ground. If the measurement site is within 1 n.m. of an airport thermometer the airport reported temperature may be used.

(4) Reported wind may not be above 10 knots at 33' above ground. If the measurement site is within 1 n.m. of an airport anemometer, the airport reported wind may be used.

(5) There may be no temperature inversion or anomalous wind conditions that would significantly affect the noise level of the airplane when the noise is recorded at the required measuring point.

(6) The flight test procedures, measuring equipment, and noise measurement procedures must be approved by the FAA.

(7) Sound pressure level data for noise evaluation purposes must be obtained with acoustical equipment and measurement procedures that comply with section F36.103 of this appendix.

Section F36.103 *Acoustical measurement system.* The acoustical measurement system must consist of approved equipment equivalent to the following:

(a) A microphone system with frequency response compatible with measurement and analysis system accuracy as prescribed in section F36.105 of this appendix.

(b) Tripods or similar microphone mountings that minimize interference with the sound being measured.

(c) Recording and reproducing equipment characteristics, frequency response, and dynamic range compatible with the response and accuracy requirements of section F36.105 of this appendix.

(d) Acoustic calibrators using sine wave or broad band noise of known sound pressure level. If broad band noise is used, the signal must be described in terms of its average and maximum root-meansquare (rms) value for nonoverload signal level.

Section F36.105 *Sensing, recording, and reproducing equipment.* (a) The noise produced by the airplane must be recorded. A magnetic tape recorder is acceptable.

(b) The characteristics of the system must comply with the recommendations in International Electrotechnical Commission (IEC) Publication No. 179 (as amended) concerning microphone and amplifier characteristics. (Copies of this publication are available for examination at the DOT Branch Library, Federal Office Building, 10A, and at the Office of Environmental Quality, both located at Headquarters, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591. Copies are also available for examination at the Regional Office of the FAA.)

(c) The response of the complete system to a sensibly plane progressive sinusoidal wave of constant amplitude must lie within

the tolerance limits specified in IEC Publication No. 179 (as amended) over the frequency range 45 to 11,200 Hz.

(d) If limitations of the dynamic range of the equipment make it necessary, high frequency pre-emphasis must be added to the recording channel with the converse de-emphasis on playback. The pre-emphasis must be applied such that the instantaneous recorded sound pressure level of the noise signal between 800 and 11,200 Hz does not vary more than 20 dB between the maximum and minimum one-third octave bands.

(e) The equipment must be acoustically calibrated using facilities for acoustic free-field calibration and electronically calibrated by the method specified in section F36.107(b).

(f) A windscreen must be employed with the microphone during all measurements of aircraft noise when the wind speed is in excess of 6 knots. Corrections for any insertion loss produced by the windscreen, as a function of frequency, must be applied to the measured data and the corrections applied must be reported.

Section F36.107. *Noise measurement procedures.* (a) The microphones must be oriented so that the maximum sound received arrives as nearly as reasonable in the direction for which the microphones are calibrated. The microphones must be placed so that their sensing elements are approximately 4 feet above ground.

(b) Immediately prior to and after each test, a recorded acoustic calibration of the system must be made in the field with an acoustic calibrator for the two purposes of checking system sensitivity and providing an acoustic reference level for the analysis of the sound level data.

(c) For the purpose of minimizing equipment or operator error, field calibrations must be supplemented with the use of an insert voltage device to place a known signal at the imput of the microphone, just prior to and after recording aircraft noise data.

(d) The ambient noise, including both acoustical background and electrical noise of the measurement system, must be recorded and determined in the test area with the system gain set at levels which will be used for aircraft noise measurements.

Section F36.109 *Data recording, reporting, and approval.* (a) Data representing physical measurements or corrections to measured data must be recorded in permanent form and appended to the record except that corrections to measurements for normal equipment response deviations need not be reported. All other corrections must be approved. Estimates must be made of the individual errors inherent in each of the operations employed in obtaining the final data.

(b) (1) Measured and corrected sound pressure levels must be presented in one-third octave band levels obtained at the time when the tone corrected Perceived Noise Level is maximum using equipment conforming to the standards described in section D36.105.

(2) The type of equipment used for measurement and analysis of all acoustic aircraft performance and meteorological data must be reported.

(c) The following atmospheric environmental data measured immediately before, after, and hourly intervals or less during the test period, at the observation points prescribed in section F36.101 of this appendix must be reported:

(1) Air temperature in degrees Fahrenheit and relative humidity in percent.

(2) Maximum, minimum, and average wind in knots and their direction.

(3) Atmospheric pressure in inches of mercury.

(d) Comments on local topography, ground cover, and events that might interfere with sound recordings must be reported.

(e) The following airplane information must be reported:

(1) Type, model and serial numbers (if any) of airplanes, engine(s), propeller(s), and muffler(s).

(2) Any modifications or nonstandard equipment likely to affect the noise characteristics of the airplane.

(3) Maximum certificated takeoff weights.

(4) True and indicated airspeed in knots for each overflight of the measuring point.

(5) Engine performance in terms of revolutions per minute, power, manifold pressure, blade pitch, and other relevant parameters for each overflight.

(6) Aircraft height in feet determined by a calibrated altimeter in the aircraft, approved photographic techniques, or approved tracking facilities.

(f) Aircraft speed and position and engine performance parameters must be recorded at an approved sampling rate sufficient to insure compliance with the test procedures and conditions of this Appendix.

Section F36.111 *Flight procedures.* (a) Tests to demonstrate compliance with the noise level requirements of this Appendix must include at least six level flights over the measuring station at a height of 1,000 ± 30′ and 10 degrees from the zenith when passing overhead.

(b) Overflight must be performed at the highest propeller rotational speed (rpm) corresponding to rated maximum continuous power, stabilized speed with propellers synchronized and with the airplane in the cruise configuration except that, if the speed at maximum continuous power would exceed the maximum speed authorized in level flight, accelerated flight is acceptable. Accelerated flight must be measured and reported.

PART C—DATA CORRECTION

Section F36.201 *Correction of data.* (a) Aircraft position and performance data and the noise measurements must be corrected to the following noise type certification reference atmospheric conditions:

(1) Sea level pressure of 2116 psf (76 cm mercury),

(2) Ambient temperature of 77 degrees F. (ISA+10 degrees C.),

(3) Relative humidity of 70 percent,

(4) Zero wind.

(b) The performance correction prescribed in paragraph (c) of this section must be used. It must be determined by the method described in this appendix, and must be added algebraically to the measured value.

(c) The performance correction must be computed by using the following formula:

$$P=60-20 \log [(11500-D50) \sin s+50]+10 \log VH/VY.$$

Where:

P=Correction that must be added algebraically to the effective perceived noise level (EPNL) evaluated under Appendix B, decibels.

D50=Takeoff distance to 50′ at maximum certificated takeoff weight, feet.

R/C=certificated best rate of climb, fpm.

VY=climb speed corresponding to certificated best rate of climb, fpm.

VH=maximum speed in horizontal flight with maximum continuous power or maximum test speed in horizontal flight over the noise measuring point averaged for all test flights, whichever is greater, fpm.

s=arcsine (R/C)/VY=angle of climb, degrees

(d) When D50 is not listed as approved performance information, it must be taken as 2,000 and 3,000 feet for single engine and multiengine airplanes, respectively.

Section F36.203 *Validity of results.* (a) The test results must produce an average EPNdB and its 90 percent confidence limits, the noise level being the arithmetic average of the corrected acoustical measurements for all valid test runs over the measuring point.

(b) The samples must be large enough to establish statistically a 90 percent confidence limit not exceeding ±1.5 EPNdB. The minimum sample size acceptable is six. If more than one acoustical measurement system is used at the measurement location, the resulting data for each test flight must be averaged as a single measurement. No test result may be omitted from the averaging process, unless omission is approved by the Administrator.

PART D—NOISE LIMITS

Section 36.301 *Aircraft noise limits.* (a) Compliance with this section must be shown with noise data measured and corrected as prescribed in Parts B and C of this appendix and evaluated in accordance with Appendix B.

(b) For propeller driven small airplane type designs for which an application for a type certificate is made from October 10, 1973, to January 1, 1975, inclusive, the noise level must not exceed 79 EPNdB for airplane weights up to and including 1,320 pounds (560 Kg). The noise level limit increasse from 79 EPNdB at a rate of 1 EPNdB/165 pounds (75 Kg) of weight in excess of 1,320 pounds (599 Kg) for airplane weights greater than 1,320 pounds, up to and including 3,630 pounds (1647 Kg). However, the noise level limit remains constant at 93 EPNdB for airplane weights of 3630 pounds or more, up to and including 12,500 pounds (5670 Kg).

(c) For propeller driven small airplane type designs for which an application for a type certificate is made from January 2, 1975, to January 1, 1980, inclusive, and for newly produced propeller driven small airplanes manufacturer on or after January 2, 1977, the noise level must not exceed 79 EPNdB for airplane weights up to and including 1,320 pounds. The noise level limit increases from 79 EPNdB at a rate of 1 EPNdB/165 pounds of weight in excess of 1,320 pounds for airplane weights greater than 1,320 pounds, up to and including 3,300 pounds (1497 Kg). However, the noise level limit remains constant at 91 EPNdB for airplane weights at 3,300 pounds or more, up to and including 12,500 pounds.

(d) For propeller driven small airplane type designs for which an application for a type certificate is made on or after January 2, 1980, the noise level limit is prescribed by the following formula:

$$EPNL=89-15 \log (12.5/W)$$

Where: W=airplane maximum certificated takeoff weight in thousands of pounds.

(e) This section does not apply to airplanes that are designed for "agricultural aircraft operation" as defined in § 137.3 of this chapter as effective on January 1, 1966, or for dispensing fire fighting materials and for which the operating limitation prescribed in § 36.1583(c) is issued.

Issued in Washington, D.C. on December 31, 1974.

CHARLES R. FOOT,
Director, Office of Environmental Quality.

$$C = 60 - 20 \text{ LOG } [(11500 - D50) \text{ SIN } \alpha + 50]$$

$$\text{WHERE } \alpha = \text{ ARCSIN } (R / C) / (VY)$$

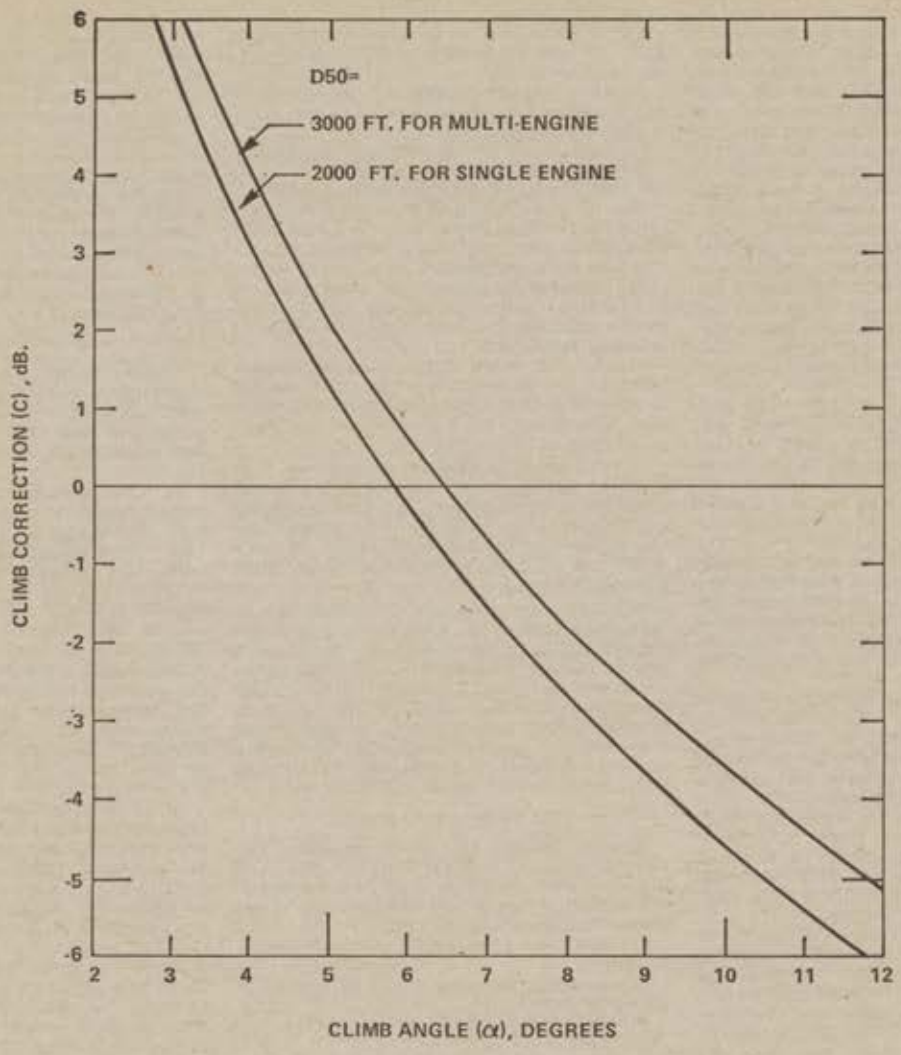

FIGURE 1. CLIMB CORRECTION FOR PROPELLER AIRPLANE NOISE

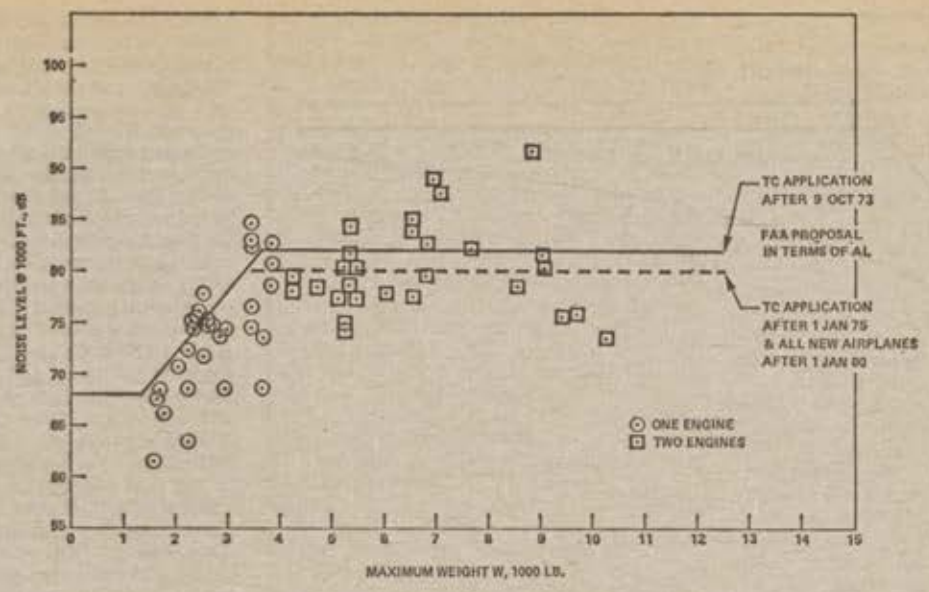

FIGURE 2. NOISE COMPLIANCE LEVELS PROPOSED BY NPRM 73-26 FOR PROPELLER DRIVEN SMALL AIRPLANES

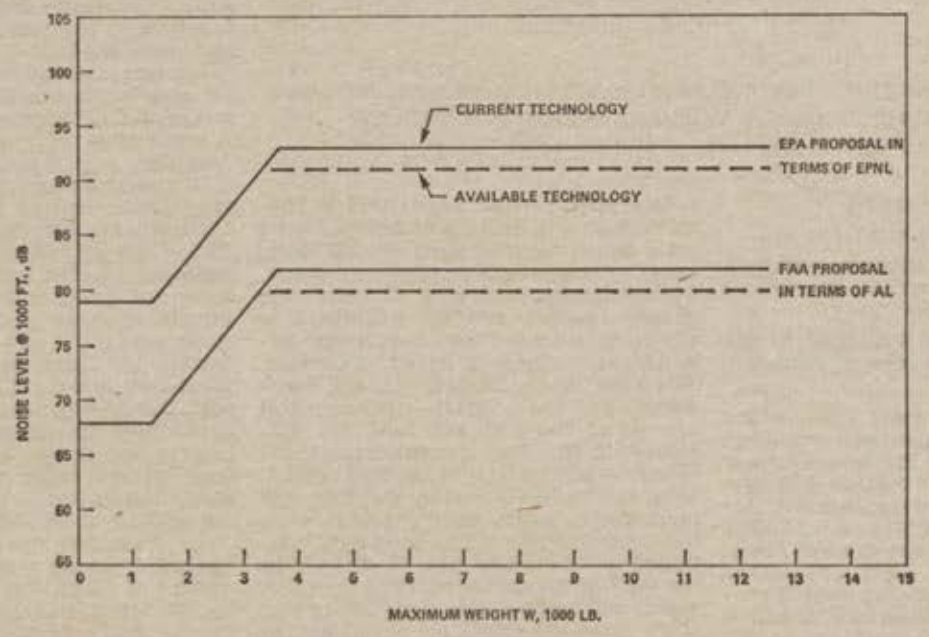

FIGURE 3. NOISE COMPLIANCE LEVELS IN TERMS OF EFFECTIVE PERCEIVED NOISE LEVEL (EPNL) AND A-WEIGHTED LEVEL (AL)

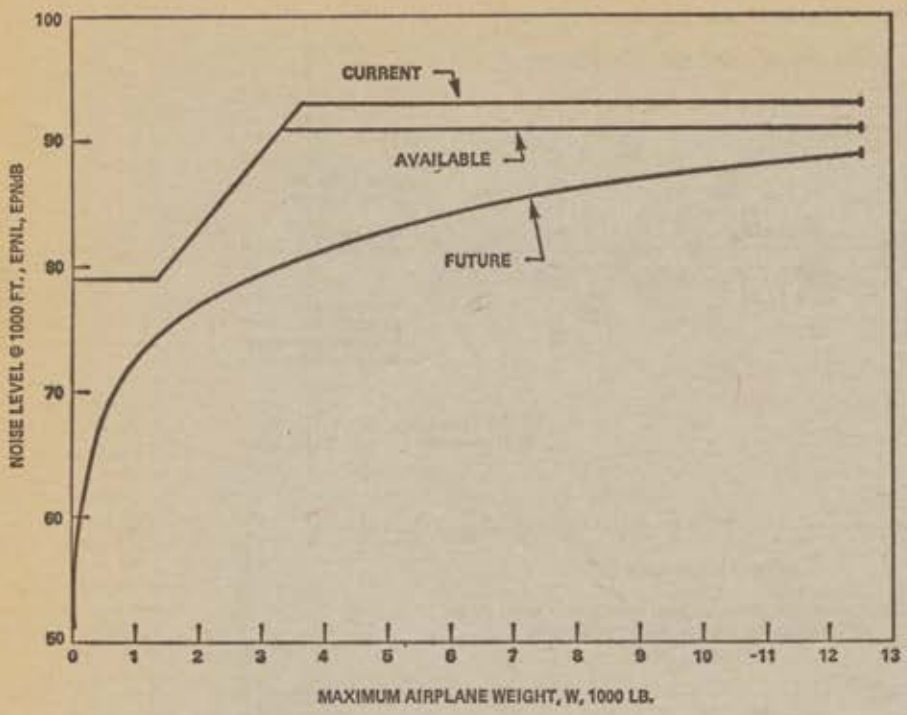

FIGURE 4. NOISE COMPLIANCE LEVELS FOR PROPELLER DRIVEN SMALL AIRPLANES BASED UPON CURRENT, AVAILABLE, AND FUTURE TECHNOLOGY

[FR Doc.74-30538 Filed 12-31-74;4:00 pm]

[14 CFR Part 91]

[Docket No. 14234; Notice No. 74-40]

NOISE ABATEMENT MINIMUM ALTITUDES FOR TURBOJET POWERED AIRPLANES IN TERMINAL AREAS

Proposed Regulations Submitted to the FAA by the Environmental Protection Agency

This notice of proposed rule making contains proposed regulations submitted by the Environmental Protection Agency (EPA) to the Federal Aviation Administration (FAA) pursuant to section 611(c)(1) of the Federal Aviation Act of 1958, as amended by the Noise Control Act of 1972 (Pub. L. 92-574). Section 611(c)(1) of the Federal Aviation Act of 1958 provides that EPA shall submit to the FAA proposed regulations to provide such control and abatement of aircraft noise and sonic boom as EPA determines is necessary to protect the public health and welfare. That section also provides that the FAA "shall consider such proposed regulations submitted by EPA under this paragraph and shall, within thirty days of its submission to the FAA, publish the proposed regulations in a notice of proposed rule making." This notice is published pursuant to this provision of law.

The EPA proposals contained herein would add a regulatory definition of the term "terminal area" to Part 91 and would prescribe minimum altitudes for turbojet powered airplanes within terminal areas.

Interested persons are invited to participate in the making of the proposed rules 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 Chief Counsel, Attention: Rules Docket, AGC-24. Comments on the overall environmental aspects of the proposed rules are specifically invited. All communications received by the FAA on or before March 7, 1975, will be considered by the FAA Administrator before taking action upon the proposed rules. 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 FAA Rules Docket for examination by interested persons. EPA has also indicated that information copies of public comments may be sent to: Director, Standards and Regulations Divisions, Office of Noise Abatement and Control (AW-571) U.S. Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, Virginia 20460.

Pursuant to section 611(c) of the Federal Aviation Act of 1958, the FAA will hold one or more hearings with respect to the proposals contained in this notice. A separate notice of hearing will be published in the FEDERAL REGISTER in the near future. As required by section 611(c), these hearings will be held no later than March 7, 1975.

The following EPA opinions, conclusions, and proposed regulatory language are published verbatim as received by the FAA on December 6, 1974.

EPA PROPOSAL TO FAA

In accordance with the provisions of section 7(a) of the Noise Control Act of 1972 (Pub. L. 92-574, 86 Stat. 1234) the Administrator of the Environmental Protection Agency conducted a study of aircraft and airport noise and submitted a report thereon to the Congress. (Report on Aircraft/Airport Noise, Senate Committee on Public Works, Serial No. 93-8, Aug. 1973). Under Section 611 of the Federal Aviation Act, as amended by the Noise Control Act of 1972 (Pub. L. 92-574; 86 Stat. 1234; 49 U.S.C. 1431) the Administrator of the EPA is also required, not earlier than the date of submission of his report to the Congress, to submit to the Federal Aviation Administration proposed regulations to provide such control and abatement of aircraft noise and sonic boom (including control and abatement through the exercise of any of the FAA's regulatory authority over air commerce or transportation or over aircraft or airport operations) as the Administrator of the EPA determines is necessary to protect the public health and welfare. This proposed regulation presenting minimum altitudes for terminal areas is the first regulation submitted to the FAA in accordance with the requirements of section 611 as so amended.

In the report submitted to the Congress under section 7(a) of the Noise Control Act, the Administrator of the EPA discussed, among other things, the adequacy of FAA aircraft noise regulations and made a tentative assessment therein of some of the regulatory actions that could effectively control aircraft noise. Based upon a study of the regulatory actions discussed in that report the Administrator of the EPA has determined that an effective program to protect the public health and welfare from aircraft noise requires the implementation of one or more of the following options of regulatory control:

(1) *Engineering application of noise control techniques at the source.* This control of aircraft noise consists of the application of basic design principles or special hardware to the aircraft engine or airplane, or both, to minimize the generation and radiation of noise.

(2) *Noise control by use of flight procedures.* This control of aircraft noise consists of flight procedures to minimize the generation and propagation of noise from the aircraft in flight.

(3) *Airport operations control.* This control of aircraft noise consists of the application of restrictions on the type and use of aircraft at the airport to minimize community noise exposure.

(4) *Land use control.* This control of community noise due to aircraft consists of developing or modifying airport surroundings for optimally compatible usage in the aircraft noise environment.

The primary approach for aircraft noise abatement is to attempt to control the noise at the source to the extent that an aircraft would be acceptable for operation at any airport as well as during enroute flight. In principle, aircraft noise can be controlled at the source by massive implementation of available technology. In practice, however, technology capability for complete control without exorbitant penalties is not yet available and may never be. Therefore, a regulation providing complete protection to the public health and welfare solely by noise control of the airplane as a source would discourage further development of most new aircraft and might effectively ground the existing civil fleet.

Flight procedures control of an aircraft can also be applied as an effective option for a substantial reduction of aircraft noise. This type of control can be combined with source control to help protect the public health and welfare from aircraft noise. However, complete noise abatement by the control of flight procedures only would relegate transportation by civil aircraft to flights conducted between airports located at, or within, isolated areas. Therefore, such regulations alone are not practicable. Since civil aircraft can be flown in modes that produce a wide range of noise exposure, it appears that those modes that minimize the generation and propagation of noise should be identified and utilized for the protection of the public health and welfare. For example, the EPA believes that the flight procedures used to demonstrate compliance with source control regulations (type certification) should represent the upper limit for noise generation and propagation and utilized whenever practicable.

Control of community noise from aircraft by airport regulation is practicable only if all feasible source and flight procedures controls have been implemented by appropriate regulations. Unless this has been done, the protection of public health and welfare from aircraft noise by means of airport restrictions only may result in unnecessary burdens upon the local and national economy.

After all feasible noise control measures have been exercised by the application of aircraft design, treatment, or modification, by operational control measures such as minimum altitudes and air traffic control procedures, and by airport control such as proper design, location and use of airports, the level of the aircraft noise may still have an adverse effect upon the public health and welfare at some locations. Should that problem occur, it appears that land use control is the only remaining option. However, a land use control option is more easily exercised in the development of land at new airports than as a remedial measure for noise impacted communities at existing airports. Moreover, since the costs of land use control at airports would be exorbitant, maximum effort should first be devoted to the practical implementation of the source, flight procedures, and airport control options. The extent to which each of the foregoing control options must be implemented to achieve a satisfactory level of cumulative noise exposure is dependent upon the requirements of the public health and welfare. ("Public Health and Welfare Criteria for Noise", EPA Technical Document 550/9-73-002, 27 July 1973; "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety", EPA Technical Document 550/9-74-004, March 1974. A copy of each document is on file with the FAA in the docket for this Rulemaking action. Copies are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402).

Although the Administrator of the FAA has adopted regulations for the reduction or abatement of aircraft noise, they have been constrained by reasons of safety, economics, and technology. Under the Noise Control Act of 1972, the Administrator of the EPA is directed to propose for adoption by the FAA those regulations he determines are necessary to protect the public health and welfare, including control and abatement through the exercise of the FAA's regulatory authority.

If it could be established that some particular design change or retrofit hardware for airplanes, or operating rule could completely satisfy the requirements for protection (from airplane noise) to the public health and welfare, then that specific method should be used. It is unlikely, however, that any single measure, within the legislative constraints, could completely satisfy the requirements for such protection. Consequently, a systems implementation, employing each noise control option available within its area of optimal application, should be considered as the most feasible method for accomplishing the desired objectives and equitably sharing the costs of noise control among all segments of the aviation community and that portion of the public that benefits from aviation.

For the information and comment of all interested persons, EPA published in the FEDERAL REGISTER on February 19, 1974, (39 FR 6112) a notice of public comment period containing a synopsis of 10 proposed rules it was considering to achieve a satisfactory level of the public health and welfare. Since the FAA has initiated a single rulemaking action covered by two of the proposals, the substance of proposed rules numbered 8 and 9 as published in the FEDERAL REGISTER has been combined into a single proposed rule entitled "Short Haul Aircraft". As combined, the 9 proposed rules and the type of control which each rule would implement are as follows:

Flight procedures noise control

(1) Take off procedures.
(2) Approach procedures.
(3) Minimum altitudes.

Source noise control

(4) Retrofit/Fleet noise level.
(5) Supersonic civil aircraft noise.
(6) Modifications to Part 36 of the Federal Aviation Regulations.
(7) Propeller driven small airplanes.
(8) Short haul aircraft.

Airport operations noise control

(9) Airport goals, mechanisms and processes by which noise exposure of communities around airports can be limited to levels consistent with public health and welfare requirements.

The EPA has decided that regulation No. (3) proposing minimum altitudes for noise abatement within terminal areas should be among the first of the nine proposed regulations submitted to the FAA for consideration and adoption in accordance with the provisions of section 611 of the Federal Aviation Act of 1958, as amended. This proposed rule, based in part on the present "keep-'em-high" program set forth in FAA Advisory Circular 90-59, prescribes noise abatement minimum altitudes for turbojet powered airplanes operated under either IFR or VFR, except when otherwise required by safety or operational requirements such as turbulence, thunderstorms, or aircraft emergencies.

As stated in the advisory circular, the FAA believes that the "keep-'em-high" program enhances safety and affords significant noise relief to the airport neighbors. The EPA agrees that the program is capable of providing a significant noise relief in the vicinity of airports, but believes that it must be made mandatory for all turbojet powered airplanes to achieve its purpose in regard to noise relief.

As proposed herein, the rule would make the following provisions of Advisory Circular 90-59 mandatory for turbojet powered civil airplanes operating within the terminal area of an airport:

(1) Enter the terminal area at 10,000 feet AGL, and remain at that altitude until descent therefrom is required for a safe landing.

(2) Descend below 5,000 feet AGL after entering the descent area established by ATC for the direction of the landing runway.

(3) Descend below 3,000 feet AGL at the rate of descent now prescribed in § 91.87(d) (2) and (3) for such airplanes. In the case of an airplane landing under visual flight rules (VFR) on a runway not served by an instrument landing system (ILS) or a visual approach slope indicator (VASI), the proposed regulation would require the rate of descent to be not less than that associated with a 3° glide angle.

By far the highest noise levels due to the aircraft occur in the vicinity of those airports serving air carrier aircraft. This is due mainly to the landing approach and takeoff noise emissions from turbojet powered airplanes (including turbofan engines) used by those carriers. Consequently, the flight procedures for

noise reduction and abatement proposed herein are directed toward the operation of turbojet powered airplanes only.

Since the area comprising a terminal area is dependent upon the facilities and procedures established for the control of air traffic at the airport in which it is located, the rule as proposed authorizes ATC to designate the boundaries of the terminal area to accommodate the flight procedures needed for operations to or from a particular airport.

It is to be noted that the rule as proposed herein does not include a provision similar to that contained in AC 90-59 requiring a departing airplane to climb to the highest altitude filed by the pilot as soon as possible after takeoff. The appropriate provisions for takeoff will be included in a separate rule proposing takeoff procedures and published in the FEDERAL REGISTER in the near future. In the meantime, the climb procedure prescribed in § 91.87(f) remains applicable as prescribed in that section.

One of the basic features of this proposed regulation is the requirement that each turbojet powered airplane shall intercept the glideslope at an elevation of 3,000 feet AGL. In the case of a straight-in approach it has been shown that an area exposed to 90 EPNdB or greater can be reduced by at least 25 percent and the flight track EPNL reduced by up to 9 EPNdB under the flight path if the glide slope intercept altitude is increased to 3,000 feet as shown in the attached Figures 1, 2 and 3. This represents a sizeable initial reduction in the level of environmental noise associated with adverse effects on the public health and welfare in the vicinity of airports.

It is to be noted that a field evaluation of a 3,000 foot glideslope intercept was sponsored by the FAA at Detroit Metropolitan and Tampa International airports during the summer of 1971. (Report No. FAA-AT-72-1, March 1972.) The evaluation included three variations of the 3,000 foot glideslope intercept concept, an airport capacity impact study and an economic analysis of the program. The field test results indicated that, at distances greater than nine nautical miles from runway touchdown, significant noise benefits (9 EPNdB projected) can be attained by requiring all aircraft to remain at 3,000 feet AGL until glideslope intercept versus a 1,500 feet AGL intercept.

The report made the following conclusions in regard to the economic impact of each phase of the program on the airport capacity and cost of each flight as a result of requiring an intercept of the glideslope at the increased altitudes:

(1) The greatest impact on annual airport capacity and cost per flight occurred when all aircraft were vectored so as to intercept the glideslope at an altitude of at least 3,000 feet AGL. Under Phase A of the program, there was a 2 percent reduction of the practical annual capacity of the airport and an increase in the direct aircraft operating costs of $8.10 for each flight. (This estimate is based upon the total cost divided by the total number of flights. The cost per aircraft type is provided in the FAA report.)

(2) The foregoing impact was significantly decreased when only turbojet aircraft were vectored to intercept the glideslope at an altitude of 3,000 feet AGL under Phase B of the program. Under this phase, there was an estimated 0.8 percent reduction of the practical annual capacity and an increase of $8.95 in the operating cost for each flight affected.

(3) The smallest impact occurred under Phase C when "all aircraft" operating under instrument flight rules were required to maintain at least 3,000 feet AGL until five flight path miles from an optimum turnon point. Under that phase, the FAA report estimates a reduction of less than 0.8 percent in the annual airport capacity and an average increase of $3.13 in the operating cost per flight. (The average operating cost increase, counting only the airplanes which followed that procedure, was $8.55 per flight.)

Since the turbojet airplane is the noise dominating airplane, the EPA has determined that a glide slope interception altitude of 3,000 feet AGL should be made mandatory for those airplanes as soon as possible for the protection of the public health and welfare of those persons living in the vicinity of airports. Moreover, it should be made applicable to those airplanes regardless of whether they are operated under VFR or IFR. Otherwise, the purpose of this requirement could be defeated by canceling an IFR flight plan and conducting the approach and landing under VFR without regard to the minimum altitude requirements of this proposal.

It is estimated that the application of this requirement to turbojet powered airplanes only would cause the least impact upon airport capacity and cost approximately $10 per flight. It would not, however, require any equipment changes or additional investment.

As proposed, the rule would also make it mandatory for turbojet powered airplanes to be operated at minimum altitudes consistent with those now applied on a voluntary basis under FAA Advisory Circular 90-59. Accordingly, turbojet powered airplanes would be required to enter the terminal area at an altitude of 10,000 feet AGL, and remain at that altitude as long as possible before beginning a descent to an altitude of 5,000 feet AGL. Descent below an altitude of 5,000 feet would begin when the airplane enters the descent area established by ATC for the landing direction of the runway to be used. As previously discussed herein the airplane must then be operated so that the glideslope is intercepted at an altitude of 3,000 feet AGL which it is to be noted, is not required under AC 90-59.

Finally, it is to be noted that, as proposed, the rule excepts an airplane from the prescribed altitude requirements for operational reasons such as turbulence, thunderstorm activity and aircraft emergencies, as are now permitted under AC 90-59. An exception is also permitted when required by the applicable distance from cloud criteria consistent with the exception permitted under § 91.87(d)(1) for operation within an airport traffic area.

Implementing the glide slope intercept altitude as proposed herein with the minimum altitudes required under AC 90-59 would reduce the population noise exposure by as much as 9 EPNdB under the flight path of a turbojet powered airplane within a distance of 5 to 10 nautical miles from an airport's runway approach threshold. The EPA believes that such a reduction in population noise exposure by the flight procedure controls proposed herein is necessary for the protection of the public health and welfare of those communities in the vicinity of an airport and has submitted this proposed rule to the FAA for adoption under section 611 of the Federal Aviation Act of 1958, as amended.

In consideration of the foregoing, it is proposed to amend § 91.87 of the Federal Aviation Regulations as follows:

§ 91.87 [Amended]

1. By adding a new sentence at the end of paragraph (a) to read as follows:

* * * As used in this section a terminal area means that airspace within the horizontal radius of an airport designated by ATC for the control of aircraft operating to or from that airport.

2. By amending paragraph (d) by redesignating subparagraphs (1), (2), and (3), as subparagraphs (2), (3), and (4), respectively, and by inserting a new subparagarph (1) reading as follows:

(d) *Minimum altitudes.* * * *

(1) A civil turbojet powered airplane approaching an airport for a landing shall, unless different altitudes are required by distance from cloud criteria, turbulence, thunderstorms, or aircraft emergency, (i) enter the terminal area of that airport at an altitude of 10,000 feet AGL and remain at that altitude until further descent is required for a safe landing, (ii) descend below an altitude of 5,000 feet AGL after entering the descent area established by ATC for the direction of the landing runway, (iii) maintain an altitude of not less than 3,000 feet AGL until intercepting the glideslope, (iv) descend below an altitude of 3,000 feet AGL at the rate of descent prescribed in paragraphs (d)(3) or (d)(4) of this section for the type of landing facility used, except that the rate of descent shall not be less than 3° for operation under VFR when a runway not served by an ILS or a VASI is used.

3. By changing the words "turbine-powered airplane or a large airplane" appearing in the redesignated subparagraph (d)(2) to read as follows: "turbopropeller powered airplane or large reciprocating engine powered airplane".

Secs. 313(a), 601, 603, 604, and 611, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423, 1424, and 1431) as amended by the

Noise Control Act of 1972 (Pub. L. 92-574); sec. 6(c), Department of Transportation Act (42 U.S.C. 1655(c)); Title I, National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); Executive Order 11514, March 5, 1970.

Issued in Washington, D.C., on December 31, 1974.

J. J. REGAN,
Acting Director,
Air Traffic Service.

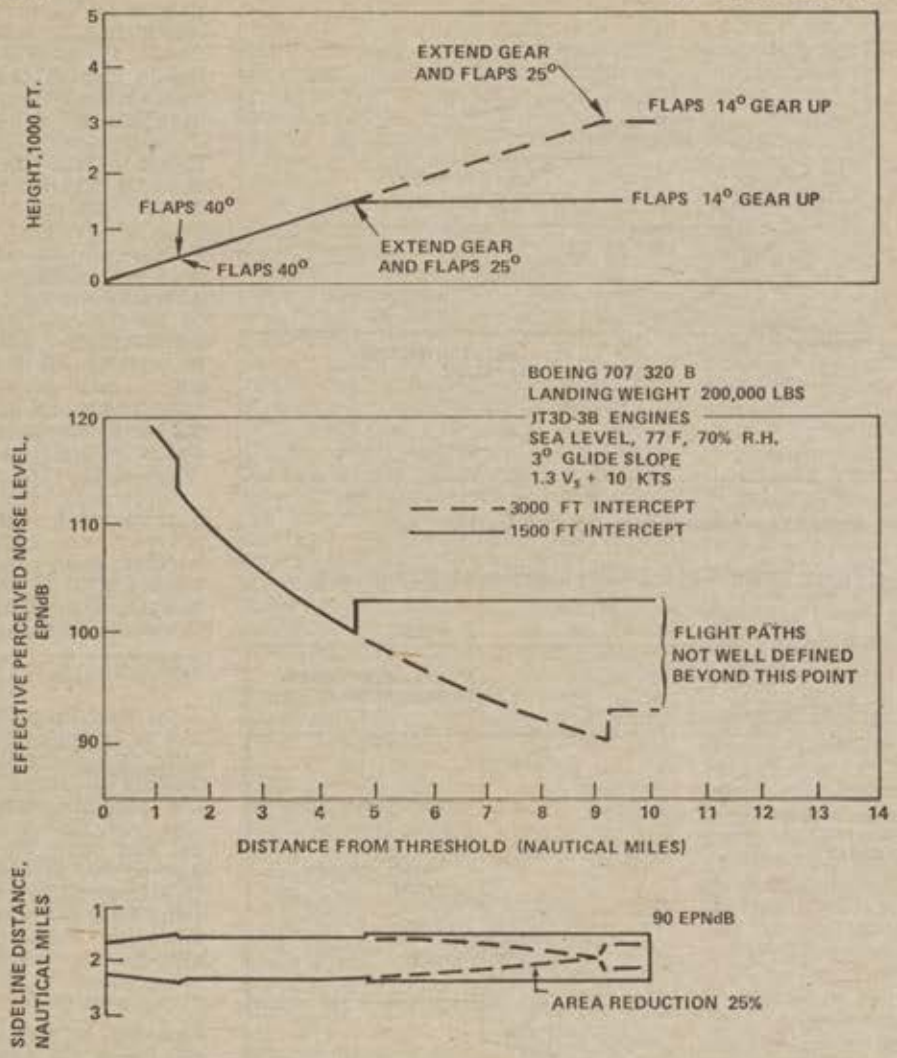

FIGURE 1. NOISE DATA FOR 1500 AND 3000 FT INTERCEPT ALTITUDES

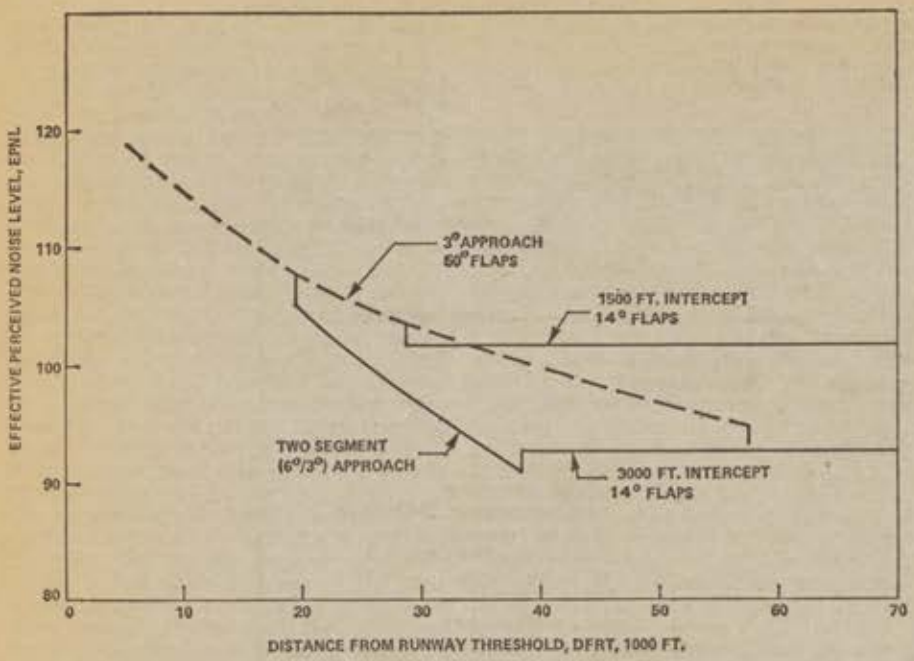

FIGURE 2. NOISE PROFILES FOR VARIOUS APPROACHES: 707 AIRPLANE

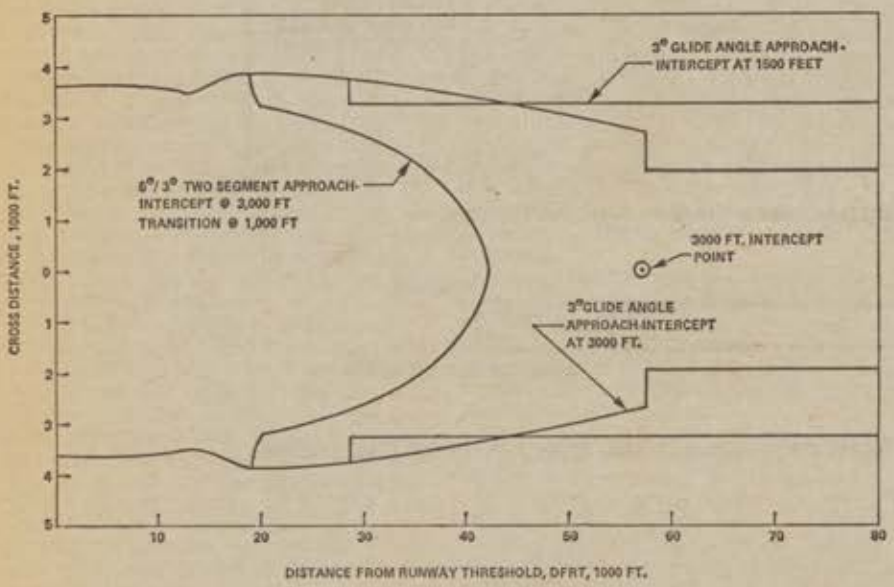

FIGURE 3. 90 EPNdB CONTOURS FOR VARIOUS APPROACHES: 707 AIRPLANE

[FR Doc.74-30539 Filed 12-31-74;3:59 pm]

Federal Railroad Administration

[49 CFR Part 213]

[Docket No. RST-2]

TRACK SAFETY STANDARDS

Approval of Supplemental Track Inspection Devices

The Federal Railroad Administration (FRA) is considering an amendment to Part 213, Track Safety Standards, to delete the provision in § 213.233(b) that track inspection devices "approved by the Federal Railroad Administrator" may be used to supplement visual inspection.

Deletion of this provision would not change in any way the mandatory procedures or frequency of visual track inspections prescribed in § 213.233; it merely removes the present requirement for FRA approval of track inspection devices before these devices may be used to supplement the required visual track inspections. FRA believes that this requirement is unnecessary and may inhibit the voluntary development, testing and use of mechanical, electrical, and other track inspection devices by the railroad industry.

Interested persons are invited to participate in the making of this proposed amendment by submitting written data, views, or comments. Communications should identify the docket number and notice number and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Communications received by February 17, 1975 will be considered by FRA before final action is taken on the proposed amendment. Comments received after that date will be considered to the extent practical. The proposal contained in this notice may be changed in light of the comments received. All comments received will be available for examination by interested persons during regular business hours in Room 5101, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

In consideration of the foregoing, it is proposed to delete the phrase "approved by the Federal Railroad Administrator" from paragraph (b) of Section 213.233 of Title 49 of the Code of Federal Regulations. As amended, paragraph (b) would read as follows:

§ 213.233 Track inspections.

* * * * *

(b) Each inspection must be made on foot or by riding over the track in a vehicle at a speed that allows the person making the inspection to visually inspect the track structure for compliance with this part. However, mechanical, electrical and other track inspection devices may be used to supplement visual inspection. If a vehicle is used for visual inspection, the speed of the vehicle may not be more than 5 miles per hour when passing over track crossings, highway crossings, or switches.

* * * * *

(Sec. 202, 84 Stat. 971, 45 U.S.C. 431; and sec. 1.49 of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(n).)

Issued in Washington, D.C. on December 30, 1974.

ASAPH H. HALL,
Deputy Administrator.

[FR Doc.75-236 Filed 1-3-75;8:45 am]

FEDERAL HOME LOAN BANK BOARD

[No. 74-1416]

[12 CFR Parts 545, 561 and 563]

CONFLICTS OF INTEREST

Extension of Time for Comments

DECEMBER 30, 1974.

By Resolution No. 74-1219, dated November 22, 1974, the Federal Home Loan Bank Board proposed to amend Parts 561 and 563 of the rules and regulations for Insurance of Accounts (12 CFR Parts 561 and 563) and Part 545 of the rules and regulations for the Federal Savings and

Loan System (12 CFR Part 545) in order to regulate conflicts of interest more effectively. Notice of such proposed rule making was published in the FEDERAL REGISTER on December 5, 1974 (39 FR 42382-91; FR Doc. No. 74-28461), and interested persons were invited to submit written data, views and arguments to the Board by January 21, 1975.

It has come to the Board's attention that the time necessary to print and mail copies to all insured institutions of these proposed amendments, which are 40 typed pages in length, was such as to delay their mailing until December 20, 1974. As a result insured institutions will not have had as much time in which to study the proposed amendments as was intended. Therefore, the Federal Home Loan Bank Board hereby extends the public comment period on the amendments proposed by Board Resolution No. 74-1219 until February 20, 1975.

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730. Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943-48 Comp., p. 1071).

By the Federal Home Loan Bank Board.

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

[FR Doc.75-353 Filed 1-3-75;8:45 am]

FEDERAL POWER COMMISSION

[18 CFR Parts 1, 3]

[Docket No. RM75-15]

REQUESTS FOR PUBLIC INFORMATION

Timetables and Procedures

JANUARY 2, 1975.

Pursuant to 5 U.S.C. 553, section 309 of the Federal Power Act (49 Stat. 858-859; 16 U.S.C. 825h), section 16 of the Natural Gas Act (52 Stat. 830; 15 U.S.C. 717o), and Pub. L. No. 93-502 (88 Stat. 1561, amending 5 U.S.C. 552), the Commission gives notice it proposes to amend, effective on February 19, 1975:

A. Certain subsections of § 1.36 Public information and requests, Chapter I, Title 18, CFR.

B. A subsection of § 3.102 Public information requests, and assistance; miscellaneous charges, Chapter I, Title 18, CFR.

It is the purpose of the amendments, as proposed herein, to conform the Commission's Rules to the new requirements of the Freedom of Information Act, 5 U.S.C. 552, as amended by the passage of H.R. 12471, Pub. L. No. 93-502. Among other things, the proposed revisions would delineate the specific timetables and procedures to be followed in the event the Commission withholds information requested under the Freedom of Information Act, the procedure to be followed for the search and duplication of requested documents, and the maintenance and dissemination of a current index of public information. Through competitive procurement procedures, the Commission each year awards an exclusive contract to a firm for the search and duplication of copies of material contained in the public files of the Commission. The invitation for bidding is made through formal advertising and the contract is awarded to the lowest priced responsible bidder. The contract is awarded annually for work to begin July 1. All monies paid for services rendered under the contract are paid directly to the contractor. The Commission will regard this competitive advertised procurement practice as compliance with section 4(A) of the Freedom of Information Act as amended.

In a Memorandum to Heads of all Federal Departments and Agencies, dated December 11, 1974 [39 FR 43734 (1974)], the Attorney General has made several suggestions for agency compliance with the 1974 Amendments. The Commission invites public comment on these suggestions which are described herein. One proposal is that agency regulations set forth explicit instructions to requesters on how to address and clearly identify their requests and appeals in order to avoid or reduce delays in routing requests for information to those within the Commission who must act upon them. Failure to comply with such rules would not disqualify a request from entitlement to processing under the Freedom of Information Act, but would defer the date of "receipt" from which the time limits are computed to take account of the amount of time reasonably required to forward the request to the specified office or employee. Where such delay has occurred, the rules would provide for an acknowledgment to the requester of the effective receipt. Such acknowledgment would also be provided where delay is caused in the mails or by any other means of which the requester is likely unaware.

The 1974 Amendments make two provisions for extensions of the time limits to be followed by the Commission in responding to requests for information. One provision allows for a 10-day extension in "unusual circumstances." The Attorney General suggests that agency regulations provide for distribution of the 10 days on a case-by-case basis or by restricting any extension at the initial stage to five days, absent special showing (so as to reserve five days for the appeal stage), or in some other manner. The second provision is for court extension of the time limits in exceptional circumstances where the Commission has been exercising due diligence in responding to the request. The Attorney General suggests that in preparing its regulations, the agency should consider designating a person who would suggest to the requester the possibility of agreeing on a specific time extension where the agency believes that immediate suit would lead to this judicial time extension. The regulations might also include a provision for the extent to which such communications or agreements with requesters should be recorded for such bearing as they may have on possible litigation. The Attorney General also proposes that the new agency regulations contain a time limit for the filing of an appeal from the agency's initial determination and that this time period run from receipt of the initial determination (in cases of denials for an entire request), and from receipt of any records being made available pursuant to the initial determination (in cases of partial denial).

Relating to the schedule of fees for the search and duplication of documents, the Memorandum suggests that the agencies provide for estimates of fees, and the circumstances in which payment of estimated or incurred fees will be requested before the work is done or the materials transmitted. The regulations could include a provision to the effect that, unless the request specifically states that whatever cost is involved will be acceptable or acceptable up to a specified limit that covers anticipated costs, a request that is expected to involve assessed fees in excess of a certain amount will not be deemed to have been received until the requester is advised (promptly on physical receipt of the request) of the anticipated cost and agrees to bear it. The regulations could also include a provision that a deposit for a certain proportion of the amount must be made when the anticipated fees exceed a certain amount. The Attorney General also recommends that the regulations give notice that charges may be made for unsuccessful or unproductive searches of documents.

Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, to be received no later than January 21, 1975, data, views, comments, or suggestions in writing concerning all or part of the proposals herein. An original and 14 conformed copies should be filed with the Secretary of the Commission. Submittals to the Commission should indicate the name, title, mailing address, and telephone number of the person to whom communications concerning the proposal should be addressed, and whether the person filing them requests a conference at the Federal Power Commission to discuss the proposals. The Commission will consider all such written submittals before acting on the matters herein proposed.

The proposed amendments to §§ 1.36 and 3.102 would be issued under the authority granted the Federal Power Commission by the Federal Power Act, particularly section 309 (49 Stat. 858-859; 16 U.S.C. 825h), by the Natural Gas Act, particularly Section 16 (52 Stat. 830; 15 U.S.C. 717o), and by Pub. L. No. 93-502 (88 Stat. 1561, amending 5 U.S.C. 552).

A. The following are proposed amendments and revisions to § 1.36, Part 1, Chapter I, Title 18 of the Code of Federal Regulations:

Amend paragraph (c) by revising the first paragraph, revising paragraph (c)(14)(i), and (c)(14)(vii), redesignating (c)(15) as (c)(16) and inserting a new paragraph (c)(15). Revise paragraph (e), redesignate paragraph (f) as paragraph (g) and insert a new paragraph

(f). The revised and redesignated paragraphs should read as set forth below:

§ 1.36 Public information requests.

* * * * *

(c) *Public records.* The public records of the Commission, available for inspection and copying upon a request reasonably describing the document, during regular business hours in the public reference room maintained by the Office of Public Information, include: * * *

(14) * * *

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

* * * * *

(vii) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would interfere with enforcement proceedings, deprive a person of a right to a fair trial or an impartial adjudication, constitute an unwarranted invasion of personal privacy, disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, disclose investigative techniques and procedures, or endanger the life or physical safety of law enforcement personnel.

* * * * *

(15) Any reasonably segregable portion of a record after deletion of the portions which are exempt under this section.

* * * * *

(e) *Index of public records.* The Secretary will maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this Section to be made available or published. The index will be published quarterly and copies or supplements thereto will be distributed by sale or otherwise.

(f) *Timetables and procedures in event of withholding of public records.* (1) The Director of Public Information will determine within ten days (except Saturdays, Sundays, and legal public holidays) after receipt of a request for public records whether to comply with such request and will immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the Chairman any adverse determination by petition filed pursuant to § 1.7

(2) The Chairman, in his capacity as administrative head of the agency pursuant to Section 1 of Reorganization Plan No. 9 of 1950, will make a determination with respect to any appeal within twenty days (except Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the Chairman will notify the person making such request of the provisions for judicial review of that determination.

(3) In unusual circumstances, the time limits prescribed in this subsection may be extended by the Secretary by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice will specify a date that would result in an extension for more than ten working days. "Unusual circumstances" as used in this paragraph means, but only to the extent reasonably necessary to the proper processing of the particular request:

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

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

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

(4) If the Commission fails to comply with the applicable time limit provisions of this subsection, the Commission can request the court for additional time to complete its review of the records by showing that exceptional circumstances exist and that it is exercising due diligence in responding to the request.

(5) Any notification of denial of any request for records under this subsection will set forth the names and titles or positions of each person responsible for the denial of such request.

(6) Upon any determination to comply with a request for records, the records will be made promptly available to such person making such request.

(g) *Procedure in event of subpoena* * * *

* * * * *

B. The following is the proposed revision of § 3.102, Part 3, Chapter I, Title 18 of the Code of Federal Regulations:

1. Revise subsection (b) so that it will read as follows:

§ 3.102 Public information requests, and assistance; miscellaneous charges.

* * * * *

(b) During the Commission's regular business hours, the public may examine in the Office of Public Information in Washington, D.C., copies of public information filed with the Commission. Pursuant to the competitive advertised procurement procedure of the Federal Power Commission, responsibility for the search and duplication of public documents is contracted out each year, and a new schedule of fees is prescribed. Any person may obtain a copy of the schedule of fees by coming in person to the Office of Public Information, by telephone or by mail. Where practicable, selfservice duplication of requested documents may also be made in the Office on duplicating machines by the person requesting the documents. Where data has been extracted from the Commission's public records on magnetic tape computer files, copies of the tape files may be secured on a reimbursable basis, upon a written request to the Office of Public Information. The fee will vary for each requirement, depending on size and complexity. Documents will be furnished without charge or at a reduced charge where the Secretary determines that waiver or reduction of the fee is in the public interest. Except for requests made by Government agencies certification of copies of any official Commission record shall be accompanied by a fee of $2. Inquiries and orders may be made to that office personally, by telephone, or by mail.

The Secretary shall cause prompt publication of this notice to be made in the FEDERAL REGISTER.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-351 Filed 1-3-75;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 210]

[Release Nos. 33-5548, 34-11132, 35-18705, IG-8612]

CONSOLIDATED FINANCIAL STATEMENTS

Disclosure Provisions for Subsidiary Companies

Since the adoption in April of Rule 4-02(e) and the rescission of Rule 4-07 of Regulation S-X [17 CFR 210.4-02(e) and 210.4-07],[1] relating to the inclusion of subsidiaries engaged in certain financial activities in consolidated financial statements, economic and financial developments together with our experience in examining statements filed under the revised rules indicate a need for further consideration of the extent of disclosure of information about subsidiaries engaged in the financial area. Of particular concern are developments in banking and other regulated financial businesses in which there is regulation for the interests of depositors and insureds apart from the interests of stockholders.

[1] See Accounting Series Release No. 154, Securities Act Release No. 5483, Securities Exchange Act Release No. 10746, Public Utility Holding Company Act Release No. 18383, Investment Company Act Release No. 8315 (April 19, 1974) [39 FR 15260].

In April of this year in amending Rule 4-02 the Commission included as subparagraph 4-02(e)(1) [17 CFR 210.4-02 (e)(1)] a provision that a requirement for separate financial statements for considerated subsidiaries engaged in certain financial activities was not applicable to a consolidated subsidiary or group of subsidiaries in which registrant's share of assets or sales and revenues exceeds 90 percent of the corresponding consolidated amount. Reconsideration of this alternative of assets or sales and revenues shows that its application may result in omission of separate financial statements of consolidated subsidiaries in circumstances in which disclosure of full information concerning financial position and operating results would be of material significance to investors. In addition, shortly after the adoption of amended Rule 4-02(e), in connection with a general amendment of certain forms and of Regulation S-Y [2] the term "significant subsidiary" in Rule 1-02 of Regulation S-X [17 CFR 210.1-02] was amended to provide for a test of income in addition to tests related to total assets and sales and revenues.

Consequently it appears appropriate to propose amendment of the aforementioned subparagraph (e)(1) to provide that separate financial statements of these specified subsidiaries may be omitted only if assets, sales and revenues, and income of the subsidiaries each exceeds 90 percent of the corresponding consolidated amounts. In connection with these three criteria there does not appear to be a problem of measurement for the assets or the sales and revenues tests nor with the income test when the subsidiary and consolidated financial statements both reflect income or both reflect a loss. For those situations, however, in which the subsidiary has a loss as against income being reported on the consolidated statements (or the reverse) the proposed subparagraph would not permit omission of separate subsidiary statements. Such a provision appears appropriate in a situation where the 90 percent tests as to assets and sales and revenues are met in view of the disparate income and loss relationship as against the assets and sales/revenues relationship.

Current developments in banking indicate that the interests of investors in bank holding companies may be better served by a clearer delineation between bank subsidiaries and other subsidiaries even though the latter group may include companies engaged in "bank related finance activities." It appears appropriate to propose amendment of Rule 4-02(e) to change the phrase "including bank related finance activities" which modifies "banking" as a line of business for which separate statements are required to "including subsidiaries of banks."

The April amendment of Rule 4-02 provided in subparagraph (e)(2) [17 CFR 210.4-02(e)(2)] that separate financial statements could be omitted for a nonsignificant subsidiary or group of subsidiaries. In view of the increasing significance of holding company investments in nonregulated financial activities an amendment is now proposed to exclude from this exemption such nonsignificant subsidiaries when the parent company's investment exceeds 10 percent of total assets as shown on the parent's balance sheet. This proposed change reflects, for example, the situation observed in a recently filed registration statement in which an otherwise nonsignificant group of bank related subsidiaries represented over 30 percent of total assets of the parent and had been the recipient of almost all of the investments and advances made in subsidiaries by the parent during the latest two years.

Commission action: The Commission hereby proposes to amend § 210.4-02(e) of 17 CFR Chapter II. As amended, the material would read as follows:

§ 210.4-02 Consolidated financial statements of the registrant and its subsidiaries.

* * * * *

(e) Separate financial statements shall be presented for each subsidiary or group of subsidiaries engaged in the business of life insurance, fire and casualty insurance, securities broker-dealer, finance (including similar activities such as leasing, factoring and mortgage banking), savings and loan or banking, including subsidiaries of banks; *provided, however*, That separate financial statements may be omitted:

(1) For a consolidated subsidiary or group of subsidiaries in the same business if the registrant's and registrant's other subsidiaries' proportionate share (based on their equity interests) of (i) total assets (after intercompany eliminations), (ii) total sales and revenues (after intercompany eliminations), and (iii) income (or loss) before income taxes and extraordinary items of such subsidiary or group of subsidiaries each exceeds 90 percent of the corresponding amounts on the consolidated financial statements. If the proportionate share of income (or loss) under (iii) above and the corresponding amount on the consolidated financial statements are not both income or both loss, then separate financial statements may not be omitted.

(2) For a nonsignificant consolidated subsidiary which is registrant's only subsidiary in a business, or for a group of consolidated subsidiaries constituting all of registrant's subsidiaries in the same business which if considered in the aggregate would not constitute a significant subsidiary, except when registrant's investment (including current and not current advances) in all nonsignificant subsidiaries exceeds 10 percent of total assets on registrant's balance sheet.

(3) For a consolidated subsidiary or group of subsidiaries in the same business if in excess of 90 percent of their sales and revenues are derived from registrant and registrant's other subsidiaries.

The foregoing proposed amendments would be adopted pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933; sections 13, 15(d) and 23(a) of the Securities Exchange Act of 1934; sections 5(b), 14 and 20(a) of the Public Utility Holding Company Act of 1935; and sections 8, 30, 31(c) and 38(a) of the Investment Company Act of 1940.

All interested persons are invited to submit their views and comments on this proposal concerning Rule 4-02 of Regulation S-X in writing to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before February 14, 1975. Such communications should refer to File No. S7-540. All such communications will be available for public inspection.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

DECEMBER 11, 1974.

[FR Doc.75-200 Filed 1-3-75;8:45 am]

[17 CFR Parts 210, 240, 249]

[Release Nos. 33-5549, 34-11142, 35-18718]

INTERIM FINANCIAL DATA

Proposals To Increase Disclosure

General Comments. Financial reporting is designed to reflect the progress of a business enterprise over time. This is achieved through a series of regular periodic reports which describe financial position at various dates and results of operations for various periods, and by episodic reporting of significant events and transactions. This reporting framework is intended to enable users of reports to understand and evaluate business operations so that they can make rational investment decisions.

A major part of the evaluation process requires an analysis of trends in a business so that reasonable inferences about future performance can be drawn. Actual results can then be compared with past expectations and revised estimates of the future made. This process of analysis must necessarily be ongoing and dynamic if our capital market mechanism is to be effective in allocating capital resources to their most productive use in a rapidly changing economy.

Timely reporting is essential to this system. Investors must have information available to them on a prompt basis and in sufficient detail to reflect significant operating trends. To these ends, the Commission has taken several steps in recent years. Form 10-Q [17 CFR 249.308a] was adopted in 1970 to require summarized quarterly reporting throughout the year. Accounting Series Release No. 138 [38 FR 2446] was issued

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[2] See Accounting Series Release No. 155, Securities Act Release No. 5488, Securities Exchange Act Release No. 10754, Public Utility Holding Company Act Release No. 18392 (April 25, 1974) [39 F.R. 17931]. The revised definition of "significant subsidiary" is applicable to the term as found in subparagraph (2) of Rule 4-02(e).

in 1973 to require full and timely disclosure of material unusual charges to income.

To date, however, quarterly data have been reported on an extremely abbreviated basis and annual financial statements have generally been presented without regard for or disclosure of trends occurring within a year. The Commission believes that these are deficiencies in the financial reporting framework and it is proposing new requirements herein to improve reporting in these respects.

The Commission also believes that it is useful to investors to have the reporting expertise of independent public accountants drawn upon in the preparation of quarterly reports. In addition, it feels that the involvement of the independent accountant will increase the reliability of such reports even though no audit opinion is issued on the interim financial report. Accordingly, the rules proposed herein encourages this involvement on a timely basis and require an after the fact review of limited interim data at the time of the annual audit by including interim data in the footnotes to the annual financial statements.

Proposed Changes in Quarterly Reporting Requirements by Amendment to Form 10-Q. The proposed amendments to Form 10-Q require that comparative income statements, balance sheets and statements of source and application of funds be furnished on a quarterly basis. The income statement is proposed to be required on a quarterly and year-to-date basis for the current and the previous year, the balance sheet at the end of the quarter for both years and the source and application of funds statement on a comparative year-to-date basis.

These financial statements are to be prepared in accordance with the general form of presentation set forth in Regulation S-X [17 CFR Part 210], except that the requirement for a summary of accounting practices and other requirements for detailed footnote disclosure do not apply unless such disclosure is required to make the financial statements not misleading. The Commission believes that it is reasonable to assume that users of interim statements will be familiar with or have access to the most recent annual financial statements and the repetition of annual footnotes is not essential to investors. In addition, the Commission is aware that the gathering of detailed footnote information would entail significant costs and might delay interim reports.

The financial statements are also to be prepared in conformity with the standards of accounting measurement set forth in Accounting Principles Board Opinion No. 28 (APB 28) and any amendments thereto adopted by the Financial Accounting Standards Board. In this connection, the Commission endorses the view set forth in that Opinion that "each interim period should be viewed primarily as an integral part of an annual period." It recognizes that interim data are necessarily more tentative than annual financial statements since these data are usually quickly prepared without the information and documentation normally available during the preparation of annual statements.

The APB 28 requirements for disclosing accounting changes are expanded in two respects by the proposed rule. First, the registrant must state the date of the change and the reasons for making it. This is already required under Form 10-Q. Second, the proposed rule would require the registrant to furnish as an exhibit to the Form 10-Q a letter from its independent public accountants indicating whether or not the accounting change is to an alternative principle which in his judgment is preferable under the circumstances. This is a change from the present letter requirement.

This letter is required since Accounting Principles Board Opinion No. 20 dealing with accounting changes provides that such changes may be made only "if the enterprise justifies the use of an alternative acceptable accounting principle on the basis that it is preferable." The Commission believes that the management of the enterprise has sustained this burden of justification only if it has convinced its independent public accountant that the change will result in improved reporting, and hence in the judgment of the independent accountant the new principle is preferable under the circumstances.

The proposed rule also would require disclosure of pro forma data in connection with business combinations accounted for on a purchase basis similar to that now required in annual statements by Accounting Principles Board Opinion No. 16.

In addition to the financial statement requirements, the proposed rule would require that the registrant provide a narrative analysis of the results of operations. This analysis should follow the guidelines set forth in Guide 1 of "Guides for Preparation and Filing of Reports and Registration Statements under the Securities Exchange Act of 1934" (Accounting Series Release No. 159) [39 FR 31894].

The Commission does not believe that these proposed extended Form 10-Q disclosure requirements should preclude management from publishing more abbreviated quarterly results to its shareholders, nor should management be discouraged from making more frequent interim reports when the circumstances warrant it. Many companies in certain industries now publish sales and, in a limited number of cases, income data on a monthly basis. The Commission believes that when a few months are particularly important in determining annual results or when results within a normal interim reporting period indicate major changes in business trends, registrants should make every effort to publish such results in the most timely fashion possible. Failure to do so in some circumstances may result in misleading investors.

Where abbreviated quarterly reports are sent to all shareholders, the Commission encourages the practice of including in those reports a statement that a more detailed presentation of quarterly results is available in Form 10-Q and will be furnished to stockholders on request.

Proposed Amendments to Regulation S-X to Require Inclusion of Interim Financial Data in Notes to Annual Financial Statements. Financial statements have traditionally been presented for a fiscal period of a year. It has been generally recognized that a year is an arbitrary period selected for convenience to permit all companies to report on a comparable period even though natural operating cycles for businesses may vary widely and in the case of most businesses the length of time it takes the earth to circle the sun has little relevance to operations. While the establishment of such a period is necessary and desirable, it must be recognized that business trends do not revolve around it.

In analyzing business results, therefore, an investor must be able to determine the pattern of events within a year as well as examining aggregate annual results. In trying to draw implications about the future, an investor might reasonably come to significantly different conclusions in the case of an enterprise which reported steadily improving operations within a fiscal year as compared to one whose operations were flat throughout the year or one whose operations varied randomly or seasonally from quarter to quarter. It is clear, therefore, that an understanding of patterns of performance within a year may be of vital importance in interpreting the significance of a full year's results. Annual statements, however, have not traditionally included such data and the investor seeking this information must find other sources.

In addition, reported interim results have frequently included adjustments which would distort trends, particularly in the final quarter of a fiscal year.

The Commission believes that this information deficiency can be remedied and that the reliability of interim data can be enhanced by requiring the inclusion of selected quarterly data in the footnotes to the annual financial statements, and accordingly it is proposing herein to amend Regulation S-X to require such disclosure.

The proposed amendment would require registrants to disclose net sales, gross profit, income before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income, and net income for each quarter of the year for the two most recent years for which income statements are presented.

When these data supplied in the annual statements are different from those previously reported on Form 10-Q, the differences must be reconciled. In addition, to the extent that there are any unusual items or adjustments in the quarterly data which would significantly affect the user's analysis of business trends, these must be disclosed.

In proposing this rule, the Commission does not propose to require registrants to restate retroactively quarterly results at the end of the year to reflect quarterly earnings as seen from the perspective of the end of the year. The Commission endorses the approach to interim reporting set forth in paragraph 26 of APB 28 which requires changes in accounting estimates to "be accounted for in the period in which the change in estimate is made." The Opinion does require disclosure of the effect on earnings of a change in estimate if material. If registrants believe that the trend of business operations would be more easily understood by showing in columnar form the amounts originally reported, adjustments based on subsequent events and a pro forma adjusted figure for each quarter, they may do so.

The Role of the Independent Public Accountant. The Commission recognizes that by requiring the proposed disclosure in a note to the annual financial statements, it is involving the independent public accountant in the reported interim results. By requiring this involvement only with a note to annual financial statements and not with filings on Form 10–Q, it believes that it is placing a lesser burden on the independent accountant, since his responsibility will only be to the note as part of and relathan directly to the interim financial statements as such. The Commission is not prepared, however, to have this footnote designated as "unaudited." Thus the auditor must satisfy himself that the interim data reported in the note are a reasonable reflection of the trend of operations within the year in conformity with generally accepted accounting principles. While certain auditing procedures will certainly have to be applied to quarterly data, and the auditor must consider the client's system of internal controls with the need to produce reliable interim data in mind, the Commission does not believe that the auditor will have to audit each interim period as a separate period to fulfill his professional responsibilities. It would appear that current methods of estimating costs could largely continue to be used, and that it would not be necessary, for example, to observe physical inventories and confirm receivables within each interim period.

The Commission has been advised that the Auditing Standards Executive Committee of the American Institute of Certified Public Accountants (AudSEC) has been considering the broad question of standards in connection with auditor association with interim reports. It encourages AudSEC to expand this project to develop standards applicable to the audits of annual footnote disclosure such as would be required under this proposal.

While this proposal does not require timely involvement of independent accountants with interim reporting, the Commission expects that the proposal will encourage such involvement in order to minimize year-end audit problems, and it believes that this is a desirable result. In drawing this conclusion, the Commission is not demeaning the integrity of corporate managements but rather expressing its view that the independent accountant has a reporting expertise that will be beneficial to management, outside directors and the investing public alike when applied to the interim reporting process. The Commission emphasizes that it is not suggesting audited interim financial statements.

The Commission notes that the New York Stock Exchange also endorsed the involvement of auditors with interim reporting in its 1973 White Paper. It also has noted the proposal of one large public accounting firm to undertake such an involvement. It believes that many registrants already utilize their accountants in this fashion and that this proposal will only accelerate a trend already in evidence.

Questions have been raised concerning the costs of these proposals, with particular emphasis on the cost of auditor involvement. The Commission believes that it is reasonable to expect that an independent public accountant who has substantial familiarity with a company through an audit relationship over time would be able to perform appropriate reviews and tests at relatively modest incremental cost to ascertain that interim data reported in a footnote to annual financial statements fairly presents results for interim periods as evidence of the trend of operations within the year when such periods are considered in conjunction with the annual period. The Commission would welcome comments from registrants and accountants on the cost of implementing these proposals.

Elimination of Form 7–Q [17 CFR 249.307a]. Since the proposals herein require a quarterly statement of source and application of funds for all companies, the separate form which set forth this requirement for real estate companies would no longer be required. The Commission believes that the format for fund statements set forth in Form 7–Q remains an appropriate one for real estate companies and it will expect such companies to retain this general approach, but it does not believe it is necessary to retain the form.

Commission action: The Commission hereby proposes amendments revising §§ 210.3–16 and 210.11A–01, §§ 240.13a–13, 240.13a–15, 240.15d–13 and 240.15d–15, and 249.308a [Form 10–Q], all of 17 CFR Chapter II. The text of the proposed amendments is attached.

The proposed amendments would be adopted pursuant to authority in sections 6, 7, 8, 10 and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, 77s] of the Securities Act of 1933; sections 12, 13, 15(d) and 23(a) [15 U.S.C. 78l, 78m, 78o(d), 78w] of the Securities Exchange Act of 1934; and sections 5(b), 14 and 20(a) [15 U.S.C. 79e, 79n, 79t] of the Public Utility Holding Company Act of 1935.

The proposals, if adopted, would be expected to be made effective for filings made with the Commission subsequent to July 15, 1975. All interested persons are invited to submit written comments on the proposals on or before March 15, 1975. The communications should be addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and should be referenced to File No. S7–542. All comments will be available for public inspection.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

DECEMBER 19, 1974.

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, AND INVESTMENT COMPANY ACT OF 1940

Part 210 (Regulations S–X) is proposed to be amended to add a new subsection (v) to § 210.3–16 and to revise § 210.11A–01.

§ 210.3–16 General notes to financial statements. (See Release No. AS–4.)

* * * * *

(v) *Disclosure of selected quarterly financial data in notes to annual financial statements.*

(1) Disclosure shall be made in a note to the annual financial statements of net sales, gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered), income before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income, and net income for each quarter of the year for the two most recent years for which income statements are presented.

(2) When the data supplied in (1) above vary from the amounts previously reported on the Form 10–Q [17 CFR 249.308a] filed for any quarter, reconcile the amounts given with those previously reported describing the reason for the difference.

(3) Describe the effect of any disposals of segments of a business, and extraordinary, unusual or infrequently occurring items recognized in each quarter of the two most recent years for which income statements are presented, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter.

* * * * *

STATEMENT OF SOURCE AND APPLICATION OF FUNDS (ARTICLE 11A–01)

§ 210.11A–01 Application of §§ 210.-11A–01 to 210.11A–02.

This article shall be applicable to statements of source and application of funds filed pursuant to requirements in registration and reporting forms under the Securities Act of 1933 and the Securities Exchange Act of 1934.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Part 240 is proposed to be amended to revoke subparagraph (b)(2) of § 240.-13a–13, § 240.13a–15, subparagraph (b)(2) of § 240.15d–13, and § 240.15d–15.

§ 240.13a–13 [Amended]

1. In § 240.13a–13 subparagraph (b) (2) is deleted and subparagraphs (b) (3), (4) and (5) are redesignated as subparagraphs (b) (2), (3) and (4), respectively.

§ 240.13a–15 [Deleted]

2. Section 240.13a–15 is deleted.

§ 240.15d–13 [Amended]

3. In § 240.15d–13 subparagraph (b) (2) and subparagraphs (b) (3), (4) and (5) are redesignated as subparagraphs (b) (2), (3) and (4), respectively.

§ 240.15d–15 [Deleted]

4. Section 240.15d–15 is deleted.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Part 249 is proposed to be amended to revise Form 10–Q [§ 249.308a], as given below.

§ 249.308a Form 10–Q, for quarterly reports under section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

H. *Presentation of Financial Information.*

(a) The registrant shall furnish an income statement, balance sheet and statement of source and application of funds following the general form of presentation set forth in Regulation S–X [17 CFR Part 210], except that Rules 3–08 and 3–16 [17 CFR 210.3–08 and 210.3–16], and other requirements which call for detailed footnote disclosure and the presentation of schedules shall not apply other than as required by (g) below. In addition, the registrant shall provide a narrative analysis of the results of operations following the guidelines set forth in Guide 1 of "Guides for Preparation and Filing of Reports and Registration Statements under the Securities Exchange Act of 1934." [39 FR 31894] A company in the promotional or development stage to which paragraph (b) of Rule 5A–01 of Article 5A of Regulation S–X [17 CFR 210.5A–01] is applicable shall furnish the information specified in Rules 5A–02, 5A–03, 5A–04 and 5A–06 of Regulation S–X [17 CFR 210.5A–02, 210.5A–03, 210.5A–04, 210.5A–06] in lieu of the above financial statement requirements.

(b) The financial statements and narrative explanations shall be provided for periods set forth below:

(1) The income statement shall be presented for the most recent fiscal quarter, for the period between the end of the last fiscal year and the end of the most recent fiscal quarter, and for corresponding periods of the preceding fiscal year.

(2) The balance sheet shall be presented as of the end of the most recent fiscal quarter and for the end of the corresponding period of the preceding fiscal year.

(3) The statement of source and application of funds shall be presented for the period between the end of the last fiscal year and the end of the most recent fiscal quarter, and for the corresponding period of the preceding fiscal year.

* * * * *

(d) If, during the current period specified in (b) above, the registrant or any of its consolidated subsidiaries, entered into a business combination treated for accounting purposes as a pooling of interests, the interim financial statements for both the current year and the preceding year shall reflect the combined results of the pooled businesses. Supplemental disclosure of the separate results of the combined entities for periods prior to the combination shall be given, with appropriate explanations.

(e) In case the registrant has disposed of any significant portion of its business or has acquired a significant amount of assets in a transaction treated for accounting purposes as a purchase, during any of the periods covered by the report, the effect thereof on revenues and net income—total and per share—for all periods shall be disclosed. In addition, where a material business combination accounted for as a purchase has occurred during the current fiscal year, disclosure shall be made of the results of operations for the current year up to the date of the end of the most recent fiscal quarter (and for the comparable period in the preceding year) on a pro forma basis as though the companies had combined at the beginning of the period being reported on. This pro forma information should as a minimum show revenue, income before extraordinary items and the cumulative effect of accounting changes, such income on a per share basis and net income.

(f) The financial statements to be included in this report shall be prepared in conformity with the standards of accounting measurement set forth in Accounting Principles Board Opinion No. 28 and any amendments thereto adopted by the Financial Accounting Standards Board. In addition to meeting the reporting requirements for accounting changes specified therein, the registrant shall state the date of any change and the reasons for making it. In addition, a letter from the registrant's independent accountants shall be filed as an exhibit indicating whether or not the change is to an alternative principle which in his judgment is preferable under the circumstances; except that no letter from the accountant need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such change.

(g) Furnish any material information necessary to make the information called for not misleading. Such information might include statements calling attention to such items as the seasonality of the company's business, major uncertainties currently facing the company, significant events occurring during or subsequent to the interim period being reported on, significant accounting changes under consideration, or new arrangements with creditors.

* * * * *

(j) The registrant may furnish any additional information related to the periods being reported on which, in the opinion of management, is of significance to investors, such as the dollar amount of backlog of firm orders and an explanation of commitments and contingent liabilities. In addition, the registrant shall indicate whether any Form 8–K [§ 249.308] was filed reporting any material unusual charges or credits to income during the most recently completed fiscal quarter or whether any Form 8–K [§ 249.308] was filed during that period reporting a change in independent accountants.

(k) If appropriate, the income statement shall [be prepared to] show earnings per share and dividends per share applicable to common stock, and the basis of the earnings per share computation shall be stated together with the number of shares used in the computation. The registrant shall file as an exhibit a statement setting forth in reasonable detail the computation of per share earnings, unless the computation is otherwise clearly set forth in the report.

* * * * *

J. *Sales of Unregistered Securities (Debt or Equity).*

The information called for herein shall be given as to each "security" as defined in section 2(1) of the Securities Act of 1933. If the information called for has been previously reported on another form, it may be incorporated by a specific reference to the previous filing.

Give the following information as to all securities of the registrant sold by the registrant during the fiscal quarter, which were not registered under the Securities Act of 1933, in reliance upon an exemption from registration provided by section 4(2) of that Act. Include sales of the registrant's reacquired securities as well as new issues, securities issued in exchange for property, services or other securities, and new securities resulting from the modification of outstanding securities:

(1) Give the date of sale, and the title and amount of the registrant's securities sold;

(2) Give the market price on the date of sale, if applicable;

(3) Give the names of the brokers, underwriters or finders, if any. As to any securities sold but which were not the subject of a public offering, name the persons or identify the class of persons to whom the securities were sold;

(4) As to securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts, brokerage commissions, or finder's fees. As to any securities sold otherwise than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the registrant;

(5) Indicate the section of the Act or rule of the Commission under which exemption from registration was claimed, and state briefly the facts relied upon to make the exemption available; and

(6) State whether the securities have been legended and stop-transfer instructions given in connection therewith, and, if not, state the reasons why not.

K. *Signature and Filing of Report.*

Eight copies of the report shall be filed with the Commission. At least one copy of the report shall be filed with each exchange on which any class of securities of the registrant is listed and registered. At least one copy of the report filed with the Commission and one copy filed with each such exchange shall be manually signed on the registrant's behalf by a duly authorized officer of the registrant. Copies not manually signed shall bear typed or printed signatures.

A. *Summarized Financial Information.* (Existing Part A to be deleted.)

B. *Capitalization and Stockholders' Equity.* (Existing Part B to be deleted.)

C. *Sales of Unregistered Securities (Debt or Equity).* (Part C is proposed to be Instruction J.)

Signatures. No change in this section.

[FR Doc.75–197 Filed 1–3–75;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[29 CFR Part 1952]

COLORADO PLAN SUPPLEMENTS

Proposed Approval

1. *Background.* Part 1952 of Title 29, Code of Federal Regulations, prescribes

procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) for review of changes and progress in the development and implementation of State plans which have been approved under section 18(c) of the Act and Part 1902 of this chapter. On September 12, 1973, a notice was published in the FEDERAL REGISTER of the approval of the Colorado plan and of the adoption of Subpart M of Part 1952 containing the decision (38 FR 25173). On November 18, 1974, the State of Colorado submitted supplements to the plan involving developmental changes (see Subpart B of 29 CFR Part 1953). The supplements consist of various rules and regulations promulgated by the State designee.

The decision approving the Colorado plan incorporated several assurances from the State on the promulgation or adoption of administrative regulations (See 38 FR 25174). In response to that commitment, the State has promulgated procedural regulations, effective in October 1974, for the following components of its occupational safety and health program: Variances (Colorado Occupational Safety and Health (hereinafter referred to as COSH) Rule 4-101 et seq.); Inspections, Citations and Proposed Penalties (COSH Rule 5-101 et seq.); Recording and Reporting Occupational Injuries and Illnesses (COSH Rule 6-101 et seq.); and Rules of Procedure for Colorado Occupational Safety and Health Hearing and Appeals (COSH Rule 7-101 et seq.). The Assistant Secretary has preliminarily reviewed the supplements and hereby gives notice that their approval is in issue before him.

3. *Location of the supplements for inspection and copying.* A copy of the plan and its supplements may be inspected and copied during normal business hours at the following locations: Office of the Associate Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, Room 850, 1726 M Street, NW., Washington, D.C. 20210; Occupational Safety and Health Administration, Room 15010, Federal Building, 1961 Stout Street, Denver, Colorado 80202; Director, Division of Labor, Department of Labor and Employment, 200 East Ninth Avenue, Denver, Colorado 80203.

4. *Public participation.* Interested persons are hereby given until February 5, 1975, in which to submit written data, views and arguments concerning whether the supplement should be approved. Such submissions are to be addressed to the Associate Assistant Secretary for Regional Programs at his address as set forth above where they will be available for inspection and copying.

Any interested person may request an informal hearing concerning the proposed supplements, by filing particularized written objections with respect thereto within the time allowed for comments with the Associate Assistant Secretary for Regional Programs. If in the opinion of the Assistant Secretary substantial objections are filed, which warrant further public discussion, a formal or informal hearing on the subjects and issues involved may be held.

The Assistant Secretary shall consider all relevant comments, arguments and requests submitted in accordance with this notice and shall thereafter issue his decision as to approval or disapproval of the supplements, make appropriate amendments to Subpart M of Part 1952 and initiate appropriate further proceedings if necessary.

Signed at Washington, D.C. this 24th day of December, 1974.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.75-229 Filed 1-3-75;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 THE TREASURY

Office of the Secretary

[ORDER 221-3]

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Transfer of Functions

By virtue of the authority vested in me as Secretary of the Treasury, including the authority in Reorganization Plan No. 26 of 1950, it is ordered that:

1. There is hereby transferred, as specified herein, the functions, powers and duties of the Internal Revenue Service arising under laws relating to wagering, to the Bureau of Alcohol, Tobacco and Firearms (hereinatfer referred to as the Bureau).

2. The Director of the Bureau shall perform the functions, exercise the powers, and carry out the duties of the Secretary in the administration and enforcement of the following provisions of law: Chapter 35 and Chapters 40 and 61 through 80, inclusive, of the Internal Revenue Code of 1954 insofar as they relate to activities administered and enforced with respect to Chapter 35.

3. All functions, powers and duties of the Secretary which relate to the administration and enforcement of the laws specified in paragraph 2 hereof are delegated to the Director. Regulations for the purposes of carrying out the functions, powers and duties delegated to the Director may be issued by him with the approval of the Secretary.

4. All regulations prescribed, all rules and instructions issued, and all forms adopted for the administration and enforcement of the laws specified in paragraph 2 hereof, which are in effect or in use on the effective date of this Order, including amendments thereto, shall continue in effect as regulations, rules, instructions and forms of the Bureau until superseded or revised.

5. All existing activities relating to the assessment, collection, processing, depositing, or accounting for taxes (including penalties and interest), under the laws specified in paragraph 2 hereof, shall continue to be performed by the Commissioner of Internal Revenue until the Director shall otherwise provide with the approval of the Secretary.

6. (a) The term "Commissioner of Internal Revenue" whenever used in regulations, rules, instructions, and forms issued or adopted for the administration and enforcement of the laws specified in paragraph 2 hereof, which are in effect or in use on the effective date of this Order, shall be held to mean the Director.

(b) The term "internal revenue officer" and "officer, employee or agent of the internal revenue" wherever used in such regulations, rules, instructions and forms, in any law specified in paragraph 2 above, and in 18 U.S.C. 1114, shall include all officers and employees of the United States engaged in the administration and enforcement of the laws administered by the Bureau, who are appointed or employed by, or pursuant to the authority of, or who are subject to the directions, instructions or orders of, the Secretary.

7. All delegations inconsistent with this Order are revoked.

8. This Order shall be effective immediately.

Dated: December 24, 1974.

[SEAL] WILLIAM E. SIMON,
Secretary of the Treasury.

[FR Doc.75-280 Filed 1-3-75;8:45 am]

LOCK-IN AMPLIFIERS AND PARTS THEREOF FROM THE UNITED KINGDOM

Withholding of Appraisement Notice

Information was received on April 17, 1974, that lock-in amplifiers from the United Kingdom were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of May 17, 1974, on page 17570. The term "lock-in amplifiers" refers to electrical measuring instruments for isolating and amplifying alternating current signals. The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States. An "Amendment of Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of August 13, 1974, changing the caption to read "Lock-in Amplifiers and parts Thereof from the United Kingdom."

Pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), notice is hereby given that there are reasonable grounds to believe or suspect that the exporter's sales price (section 204 of the Act; 19 U.S.C. 163) of lock-in amplifiers and parts thereof from the United Kingdom is less, or is likely to be less, than the market value (section 205 of the Act; 19 U.S.C. 164).

Statement of Reasons. The information currently before the U.S. Customs Service indicates that the proper basis of comparison for fair value purposes is between exporter's sales price and adjusted home market price of such or similar merchandise.

Exporter's sales price was calculated on the basis of the resale price to unrelated purchasers in the United States, with deductions for air freight, insurance, U.S. duty, Customs brokerage and clearance charges, inland freight, selling expenses in the United States, and commissions. Assembly costs in the United States were also deducted from the resale price of the model which was imported in kit form.

Home market price was calculated on the basis of an ex-factory price to unrelated purchases, with a deduction for selling expenses. For comparisons involving the model imported in kit form, assembly costs in the home market were deducted.

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

Customs officers are being directed to withhold appraisement of lock-in amplifiers and parts thereof from the United Kingdom in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

In accordance with §§ 153.32(b) and 153.37, Customs Regulations (19 CFR 153.32(b), 153.37), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, D.C. 20229, in time to be received by his office on or before January 16, 1975. Such requests must be accompanied by a statement outlining the issues wished to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office on or before February 5, 1975.

This notice, which is published pursuant to § 153.34(b), Customs Regulations (19 CFR 153.34(b)), shall become effective January 6, 1975. It shall cease to be effective at the expiration of 6 months from the date of this publication, unless previously revoked.

Dated: December 31, 1974.

[SEAL] DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[FR Doc.75-312 Filed 1-3-75;8:45 am]

TREASURY ADVISORY COMMITTEES

Public Availability of Reports on the Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C.

App. I. (Pub.L. 92-463), and OMB Circular A-63 of March 27, 1974, those Advisory Committees of the Department of the Treasury which held closed, or partially closed, meetings through October 31, 1974, have prepared summary reports on the activities of those meetings. Copies of the reports have been filed and are available for public inspection at two locations:

The Library of Congress
Room 256, Main Building
10 First Street, SE.
Washington, D.C.

The Department of the Treasury
Main Library
Room 5033, Main Treasury Building
15th and Pennsylvania Avenue, NW.
Washington, D.C.

The following committees filed summary reports:

Advisory Committee on Explosives Tagging
Advisory Committee on Reform of the International Monetary System
American Bankers Association Government Borrowing Committee
Art Advisory Panel of the Commissioner of Internal Revenue
Consulting Committee of Bank Economists
National Advisory Committee on Banking Policies and Practices
Regional Advisory Committee on Banking Policies and Practices (one committee for each of the fourteen National Bank Regions)
Securities Industry Association
Government Securities and Federal Agencies Committee
Technical Subcommittee to the Advisory Committee on Explosives Tagging

[SEAL] WARREN F. BRECHT,
Assistant Secretary (Administration).

[FR Doc.75-281 Filed 1-3-75;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Army

SHORELINE EROSION ADVISORY PANEL

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Shoreline Erosion Advisory Panel on 23-24 January 1975.

The meeting will be held in Room 1E-235 of the Forrestal Building, 10th and Independence Avenue SW., Washington, DC from 0830 hours to 1600 hours on 23 January 1975 and, if the schedule requires, from 0830 hours until completion of discussions on 24 January 1975.

The 23 January session will be devoted to presentations on the legislative history of the Shoreline Erosion Control Demonstration Act of 1974, the interrelationships between the Shore Erosion Advisory Panel and the Department of Agriculture, possible alternative financial and institutional arrangements for demonstration projects, the State of Michigan's demonstration program, shore protection methods and monitoring programs and laboratory research on low cost shore protection methods scheduled by the Coastal Engineering Research Center. Time for public participation at the meeting has been scheduled for 1130 hours and 1530 hours on 23 January.

In the event that scheduled presentations and panel deliberations cannot be completed on 23 January, the meeting will be continued to 24 January 1975, and will include additional time for public participation.

The meeting will be open to the public subject to the following limitations:

a. Seating capacity of the meeting room limits public attendance to not more than 30 people. Advance notice of intent to attend is requested in order to assure adequate and appropriate arrangements.

b. Oral participation by the public is limited to those times scheduled on the agenda; however, written statements may be submitted prior to, or up to 30 days following the meeting.

Inquiries may be addressed to Colonel James L. Trayers, Commander and Director, U.S. Army Coastal Engineering Research Center, Kingman Building, Fort Belvoir, Virginia 22060; telephone: 202-325-7000.

Dated: December 27, 1974.

By Authority of the Secretary of the Army.

FRED R. ZIMMERMAN,
Lt. Colonel, U.S. Army,
Chief, Plans Office, TAGO.

[FR Doc.75-208 Filed 1-3-75;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 74-4]

DAVID M. HIGGINS, M.D.

Correction of Record

By letter of December 10, 1974, Logan A. Webster, Chief Probation Officer of the United States District Court for the Western District of Pennsylvania, drew the attention of the Administrator of the Drug Enforcement Administration to certain apparent inaccuracies in a FEDERAL REGISTER publication of July 23, 1974 (Vol. 39, No. 142).

They are as follows:

1. In the fourth paragraph of the first column, headed "Discussion of Evidence," the word "barbiturates" should be substituted for the word "amphetamines" after the number 20,000.

2. Dr. Higgins did not admit that on January 8, 1973, he sold Corporal Prandy 700 amphetamines for $150, as stated in the fourth paragraph of the first column. He did admit the sale of barbiturates. Consequently, the sentence in question should be amended to read:

"In addition, during the instant proceedings Dr. Higgins has admitted that on January 8, 1973, he sold Corporal Prandy 453 barbituarates for $400 and that on January 12, 1973, he sold Corporal Prandy 20,000 barbiturates for $2,400."

Any references to convictions arising from illicit transactions involving amphetamines are incorrect.

Finally, Mr. Webster's letter points out that, during the criminal proceedings against Dr. Higgins in the United States District Court for the Western District of Pennsylvania, Mr. Webster's office prepared a presentence report in which reference is made to Dr. Higgins' allegations of coercion during the illicit transactions to which he subsequently pleaded guilty. This report, however, was not a part of the record in the administrative proceedings which resulted in the revocation of Dr. Higgins' registration under the Controlled Substances Act of 1970.

The Administrator appreciates Mr. Webster's attention in this matter and hereby orders the corrections to the record described above. These corrections do not affect the order published in the FEDERAL REGISTER on July 23, 1973, in this matter.

Dated: December 30, 1974.

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

[FR Doc.75-223 Filed 1-3-75;8:45 am]

[Docket No. 74-9]

GUY M. AUTORE, M.D.

Revocation of Registration

On August 9, 1974, a hearing was held before Administrative Law Judge George A. Koutras on the issues raised by an Order to Show Cause directed to Guy M. Autore, M.D., as to why his DEA registration AA0091885 should not be revoked.

The Order to Show Cause was predicated on the December 17, 1973, conviction of Dr. Autore in the United States District Court for the Central District of California on thirteen counts of unlawfully distributing controlled substances included in Schedules II and III of the Controlled Substances Act. Dr. Autore was sentenced to three years imprisonment, execution thereof suspended after confinement for a period of six months.

Title 21, U.S.C., 824(a)(2) provides that a registration to manufacturer, distribute or dispense controlled substances may be suspended or revoked on a finding that the registrant has been convicted of a felony relating to a controlled substance.

Judge Koutras found as a matter of law that Dr. Autore had been convicted of a felony relating to a controlled substance. The Administrator concurs in that finding.

At the hearing, Dr. Autore argued that his criminal conviction was not final since his appeal from the convictions was still pending. Judge Koutras found as a matter of law that a conviction is a conviction within the meaning of the Act even though an appeal may be pending. The Administrator concurs in that finding. (See In the Matter of Leonard S. Cohen, 38 F.R. 9522, April 17, 1973; In the Matter of Dr. Carl Oslin Ramzy, 36 F.R. 24077, December 18, 1971).

Judge Koutras found as a matter of law that the record of the hearing provides a rational basis for the Administrator to suspend or revoke Dr. Autore's

registration. The Administrator concurs in that finding.

Judge Koutras recommended that Dr. Autore's registration be suspended for thirty-six months apparently to coincide with his period of probation. The Administrator does not accept this recommendation since in his view Dr. Autore's conduct reveals an absolute disregard of the public health and safety and his own responsibilities as a physician. Should Dr. Autore apply for a registration at some time in the future his application would be considered in the light of all the circumstances then obtaining. However, it is difficult at this time to see how the conduct resulting in his conviction could ever be ignored.

Therefore, under the authority vested in the Attorney General by Section 304 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 824), and redelegated to the Administrator of the Drug Enforcement Administration, by § 0.100, as amended, Title 28 Code of Federal Regulations, the Administrator hereby orders that the Certificate of Registration of Guy M. Autore, M.D. (DEA Registration AA0091885) be, and hereby is, revoked, effective January 6, 1975.

Dated: December 30, 1974.

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

[FR Doc.75-234 Filed 1-3-75;8:45 am]

INTERIM MANUFACTURING QUOTAS

Schedule I and II Controlled Substances

Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II by July 1 of each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28, Code of Federal Regulations.

Therefore, pursuant to section 306 and 21 CFR 1303.11 and 1303.21, any currently registered bulk manufacturer who received a manufacturing quota for 1974 for a basic class of Schedule I or II controlled substance and who has applied for a 1975 manufacturing quota for said substance, may manufacture, effective January 1, 1975, up to 25 percent of his 1974 bulk manufacturing quota. This notice is given to insure uninterrupted manufacture of Schedule I and II controlled substances pending publication of the 1975 manufacturing quotas.

Dated: December 30, 1974.

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

[FR Doc.75-232 Filed 1-3-75;8:45 am]

Federal Bureau of Investigation

NATIONAL CRIME INFORMATION CENTER ADVISORY POLICY BOARD

Renewal

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) of the renewal of the NCIC Advisory Policy Board.

The Assistant Attorney General for Administration has determined that renewal of this Board is necessary and in the public interest. Copies of documents relating to the renewal of this Board and all documents and reports received pursuant to this notice will be available for inspection at FBI Headquarters, Washington, D.C., during regular business hours.

The nature and purpose of this Board is to recommend to the FBI general policy with respect to the philosophy, concept and operational principles of the NCIC.

Membership on this Board consists of twenty-six (26) representatives of criminal justice agencies throughout the United States. Twenty members are elected; five each from the four (4) NCIC geographic regions. Qualified electors are representatives of NCIC control terminal agencies. The FBI does not participate in the democratic electoral process. The six additional members are appointed by the Director of the FBI. They represent the judicial, prosecutive and corrections segements of the criminal justice community. The Chairman of the Board is elected by the membership at the first meeting of the Board and he will serve until January 4, 1977.

CLARENCE M. KELLEY,
Director.

[FR Doc.75-217 Filed 1-3-75;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

RIVERTON UNIT, PICK-SLOAN MISSOURI BASIN PROGRAM, WYOMING

Sale of Lands

The sale of the lands described in the FEDERAL REGISTER published Friday, November 15, 1974, 39 FR 40311 is hereby postponed until further notice.

R. W. LLOYD,
Acting Regional Director.

[FR Doc.75-254 Filed 1-3-75;8:45 am]

Geological Survey

GULF OF ALASKA

Proposed OSC Orders

Notice is hereby given that the Geological Survey is proposing OCS Orders for the Gulf of Alaska. For purpose of these Orders, Gulf of Alaska shall include those lands subject to Federal OCS oil and gas leasing in that part of the North Pacific Ocean from the southernmost seaward boundary between Alaska and Canada to the westernmost point of the Alaska Peninsula, including the lower Cook Inlet.

By 39 FR 149, August 1, 1974, the Geological Survey announced its intention to develop operating orders for the Gulf of Alaska OCS Area and solicited comments concerning proposed OCS Orders by September 15, 1974. Comments have been received and considered.

In view thereof, the following operating orders are being proposed and consistent with current procedures of the Geological Survey, comments and suggestions are solicited as to the content of these proposed Orders.

OCS Order No. 1: Marking of Wells, Platforms and Structures
OCS Order No. 2: Drilling Procedures
OCS Order No. 3: Plugging and Abandonment of Wells
OCS Order No. 4: Suspensions and Determination of Well Producibility
OCS Order No. 5: Installation of Subsurface Safety Devices
OCS Order No. 6: Procedures for Completion of Oil and Gas Wells
OCS Order No. 7: Pollution and Waste Disposal
OCS Order No. 8: Platforms and Structures
OCS Order No. 9: Approval Procedures for Oil and Gas Pipelines
OCS Order No. 11: Oil and Gas Production Rates, Prevention of Waste, and Protection of Correlative Rights
OCS Order No. 12: Public Inspection of Records

Interested persons may submit written comments and suggestions to the Chief, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 600, 12201 Sunrise Valley Drive, Reston, Virginia 22092, on or before March 1, 1975.

W. A. RADLINSKI,
Acting Director.

GULF OF ALASKA

[OCS Order No. 1]

MARKINGS OF WELLS, PLATFORMS AND STRUCTURES

This Order is established pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.37. Section 250.37 provides as follows:

Well designations. The lessee shall mark promptly each drilling platform or structure in a conspicuous place, showing his name or the name of the operator, the serial number of the lease, the identification of the wells, and shall take all necessary means and precautions to preserve these markings.

The operator shall comply with the following requirements. All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b).

1. *Identification of fixed platforms and structures.* Platforms and structures shall be identified at two diagonal corners of the platform or structure by a sign with letters and figures not less than 12 inches

(30.5 cm.) in height with the name of the operator, the OCS lease number, the name of the area, the block number, and the platform or structure designation. The information may be abbreviated as in the following example:

The Blank Oil Company operates "C" platform on lease OCS-A 1000 in Block 108 of Icy Bay Area.

The identifying sign on the platform would show:

BOC—OCS-A 1000—I.B.—108—C.

2. *Identification of mobile platforms and structures.* Floating semi-submersible platforms, bottom-setting mobile and floating drilling ships shall be identified by one sign with letters and figures not less than 12 inches (30.5 cm.) in height affixed to the derrick to be visible from off the vessel with the name of the lease operator, the OCS lease number, and the name of the area, and the block number.

3. *Identification of individual wells.* The OCS lease and well number shall be painted on, or a sign affixed to, each singly completed well. In multiple completed wells each completion shall be individually identified at the wellhead. All identifying signs shall be maintained in a legible condition.

RODNEY A. SMITH,
Oil and Gas Supervisor,
Alaska Area.

RUSSELL G. WAYLAND,
Chief, Conservation Division.

GULF OF ALASKA

[OCS ORDER NO. 2]

DRILLING PROCEDURES

This Order is established pursuant to the authority prescribed in 30 CFR 250.11. All exploratory and development wells drilled for oil and gas shall be drilled in accordance with 30 CFR 250.34, 250.41, 250.91, and the provisions of this Order which shall continue in effect until field drilling rules are issued. When sufficient geological and engineering information is obtained through exploratory drilling, operators may make application or the Supervisor may require an application for the establishment of field drilling rules. After field drilling rules have been established by the Supervisor, development wells shall be drilled in accordance with such rules.

All wells drilled under the provisions of this Order shall have been included in an exploratory or development plan for the lease as required under 30 CFR 250.34. Each Application for Permit to Drill (Form 9-331C) shall include all information required under 30 CFR 250.91, and shall include a notation of any proposed departures from the requirements of this Order. All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b).

The Operator shall comply with the following requirements. All applications for approval under the provisions of the Order shall be submitted to the Supervisor.

1. *Well casing and cementing.* All wells shall be cased and cemented in accordance with the requirements of 30 CFR 250.14(a)(1), and the Application for Permit to Drill shall include the casing design safety factors for collapse, tension and burst. In cases where cement has filled the annular space back to the ocean floor, the cement may be washed out or displaced to a depth not exceeding 40 feet (12.2 metres) below the ocean floor to facilitate casing removal upon well abandonment. For the purpose of this Order, the casing strings in order of normal installation are drive or structural, conductor, surface, intermediate, and production casing.

A temperature or cement bond survey shall be run following cementing of the surface, intermediate, and production casing strings to verify that the casing has been adequately cemented unless the cement is circulated to the ocean floor.

The design criteria for all wells shall consider all pertinent factors for well control, including formation fracture gradients, formation pressures and casing setting depths. All casing, except drive pipe, shall be new pipe or reconditioned used pipe that has been tested to insure that it will meet API standards for new pipe.

A. *Drive or structural casing.* This casing shall be set by drilling, driving, or jetting to a minimum depth of 100 feet (30.5 metres) below the ocean floor or to such greater depth required to support unconsolidated deposits and to provide hole stability for initial drilling operations. If this portion of the hole is drilled, the drilling fluid shall be of a type that is in compliance with the liquid disposal requirements of OCS Order No. 7, and a quantity of cement sufficient to fill the annular space back to the ocean floor shall be used.

B. *Conductor and surface casing.* Casing design and setting depths shall be based upon all engineering and geologic factors, including the presence or absence of hydrocarbons or other potential hazards and water depths.

(1) *Conductor casing.* This casing shall be set at a depth in accordance with paragraph 1B(3) below. A quantity of cement sufficient to fill the annular space back to the ocean floor shall be used.

(2) *Surface casing.* This casing shall be set at a depth in accordance with paragraph 1B(3) below and cemented in a manner necessary to protect all freshwater sands and provide well control until the next string of casing is set.

This casing shall be cemented with a quantity sufficient to fill the calculated annular space to the ocean floor or at least 1,500 feet (457.2 metres) above the surface casing shoe and at least 200 feet (61.0 metres) inside the conductor casing or as approved by the Supervisor. When there are indications of improper cementing, such as lost returns, cement channeling, or mechanical failure of equipment, the operator shall recement or make the necessary repairs. After drilling a maximum of 100 feet (30.5 metres) below the surface casing shoe, a pressure test shall be obtained to aid in determining a formation fracture gradient either by testing to formation leakoff or by testing to a predetermined equivalent mud weight. The results of this test and any subsequent tests of the formation shall be recorded on the driller's log and used to determine the depth of and maximum mud weight to be used in the intermediate hole.

(3) *Conductor and surface casing setting depths.* These strings of casing shall be set at the depth specified below, subject to approved variation to permit the casing to be set in a competent bed, or through formations determined desirable to be isolated from the well by pipe for safer drilling operations, provided, however, that the conductor casing shall be set immediately prior to drilling into formations known to contain oil or gas, or, if unknown, upon encountering such formations. These casing strings shall be run and cemented prior to drilling below the specified setting depths. For those wells which may encounter abnormal pressure conditions, the Supervisor may prescribe the exact setting depth. Conductor casing setting depths shall be between 300 (91.4 metres) and 1,000 feet (304.8 metres) (TVD below ocean floor), and surface casing setting depths shall be between 1,000 (304.8 metres) and 4,500 feet (1,371.6 metres) (TVD below ocean floor).

Engineering, geophysical and geologic data used to substantiate the proposed setting depths of the conductor and surface casing (such as estimated fracture gradients, pore pressures, shallow hazards, etc.) shall be furnished with the Application for Permit to Drill.

c. *Intermediate casing.* This string of casing shall be set when required by anticipated abnormal pressure, mud weight, sediment, and other well conditions. The proposed setting depth for intermediate casing will be based on the pressure tests of the exposed formation immediately below the surface casing shoe or on subsequent pressure tests. This casing shall be set when the weight of the mud has been increased to within 0.5 ppg (0.06 kg/L) of the equivalent mud weight based on pressure tests below the surface casing.

A quantity of cement sufficient to cover and isolate all hydrocarbon zones and to isolate abnormal pressure intervals from normal pressure intervals shall be used. If a liner is used as an intermediate string, it shall have a minimum lap length of 200 feet (61.0 metres). The cement shall be tested by a fluid entry or pressure test to determine whether a seal between the liner top and next larger string has been achieved. This test shall be recorded on the driller's log. When such liner is used as production casing, it shall be extended to the surface and cemented to avoid surface casing being used as production casing.

D. *Production casing.* This string of casing shall be set before completing the well for production. It shall be cemented in a manner necessary to cover or isolate all zones which contain hydrocarbons,

but in any case, a calculated volume sufficient to fill the annular space at least 500 feet (152.3 metres) above the uppermost producible hydrocarbon zone must be used. When a liner is used as production casing, it shall have a minimum lap length of 200 feet (61.0 metres). The testing of the seal between the liner top and the next larger string shall be conducted as in the case of intermediate liners. This test shall be recorded on the driller's log.

E. *Pressure testing of casing.* Prior to drilling the plug after cementing, all casing strings, except the drive or structural casing, shall be pressure-tested as shown in the table below. The test pressure shall not exceed the internal yield pressure of the casing. The surface casing shall be tested, with water in the top 100 feet (30.5 metres) of the casing. If the pressure declines more than 10 percent in 30 minutes, or if there are other indications of a leak, corrective measures shall be taken until a satisfactory test is obtained.

Casing	*Minimum surface pressure*
Conductor	200 (13.6 atm).
Surface	1,000 (68 atm).
Intermediate	1,500 (102 atms) or 0.2 lb/in²/ft. (0.045 atm /M), whichever is greater.
Liner	1,500 (102 atm) or 0.2 lb/in²/ft (0.045 atm /M), whichever is greater.
Production	1,500 (102 atm) or 0.2 lb/in²/ft (0.045 atm /M), whichever is greater.

After cementing any of the above strings, drilling shall not be commenced until a time lapse of eight hours under pressure for conductor casing string or 12 hours under pressure for all other strings. Cement is considered under pressure if one or more float valves are employed and are shown to be holding the cement in place or when other means of holding pressure are used. All casing pressure tests shall be recorded on the driller's log.

2. *Directional surveys.* Wells are considered vertical if inclination does not exceed an average of three degrees from the vertical. Inclination surveys shall be obtained on all vertical wells at intervals not exceeding 500 feet (152.4 metres) during the normal course of drilling.

Wells are considered directional if inclination exceeds an average of three degrees from the vertical. Directional surveys giving both inclination and azimuth shall be obtained on all directional wells at intervals not exceeding 500 feet (152.4 metres) during the normal course of drilling and at intervals not exceeding 100 feet (30.5 metres) in all angle change portions of the hole.

On both vertical and directional wells, directional surveys giving both inclination and azimuth shall be obtained at intervals not exceeding 500 feet (152.4 metres) prior to, or upon, setting surface or intermediate casing, liners, and at total depth.

Composite directional surveys shall be filed with the Supervisor. The interval shown will be from the bottom of conductor casing, or, in the absence of conductor casing, from the bottom of drive or structural casing to total depth. In calculating all surveys, a correction from true north to Lambert-Grid north shall be made after making the magnetic to true north correction.

3. *Blowout prevention equipment.* Blowout preventers and related well-control equipment shall be installed, used, and tested in a manner necessary to prevent blowouts. Prior to drilling below the drive pipe or structural casing and until drilling operations are completed, blowout prevention equipment shall be installed and maintained ready for use as follows:

A. *Drive pipe or structural casing.* Before drilling below this string, at least one remotely controlled, annular-type blowout preventer or pressure-rotating, pack-off-type head and equipment for circulating the drilling fluid to the drilling structure or vessel shall be installed. When the blowout preventer system is on the ocean floor, the choke and kill lines or equivalent vent lines, equipped with necessary connections and fittings, shall be used for diversion. An annular preventer or pressure-rotating, pack-off-type head, equipped with suitable diversion lines as described above and installed on top of the marine riser may be utilized to permit the diversion of hydrocarbons and other fluids. A diverter system which provides at least the equivalent of two 4-inch (10.2 cm.) lines (22 square inches (141.9 cm²) internal cross-sectional area) and full-open or butterfly valves shall be installed. The diverter system shall be equipped with automatic, remote-controlled valves which open, prior to shutting in the well, and at least two lines venting in different directions to accomplish downwind diversion. A schematic diagram and operational procedure for the diverter system shall be submitted with the Application for Permit to Drill (Form 9-331C) to the Supervisor for approval.

In drilling operations where a floating or semisubmersible type of drilling vessel is used and formation competency at the structural casing setting depth is not adequate to permit circulation of drilling fluids to the vessel while drilling conductor hole, a program which provides for safety in these operations shall be described and submitted to the Supervisor for approval. This program shall include all known pertinent and relevant information, including seismic and geologic data, water depth, drilling-fluid hydrostatic pressure, schematic diagram from rotary table to proposed conductor casing seat, and contingency plan for moving off location. Where drilling fluids are not circulated to the vessel, small diameter initial pilot hole shall be drilled from the bottom of the drive or structural casing to the proposed conductor casing seat to minimize hazards from shallow hydrocarbons.

B. *Conductor casing.* Before drilling below this string, at least one remotely controlled, annular-type blowout preventer and equipment for circulating the drilling fluid to the drilling structure or vessel shall be installed. A diverter system as described in paragraph 3A above shall be installed.

C. *Surface casing.* Before drilling below this string, the blowout prevention equipment shall include a minimum of: (1) three remote-controlled, hydraulically operated blowout preventers with a working pressure which exceeds the maximum anticipated surface pressure, including one equipped with pipe rams, one with blind rams, and one annular type; (2) a drilling spool with side outlets, if side outlets are not provided in the blowout preventer body; (3) a choke line and manifold; (4) a kill line separate from choke line; and (5) a fill-up line.

D. *Intermediate casing.* Before drilling below this string, the blowout prevention equipment shall include a minimum of: (1) four remote-controlled, hydraulically operated blowout preventers with a working pressure which exceeds the maximum anticipated surface pressure, including at least two equipped with pipe rams, one with blind rams, and one annular type; (2) a drilling spool with side outlets, if side outlets are not provided in the blowout preventer body; (3) a choke line and manifold; (4) a kill line separate from choke line; and (5) a fill-up line.

E. *Testing.*—(1) *Pressure test.* Ram-type blowout preventers and related control equipment shall be tested with water to the rated working pressure of the stack assembly, with the exception of the annular-type preventer, which shall be tested to 70 percent of the rated working pressure. They shall be tested: (2) when installed, (b) before drilling out after each string of casing is set, (c) not less than once each week from each of the control stations, and (d) following repairs that require disconnecting a pressure seal in the assembly.

(2) *Actuation.* While drill pipe is in use, ram-type blowout preventers shall be actuated to test proper functioning once each trip, but in no event less than once each day. The annular-type blowout preventer shall be actuated on the drill pipe once each week. Accumulators or accumulators and pumps shall maintain a pressure capacity reserve at all times to provide for repeated operation of hydraulic preventers. An operable remote blowout-preventer-control station shall be provided, in addition to the one on the drilling floor.

(3) *Drills.* A blowout prevention drill shall be conducted weekly for each drilling crew to insure that all equipment is operational and that crews are properly trained to carry out emergency duties.

(4) *Records.* All blowout preventer tests and crew drills shall be recorded on the driller's log.

F. *Other equipment.* An inside blowout-preventer assembly (back-pressure valve) and an essentially full-opening drill-string safety valve in the open position shall be maintained on the rig floor to fit all pipe in the drill string. A kelly cock shall be installed below the swivel, and an essentially full-opening

kelly cock of such design that it can be run through the blowout preventers shall be installed at the bottom of the kelly.

4. *Mud program.* The characteristics, use, and testing of drilling mud and the conduct of related drilling procedures shall be such as are necessary to prevent the blowout of any well. Quantities of mud materials sufficient to insure well control shall be maintained readily accessible for use at all times.

A. *Mud control.* Before starting out of the hole with drill pipe, the mud shall be properly conditioned by circulating with the drill pipe just off bottom until the annular volume is displaced, unless it is documented in the driller's log that: (1) there was no indication of influx of formation fluids prior to starting to pull the drill pipe from the hole, (2) the weight of the returning mud is not less than the weight of the mud entering the hole, and (3) other mud properties recorded on the daily drilling log are within the specified ranges at the stage of drilling the hole to perform their required functions. In those cases when the hole is circulated, the driller's log shall be so noted.

When coming out of the hole with drill pipe, the annulus shall be filled with mud before the mud level drops 100 feet (30.5 metres). A mechanical device for measuring the amount of mud required to fill the hole shall be utilized, and any time there is an indication of swabbing, or influx of formation fluids, the necessary safety devices and action shall be employed to control the well. The mud shall not be circulated and conditioned, except on or near bottom, unless well conditions prevent running the drill pipe back to bottom. The mud in the hole shall be circulated or reverse-circulated prior to pulling drill-stem test tools from the hole.

The hole shall be filled by accurately measured volumes of mud. The number of stands of drill pipe and drill collars that may be pulled between the times of filling the hole shall be calculated and posted. The number of barrels and pump strokes required to fill the hole for this designated number of stands of drill pipe and drill collars shall be posted. For each casing string, the maximum pressure which may be applied to the blowout preventer before controlling excess pressure by bleeding through the choke, shall be posted at the driller's station. Drill pipe pressure shall be monitored during the bleeding procedure for well control.

An operable degasser shall be installed in the mud system prior to the commencement of drilling operations and shall be maintained for use throughout the drilling and completion of the well.

B. *Mud system equipment.* Mud testing equipment shall be maintained on the drilling rig at all times, and mud tests shall be performed at least once every eight hours, or more frequently as conditions warrant. Mud testing shall be conducted to determine the physical and chemical properties necessary to assure proper well control. Such tests shall be conducted in accordance with procedures outlined in API RP-13B, February 1974, and the results recorded and maintained at the drill site. The following mud system monitoring equipment shall be installed (with derrick floor indicators) and used at that time in the drilling operation when mud returns are first established and throughout subsequent drilling operations:

(1) Recording mud pit level indicator to determine mud pit volume gains and losses. This indicator shall include a visual and audio warning device.

(2) Mud volume measuring device for accurately determining mud volumes required to fill the hole on trips.

(3) Mud return indicator to determine that returns essentially equal the pump discharge rate.

(4) Gas-detecting equipment to monitor the drilling mud returns.

(5) Hydrogen sulfide (H_2S) sensing equipment capable of sensing a minimum of 5 parts per million of H_2S in air to monitor the drilling mud returns.

C. *Mud quantities.* The operator shall state in the Application for Permit to Drill, the minimum quantities of mud material, including weighting material, to be maintained at the drill site. For emergency use daily inventories shall be recorded and maintained at the drill site. Drilling operations shall be suspended in the absence of approved minimum quantities of mud materials.

5. *Supervision, surveillance and training.*

A. *Supervision.* The operator shall provide continuous company supervision of drilling operations on a 24-hour basis.

B. *Surveillance.* From the time drilling operations are initiated and until the well is completed or abandoned, a member of the drilling crew or the toolpusher shall maintain rig floor surveillance at all times.

C. *Training.* Company and drilling contractor supervisory personnel including drillers shall be trained in and qualified for present-day well control. Records of such training and qualification shall be maintained at the drill site. Training shall include, but is not limited to:

(1) Abnormal pressure detection methods.

(2) Well control methods and procedures.

6. *Hydrogen Sulfide.* When drilling operations are undertaken to penetrate reservoirs known or expected to contain hydrogen sulfide (H_2S), or, if unknown, upon encountering H_2S, the following preventive measures shall be taken to control the effects of the toxicity, flammability, and corrosive characteristics of H_2S. Alternative equipment or procedures that achieve the same or greater levels of safety may be approved by the Supervisor. When sulphur dioxide (SO_2), a product of combustion of H_2S, is present, the procedures outlined in the approved contingency plan required in paragraph 6A(3) of this Order shall be followed.

A. *Personnel safety and protection.*

(1) *Training Program.* (a) All personnel, whether regularly assigned, contracted, or employed on an unscheduled basis, shall be informed as to the hazards of H_2S and SO_2. They shall also be instructed in the proper use of personnel safety equipment and informed of H_2S detectors and alarms, ventilation equipment, prevailing winds, briefing areas, warning systems, and evacuation procedures.

(b) Information relating to these safety measures shall be prominently posted on the drilling facility and on vessels in the immediate vicinity which are serving the drilling facility.

(c) To promote efficient safety procedures, an on-site H_2S safety program, which includes a weekly drill and training session, shall be established. Records of attendance shall be maintained on the drilling facility.

(d) All personnel in the working crew shall have been indoctrinated in basic first-aid procedures applicable to victims of H_2S exposure. During subsequent on-site training sessions and drills, emphasis shall be placed upon rescue and first aid for H_2S victims. Each drilling facility shall have the following equipment, and each crew member shall be thoroughly familiar with the location and use of these items:

(i) A first-aid kit.

(ii) Resuscitators, complete with face masks, oxygen bottles, and spare oxygen bottles.

(iii) A Stokes litter or equivalent.

(e) One person, who regularly performs duties on the drilling facility, shall be responsible for the overall operation of the on-site safety and training program.

(2) *Visible warning system.* Wind direction equipment shall be installed at prominent locations to indicate to all personnel, on or in the immediate vicinity of the facility, the wind direction at all times for determining safe upwind areas in the event that H_2S is present in the atmosphere.

Operational danger signs shall be displayed from each side of the drilling ship or platform, and a number of rectangular red flags shall be hoisted in a manner visible to watercraft and aircraft. Each flag shall be of a minimum width of three feet (0.9 metres) and a minimum height of two feet (0.6 metres). Each sign shall have a minimum width of eight feet (2.4 metres) and a minimum height of four feet (1.2 metres), and shall be painted a high-visibility yellow color with black lettering of a minimum of 12 inches (30.5 cm.) in height. All signs and flags shall be illuminated under conditions of poor visibility and at night when in use. These signs and flags shall be displayed to indicate the following operational conditions and requirements:

(a) *Moderate danger.* When the threshold limit value of H_2S (10 parts per million) is reached, the signs will be displayed. If the concentration of H_2S reaches 20 parts per million, protective

breathing apparatus shall be worn by all personnel, and all non-working personnel shall proceed to the safe briefing areas.

(b) *Extreme danger.* When H_2S is determined to have reached the injurious level (50 parts per million), the flags shall be hoisted in addition to the displayed signs. All nonessential personnel or all personnel, as appropriate, shall be evacuated at this time. Radio communications shall be used to alert all known air- and watercraft in the immediate vicinity of the drilling facility.

(3) *Contingency plan.* A contingency plan shall be developed prior to the commencement of drilling operations and submitted to the Supervisor for approval. The plan shall include the following:

(a) General information and physiological response to H_2S and SO_2 exposure.

(b) Safety procedures, equipment, training, and smoking rules.

(c) Procedures for operating conditions:

(i) Moderate danger to life.

(ii) Extreme danger to life.

(d) Responsibilities and duties of personnel for each operating condition.

(e) Designation of briefing areas as locations for assembly of personnel during Extreme Danger condition. At least two briefing areas shall be established on each drilling facility. Of these two areas, the one upwind at any given time is the safe briefing area.

(f) Evacuation plan.

(g) Agencies to be notified in case of an emergency.

(h) A list of medical personnel and facilities, including addresses and telephone numbers.

(4) *H_2S detection and monitoring equipment.* Each drilling facility shall have an H_2S detection and monitoring system which activates audible and visible alarms before the concentration of H_2S exceeds its threshold limit value of 10 parts per million in air. This equipment shall be capable of sensing a minimum of five parts per million H_2S in air, with sensing points located at the bell nipple, shale shaker, mud pits, driller's stand, living quarters, and other areas where H_2S might accumulate in hazardous quantities.

H_2S detector ampules shall be available for use by all working personnel. After H_2S has been initially detected by any device, frequent inspections of all areas of poor ventilation shall be made with a portable H_2S–detector instrument.

(5) *Personnel protective equipment.*

(a) All personnel on a drilling facility or aboard marine vessels serving the facility shall be equipped with proper personnel protective-breathing apparatus. The protective-breathing apparatus used in an H_2S environment shall conform to all applicable Occupational Safety and Health Administration regulations and American National Standards Institute standards. Optional equipment, such as nose cups and spectacle kits, shall be available for use as needed.

(b) The storage location of protective-breathing apparatus shall be such that they are quickly and easily available to all personnel. Storage locations shall include the following:

(i) Rig floor.

(ii) Any working area above the rig floor.

(iii) Mud-logging facility.

(iv) Shale-shaker area.

(v) Mud pit area.

(vi) Mud storage area.

(vii) Pump rooms (mud and cement).

(viii) Crew quarters.

(ix) Each briefing area.

(x) Heliport.

(c) A system of breathing-air manifolds, hoses, and masks shall be provided on the rig floor and the briefing areas. A cascade air-bottle system shall be provided to refill individual protective-breathing-apparatus bottles. The cascade air-bottle system may be recharged by a high-pressure compressor suitable for providing breathing-quality air, provided the compressor suction is located in an uncontaminated atmosphere. All breathing-air bottles shall be labeled as containing breathing-quality air fit for human usage.

(d) Workboats attendant to rig operations shall be equipped with protective breathing apparatus for all workboat crew members. Pressure-demand or demand-type masks, connected to a breathing-air manifold, and additional protective breathing apparatus shall be available for evacuees. Whenever possible, boats shall be stationed upwind.

(e) Helicopters attendant to rig operations shall be equipped with a protective breathing apparatus for the pilot.

(f) The following additional personnel safety equipment shall be available for use as needed:

(i) Portable H_2S detectors.

(ii) Retrieval ropes with safety harnesses to retrieve incapacitated personnel from contaminated areas.

(iii) Chalk boards and note pads located on the rig floor, in the shale-shaker area, and in the cement pump rooms for communication purposes.

(iv) Bull horns and flashing lights.

(v) Resuscitators.

(6) *Ventilation equipment.* All ventilation devices shall be explosion-proof and situated in areas where H_2S or SO_2 may accumulate. Movable ventilation devices shall be provided in work areas and be multidirectional and capable of dispersing H_2S or SO_2 vapors away from working personnel.

(7) *Notification of regulatory agencies.* The following agencies shall be immediately notified under the alert conditions indicated:

(a) *Moderate danger.*

(i) U.S. Geological Survey.

(ii) U.S. Coast Guard.

(b) *Extreme danger.*

(i) U.S. Geological Survey.

(ii) U.S. Coast Guard.

(iii) Appropriate State agencies.

B. *Metallurgical equipment considerations.* Equipment used when drilling zones bearing H_2S shall be constructed of materials which, according to design principles, will be able to resist damage from the phenomena known variously as sulfide stress cracking, hydrogen embrittlement, or stress corrosion cracking. Such equipment includes drill pipe, casing, casing heads, blowout-preventer stack assemblies, kill lines, choke manifolds, and other related equipment. A knowledge of the various interations between stress, environment, and the metallurgy employed is required for successful operation in H_2S environments. The following general practices are required for acceptable performance:

(1) *Drill string.* Drill strings shall be designed consistent with the anticipated depth, conditions of the hole and reservoir environment to be encountered. Care shall be taken to minimize exposure of the drill string to high stresses as much as is practical and consistent with the anticipated hole conditions to be encountered.

(2) *Casing.* Casing, couplings, flanges, and related equipment shall be designed for H_2S service. Field welding on casing (except conductor and surface strings) is prohibted unless approved by the Supervisor.

(3) *Wellhead, blowout preventers, and pressure control equipment.* The blowout-preventer stack assembly shall be designed in accordance with criteria evolved through technology of the latest state-of-the-art for H_2S service. Surface equipment such as choke lines, choke manifold, kill lines, bolting, weldments, and other related well-killing equipment shall be designed and fabricated utilizing the most advanced technology concerning sulfide stress cracking. Elastomers, packing, and similar inner parts exposed to H_2S shall be resistant at the maximum anticipated temperature of exposure.

C. *Mud program.*

(1) Either water-base or oil-base muds are suitable for use in drilling formations containing H_2S. Disposal of drilling mud and cuttings shall be in accordance with OCS Order No. 7.

(2) A pH of 10.0 or above shall be maintained in a water-base mud system to control corrosion and prevent sulfide stress cracking.

(3) H_2S scavengers shall be used as needed in both water- and oil-base mud systems.

(4) Sufficient quantities of additives shall be maintained on location for addition to the mud system as needed to neutralize H_2S picked up by the system when drilling in formations containing H_2S.

(5) The application of corrosion inhibtors to the drill pipe to afford a protective coating or their addition to the mud system may be used as an additional safeguard to the normal protection of the metal by pH control and the scavengers mentioned above.

(6) Drilling mud containing H_2S gas shall be degassed at the optimum location for the particular rig configuration employed. The gases so removed shall be piped into a closed flare system and burned at a suitable remote stack.

D. *General operations.* All personnel in the working area shall utilize H_2S protective-breathing apparatus when required, as specified in paragraph 6A(2)(a). The normal fixed-point-monitor system in paragraph 6A(4) may be supplemented with portable H_2S detectors as conditions warrant.

(1) *Drill string trips or fishing operations.* Every effort shall be made to pull a dry drill string while maintaining well control. If it is necessary to pull the drill string wet after penetration of H_2S-bearing zones, increased monitoring of the working area shall be provided and protective-breathing apparatus shall be worn under conditions as outlined in paragraph 6A(2)(a).

(2) *Circulating bottoms-up from a drilling break, cementing operations, logging operations, or well circulation while not drilling.* After penetration of an H_2S-bearing zone, protective-breathing apparatus shall be worn by those personnel in the working area in advance of circulating bottoms-up or when H_2S is indicated by the monitoring system in quantities sufficient to require protective-breathing apparatus under paragraph 6A(2)(a), should this condition occur earlier.

(3) *Coring operations in H_2S-bearing zones.* Personnel protective-breathing apparatus shall be worn 10–20 stands in advance of retrieving the core barrel. Cores to be transported shall be sealed and marked for the pressure of H_2S.

(4) *Abandonment or temporary abandonment operations.* Internal well-abandonment equipment shall be designed for H_2S service.

(5) *Logging operations after penetration of known or suspected H_2S-bearing zones.* Mud in use for logging operations shall be conditioned and treated to minimize the effects of H_2S on the logging equipment.

(6) *Stripping operations.* Displaced mud returns shall be monitored and protective-breathing apparatus worn if H_2S is detected at levels outlined for protective-breathing apparatus under paragraph 6A(2)(a).

(7) *Gas-cut mud or well kick from H_2S-bearing zones.* Protective-breathing apparatus shall be worn when an H_2S concentration of 20 parts per million is detected. Should a decision be made to circulate out a kick, protective-breathing apparatus shall be worn prior to and subsequent to bottoms-up, and at any time during an extended kill operation that the concentration of H_2S becomes hazardous to personnel as defined in paragraph 6A(2)(a).

(8) *Drill string precautions.* Precautions shall be taken to minimize drill string stresses caused by conditions such as excessive dogleg severity, improper stiffness ratios, improper torque, whip, abrasive wear on tool joints, and joint inbalance. API RP 7G (April 1974) shall be used as a guideline for drill string precautions. Tool joint compounds containing free sulphur shall be employed to minimize notching, stress concentrations, and possible drill pipe failures.

(9) *Flare system.* The flare system shall be designed to safely gather and burn H_2S gas. Flare lines shall be located as far from the drilling facility as feasible in a manner to compensate for wind changes. The flare system shall be equipped with a pilot and an automatic igniter. Backup ignition for each flare shall be provided.

E. *Kick detection and well control.* In addition to the requirements of paragraph 4B of this Order, all efforts shall be made to prevent a well kick as a result of gas-cut mud, drilling breaks, lost circulation, or trips for bit change. Drilling rate changes shall be evaluated for the possibility of encountering abnormal pressures, and mud weights adjusted in an effort to compensate for any hydrostatic imbalance that might result in a well kick.

In the event of a kick, the disposal of the well influx fluids shall be accomplished by one of the following alternatives, giving consideration to personnel safety, possible environmental damage, and possible facility well equipment damage:

Alternative A. To contain the well fluid influx by shutting in the well and pumping the fluids back into the formation.

Alternative B. To control the kick by using appropriate well-control techniques to prevent formation fracturing in open hole within the pressure limits of well equipment (drill pipe, casing, wellhead, blowout preventers, and related equipment). The disposal of H_2S and other gases shall be through pressured or atmospheric mud-gas separator equipment, depending on volume and pressure of H_2S gas. The equipment shall be designed to recover drilling mud and to vent to the atmosphere and burn the gases separated. The mud system shall be treated to neutralize H_2S and restore and maintain the proper mud quality.

F. *Well testing in an H_2S environment.*—(1) *Procedures.*

(a) Well testing shall be performed with a minimum number of personnel in the immediate vicinity of the rig floor and test equipment to safely and adequately perform the test and maintain related equipment and services.

(b) Prior to initiation of the test, special safety meetings shall be conducted for all personnel who will be on the drill facility during the test, with particular emphasis on the use of personnel protective-breathing apparatus, first-aid procedures, and the H_2S Contingency Plan.

(c) During the test, the use of H_2S detection equipment shall be intensified. All produced gases shall be vented and burned through a flare system which meets the requirements of paragraph 6D(9). Gases from stored test fluids shall be vented into the flare system.

(d) "No Smoking" rules in the approved Contingency Plan of paragraph 6A(3)(b) of this Order shall be rigorously enforced.

(2) *Equipment.*

(a) Drill-Stem test tools and wellhead equipment shall be suitable for H_2S service.

(b) Tubing which meets the requirements for H_2S service shall be used for drill-stem testing. Drill pipe shall not be used for drill-stem tests without the prior approval of the Supervisor. The water cushion shall be thoroughly inhibited in order to prevent H_2S corrosion. The test string shall be flushed with treated fluid for the same purpose after completion of the test.

(c) All surface test units and related equipment shall be designed for H_2S service. Only competent personnel who are trained in and knowledgeable of the hazardous effects of H_2S shall be utilized in these tests.

RODNEY A. SMITH,
Oil and Gas Supervisor,
Alaska Area.

RUSSELL G. WAYLAND,
Chief, Conservation Division.

GULF OF ALASKA

[OCS Order No. 3]

PLUGGING AND ABANDONMENT OF WELLS

This Order is established pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.15. The operator shall comply with the following minimum plugging and abandonment procedures which have general application to all wells drilled for oil and gas. Plugging and abandonment operations shall not be commenced prior to obtaining approval from an authorized representative of the Geological Survey. Oral approvals shall be in accordance with 30 CFR 250.13. All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b).

1. *Permanent Abandonment.*—A. *Isolation in uncased hole.* In uncased portions of wells, cement plugs shall be spaced to extend 100 feet (30.5 metres) below the bottom to 100 feet (30.5 metres) above the top of any oil, gas, and water zones so as to isolate them in the strata in which they are found and to prevent them from escaping into other strata. Additional cement plugs may be required to protect other minerals. No more than 2500 feet (762.5 metres) of uncased hole shall be left without a cement plug of at least 100 feet (30.5 metres) in length.

B. *Isolation of open hole.* Where there is open hole (uncased and open into the casing string above) below the casing, a cement plug shall be placed in the deepest casing string by (1) or (2) below. In the event lost circulation conditions exist or are anticipated, the plug may be placed in accordance with (3) below:

(1) A cement plug placed by displacement method so as to extend a minimum of 100 feet (30.5 metres) above and 100 feet (30.5 metres) below the casing shoe.

(2) A cement retainer with effective back pressure control set not less than 50 feet (15.2 metres) nor more than 100 feet

(30.5 metres), above the casing shoe with a cement plug calculated to extend at least 100 feet (30.5 metres) below the casting shoe and 50 feet (15.2 metres) above the retainer.

(3) A permanent type bridge plug set within 150 feet (45.7 metres) above the casing shoe with 50 feet (15.2 metres) of cement on top of the bridge plug. This plug shall be tested prior to placing subsequent plugs.

C. *Plugging or isolating perforated intervals.* A cement plug shall be placed opposite all open perforations (perforations not squeezed with cement) extending a minimum of 100 feet (30.5 metres) above and 100 feet (30.5 metres) below the perforated interval or down to a casing plug whichever is less. In lieu of the cement plug, a bridge plug set at a maximum of 150 feet (45.7 metres) above the open perforations with 50 feet (15.2 metres) of cement on top may be used, provided the perforations are isolated from the hole below.

D. *Plugging of casing stubs.* If casing is cut and recovered, a cement plug 200 feet (61.0 metres) in length shall be placed to extend 100 feet (30.5 metres) above and 100 feet (30.5 metres) below the stub. A retainer may be used in setting the required plug.

E. *Plugging of annular space.* No annular space that extends to the ocean floor shall be left open to drilled hole below. If this condition exists, the annulus shall be plugged with cement.

F. *Surface plug requirement.* A cement plug of at least 150 feet (45.7 metres) with the top of the plug 150 feet (45.7 metres) or less below the ocean floor, shall be placed in the smallest string of casing which extends to the surface.

G. *Testing of plugs.* The setting and location of the first plug below the top 150 foot (45.7 metres) surface plug and each plug placed opposite open hole or perforations, shall be verified by placing a minimum pipe weight of 15,000 pounds (6803.9 kilograms) on the plug.

H. *Mud.* Each of the respective intervals of the hole between the various plugs shall be filled with mud fluid of sufficient density to exert hydrostatic pressure exceeding the greatest formation pressure encountered while drilling such interval.

I. *Clearance of location.* All casing and piling shall be severed and removed to at least 15 feet (4.6 metres) below the ocean floor and the ocean floor shall be cleared of any obstructions.

2. *Temporary abandonment.* Any drilling well which is to be temporarily abandoned shall be mudded and cemented as required for permanent abandonment except for requirements F and I of paragraph 1 above. When casing extends above the ocean floor, a mechanical bridge plug (retrievable or permanent) shall be set in the casing between 15 feet (4.6 metres) and 200 feet (61.0 metres) below the ocean floor.

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Oil and Gas Supervisor,
Alaska Area.

RUSSELL G. WAYLAND,
Chief, Conservation Division.

GULF OF ALASKA

[OCS Order No. 4]

SUSPENSIONS AND DETERMINATION OF WELL PRODUCIBILITY

This Order is established pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.12(d)(1). An OCS lease provides for extension beyond its primary term for as long as oil or gas may be produced from the lease in paying quantities. The term "paying quantities" as used herein means production in quantities sufficient to yield a return in excess of operating costs. An OCS lease may be maintained beyond the primary term, in the absence of actual production, when a suspension of production has been approved. Any application for suspension of production for an initial period shall be submitted prior to the expiration of the term of a lease. The Supervisor may approve a suspension of production provided at least one well has been drilled on the lease and he determines it to be capable of being produced in paying quantities. The temporary or permanent abandonment of a well will not preclude approval of a suspension of production as provided in 30 CFR 250.12(d)(1). All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b).

To provide data necessary to determine that a well may be capable of production in paying quantities, the following are minimum requirements:

1. *Oil wells.* A production test of at least two hours duration after the well flow has stabilized.

2. *Gas wells.* A deliverability test of at least two hours duration after the well flow has stabilized, or a four-point back pressure test.

3. *Well data.* All pertinent engineering, geologic and economic data shall be submitted to the Supervisor and will be considered in determining whether a well is capable of being produced in paying quantities.

4. *Witnessing and results.* All tests must be witnessed by an authorized representative of the Geological Survey. Test data accompanied by operator's affidavit, or third-party test data, may be accepted in lieu of a witnessed test provided prior approval is obtained.

RODNEY A. SMITH,
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Alaska Area.

RUSSELL G. WAYLAND,
Chief, Conservation Division.

GULF OF ALASKA

[OCS ORDER NO. 5]

SUBSURFACE SAFETY DEVICES

This order is established pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.41(b). Section 250.41(b) provides as follows:

(b) *Completed wells.* In the conduct of all its operations, the lessee shall take all steps necessary to prevent blowouts, and the lessee shall immediately take whatever action is required to bring under control any well over which control has been lost. The lessee shall: (1) in wells capable of flowing oil or gas, when required by the supervisor, install and maintain in operating condition storm chokes or similar subsurface safety devices; (2) for producing wells not capable of flowing oil or gas, install and maintain surface safety valves with automatic shutdown controls; and (3) periodically test or inspect such devices or equipment as prescribed by the supervisor.

The operator shall comply with the following requirements. All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b). All applications for approval under the provisions of this Order shall be submitted to the Supervisor's office. References in this Order to approvals, determinations, or requirements are to those given or made by the Supervisor or his delegated representative.

1. *Installation.* All tubing installations open to hydrocarbon-bearing zones shall be equipped with a surface or other remotely controlled subsurface safety device installed at a depth of 100 feet (30.5 metres) or more below the ocean floor unless, after application and justification, the well is determined to be incapable of flowing oil or gas. These installations shall be made within two (2) days after stabilized production is established, and during this period of time the well shall not be left unattended while open to production.

A. *Shut-in wells.* A tubing plug may be installed in lieu of, or in addition to, other subsurface safety devices if a well has been shut in for a period of six (6) months. Such plugs shall be set at a depth of 100 feet (30.5 metres) or more below the ocean floor. All retrievable plugs shall be of the pumpthrough type. All wells perforated and completed, but not placed on production, shall be equipped with a subsurface safety device or tubing plug within two (2) days after completion.

B. *Injection wells.* Subsurface safety devices shall be installed in all injection wells unless, after application and justification, it is determined that the well is incapable of flowing oil or gas, which condition shall be verified annually.

2. *Design, testing and inspection.* Subsurface safety devices shall be designed, adjusted, installed, and maintained to insure reliable operation. During testing and inspection procedures, the well shall not be left unattended while open to production unless a properly operating subsurface safety device has been installed in the well.

A. *Surface-controlled subsurface safety devices.*—(1) *Quality Assurance and Performance.* The operator shall comply with the minimum standards set forth in API Spec. 14 A, October 1973, Subsurface Safety Valves, for quality assurance including design, material, and functional test requirements, and for verification of independent party performance testing and manufacturer functional testing of such valves.

(2) *Installation and testing.* The operator shall comply with the minimum recommended practices set forth in API

RP 14 B, October 1973, Design, Installation, and Operation of Subsurface Safety Valve Systems, which contain procedures for design calculations, safe installation, and operating and testing. Each surface-controlled subsurface safety device installed in a well shall be tested in place for proper operation when installed and thereafter at intervals not exceeding 30 days. If the device does not operate properly, it shall be removed, repaired, and reinstalled or replaced and tested to insure proper operation.

B. *Tubing plugs.* A shut-in well equipped with a tubing plug shall be inspected for leakage by opening the well to possible flow at intervals not exceeding six (6) months. If a test indicates leakage, the plug shall be removed, repaired, and reinstalled or an additional tubing plug installed to prevent leakage.

3. *Temporary removal.* Each wireline- or pumpdown-retrievable subsurface safety device may be removed, without further authority or notice, for a routine operation which does not require approval of a Sundry Notice and Report on Wells (Form 9-331) for a period not to exceed fifteen (15) days. The well shall be clearly identified as being without a subsurface safety device and shall not be left unattended while open to production.

4. *Additional protective equipment.* All tubing installations in which a wireline- or pumpdown- retrievable subsurface safety device is to be installed shall be equipped with a landing nipple, with flow couplings or other protective equipment above and below, to provide for setting of the subsurface safety device. All wells in which a subsurface safety device or tubing plug is installed shall have the tubing-casing annulus packed off above the uppermost open casing perforations. The control system for all surface-controlled subsurface safety devices shall be an integral part of the platform shut-in system.

5. *Emergency action.* All tubing installations open to hydrocarbon-bearing zones and not equipped with a subsurface safety device as permitted by this Order shall be clearly identified as not being so equipped, and a subsurface safety device or tubing plug shall be available at the field location. In the event of an emergency, such device or plug shall be promptly installed with due consideration being given to personnel safety.

6. *Records.* The operator shall maintain the following records for a minimum period of one year for each subsurface safety device and tubing plug installed, which records shall be available to any authorized representative of the Geological Survey.

A. *Field records.* Individual well records shall be maintained at or near the field and shall include, as a minimum, the following information:

(1) A record which will give design and other information; i.e., make, model, size, etc.

(2) Verification or assembly by a qualified person in charge of installing the device and installation date.

(3) Verification of setting depth and all operational tests as required in this Order.

(4) Removal date, reason for removal, and reinstallation date.

(5) A record of all modifications of design in the field.

(6) All mechanical failures or malfunctions, including sandcutting, of such devices, with notation as to cause or probable cause.

(7) Verification that a failure report was submitted.

B. *Other records.* The following records, as a minimum, shall be maintained at the operator's office:

(1) Verified design information of subsurface safety devices for the individual well.

(2) Verification of assembly and installation according to design information.

(3) All failure reports.

(4) All laboratory analysis reports of failed or damaged parts.

(5) Quarterly failure-analysis report.

7. *Reports.* Well completion reports (Form 9-330) and any subsequent reports of workover (Form 9-331) shall include the type and the depth of the subsurface safety devices and tubing plugs installed.

To establish a failure-reporting and corrective-action program as a basis for reliability and quality control, each operator shall submit a quarterly failure-analysis report to the office of the Supervisor, identifying mechanical failures by lease and well, make and model, cause or probable cause of failure, and action taken to correct the failure. The reports shall be submitted within 30 days following the periods ending December 31, March 31, June 30, and September 30 of each year.

RODNEY A. SMITH,
Oil & Gas Supervisor
Alaska Area.

RUSSELL G. WAYLAND,
Chief, Conservation Division.

GULF OF ALASKA

[OCS Order No. 6]

COMPLETION OF OIL AND GAS WELLS

This Order is established pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.92. All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12 (b).

1. *Wellhead equipment and testing.* A. *Wellhead equipment.* All completed wells shall be equipped with casingheads, wellhead fittings, valves, and connnections with a rated working pressure equal to or greater than the surface shut-in pressure of the well. Connections and valves shall be designed and installed to permit fluid to be pumped between any two strings of casing. Two masters valves shall be installed on the tubing in all wells. All wellhead connections shall be assembled and tested, prior to installation, by a fluid pressure which shall be equal to 1.5 times the rated working pressure of the fitting to be installed.

B. *Testing procedure.* Any wells showing sustained pressure on the casinghead, or leaking gas or oil between the production casing and the next larger casing string, shall be tested in the following manner: The well shall be killed with water or mud and pump pressure applied to the production casing string. Should the pressure at the casinghead reflect the applied pressure, corrective measures must be taken and the casing shall again be tested in the same manner. This testing procedure shall be used when the origin of the pressure cannot be determined otherwise.

2. *Multiple or tubingless completions.—A Multiple completions.*

(1) Information shall be submitted on, or attached to, Form 9-331 showing top and bottom of all zones proposed for completion or alternate completion, including a partial electric log and a diagrammatic sketch showing such zones and equipment to be used.

(2) When zones approved for multiple completion become intercommunicated the lessee shall immediately repair and separate the zones after approval is obtained.

B. *Tubingless completions.*

(1) All tubing strings in a multiple completed well shall be run to the same depth below the deepest producible zone.

(2) The tubing string(s) shall be new pipe or reconditioned used pipe that has been tested to insure that it will meet API Standards for new pipe. The tubing shall be cemented with a sufficient volume to extend a minimum of 500 feet (152.4 metres) above the uppermost producible zone.

(3) Information shall be submitted on, or attached to, Form 9-331 showing the top and bottom of all zones proposed for completion or alternate completion, including a partial electric log and a diagrammatic sketch showing such zones and equipment to be used.

RODNEY A. SMITH,
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Alaska Area.

RUSSELL G. WAYLAND,
Chief, Conservation Division.

GULF OF ALASKA

[OCS Order No. 7]

POLLUTION AND WASTE DISPOSAL

This Order is established pursuant to the authority perscribed in 30 CFR 250.-11 and in accordance with 30 CFR 250.43. Section 250.43 provides as follows:

(a) The lessee shall not pollute land or water or damage the aquatic life of the sea or allow extraneous matter to enter and damage any mineral- or water-bearing formation. The lessee shall dispose of all liquid and non-liquid waste materials as prescribed by the supervisor. All spills or leakage of oil or waste materials shall be recorded by the lessee and, upon request of the supervisor, shall be reported to him. All spills or leakage of a substantial size or quantity, as defined by the supervisor, and those of any size or quantity which cannot be immediately controlled also shall be reported by the

lessee without delay to the supervisor and to the Coast Guard and the Regional Director of the Federal Water Pollution Control Administration. All spills or leakage of oil or waste materials of a size or quantity specified by the designee under the pollution contingency plan shall also be reported by the lessee without delay to such designee.

(b) If the waters of the sea are polluted by the drilling or production operations conducted by or on behalf of the lessee, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant, wheresoever found, proximately resulting therefrom shall be at the expense of the lessee. Upon failure of the lessee to control and remove the pollutant, the supervisor, in cooperation with other appropriate agencies of the Federal, State and local governments, or in cooperation with the lessee, or both, shall have the right to accomplish the control and removal of the pollutant in accordance with any established contingency plan for combating oil spills or by other means at the cost of the lessee. Such action shall not relieve the lessee of any responsibility as provided herein.

(c) The lessee's liability to third parties, other than for cleaning up the pollutant in accordance with subsection (b) above, shall be governed by applicable law.

NOTE.—In paragraph (a) above, the Regional Director of the Federal Water Pollution Control Administration has been replaced by the Regional Administrator, Environmental Protection Agency.

All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b).

1. *Pollution prevention.* The disposal of waste materials into ocean waters shall not create conditions which will adversely affect the public health, life or property, aquatic life or wildlife, recreation, navigation, or other uses of the ocean waters. All applicable waste disposal regulations administered by the Environmental Protection Agency shall be complied with in all cases where such regulations are more stringent than the requirements of this Order. All personnel shall be thoroughly instructed in the techniques of equipment maintenance and operation for the prevention of pollution. The operator shall comply with the following pollution prevention requirements:

A. *Liquid disposal.*

(1) Drilling mud containing oil shall not be disposed of into the ocean water. Drilling mud containing toxic substances shall be neutralized prior to disposal.

(2) All platforms and structures shall be curbed and connected by drains to a collecting tank or sump unless drip pans, or equivalents, are placed under equipment and piped to a tank or sump as provided in OCS Order No. 8.

(3) The following requirements shall apply to the handling and disposal of all produced water discharged into the ocean water. The disposal of water other than into the ocean water shall have the method and location approved by the Supervisor.

(a) Produced waste water disposal systems shall be designed and maintained so that the oil content of the effluent shall not exceed 50 mg/l determined by averaging the four samples required in (b)(i) below. The oil content shall be determined by the infrared or fluorometric method. A copy of the method to be used shall be submitted to the Supervisor for approval. The Supervisor may approve the use of other methods, if the method to be used at a location is shown to be reliable under the conditions existing at that location.

(b) Produced water discharged into the ocean will be sampled, analyzed, and the results of the analysis recorded once each month to determine if the requirement of subparagraph 1A(3)(a) above is fulfilled. Testing and reporting procedures are as follows:

(i) Four samples shall be collected over a 24-hour period. At least two hours must elapse between grabbed samples; however, a continuous sample is acceptable in lieu of grabbed samples. Sample, grabbed or continuous, shall be taken at a point prior to contact with seawater and shall be as nearly representative of the discharge stream as possible.

(ii) Analysis of the effluent sample shall be completed within two weeks of collection, or a new set of samples must be taken.

(iii) When the sample is taken, the date, time of day, temperature of discharge, pH, and discharge in bbls/day shall be recorded. This information, along with the analysis results, shall be reported on Form —— "Quality Measurement of Discharged Produced Water."

(iv) A copy of the latest analysis results shall be maintained at the discharge site or field production headquarters.

(v) For each produced water discharge point, a quarterly report of the results of each monthly analysis shall be submitted to the Supervisor. Reports shall be submitted in January, April, July, and October of each calendar year.

(c) Should the analysis indicate that the effluent does not meet the requirement of paragraph 1A(3)(a) above, corrective action shall immediately be taken. Approval to continue operations to aid in the identification and remedy of the problem must be obtained from the Supervisor. Such approval shall be contingent upon submittal of a follow-up report to the Supervisor within 10 days.

B. *Solid waste disposal.*

(1) Drill cuttings, sand, and other solids containing oil shall not be disposed of into the ocean water unless the oil has been removed.

(2) Mud containers and other solid waste materials shall be incinerated or transported to shore for disposal in accordance with Federal, State or local requirements.

(3) Sewage disposal systems shall be installed and used in all cases where sewage is discharged into the ocean water. Sewage is defined as water containing liquid and solid wastes from toilets and other receptacles intended to receive or retain body wastes.

(a) Sewage disposal systems shall be designed and maintained so that the effluent shall meet secondary treatment standards as follows:

(i) Biochemical oxygen demand (BOD_5) of 50 mg/l or less, to be determined by the procedure in Standard Methods, 13th Edition, 1971 p. 489, Method 219.

(ii) Suspended solids of 150 mg/l, to be determined by the procedure in Standard Methods, 13th Edition, 1971, p. 537, Method 224c.

(iii) Minimum chlorine residual of 1.0 mg/l, to be determined by the procedure in Standard Methods, 13th Edition, 1971, p. 382, Method 204A or 204B. Other methods, such as ultraviolet light, may be approved upon application.

(b) Where sewage effluent is discharged into the ocean water, the operator shall comply with the following:

(i) The effluent shall be sampled and analyzed, and the results recorded semi-annually to determine if the requirement under subparagraph 1B(3)(a) above are being met.

(ii) A copy of the most recent laboratory analysis of the effluent shall be maintained at the field headquarters or at the discharge site.

(iii) The semi-annual effluent analysis results shall be submitted to the Supervisor in January and July of each calendar year.

(iv) Should analysis indicate that the effluent does not meet the requirements of paragraph 1B(3)(a) above, immediate corrective action shall be taken.

2. *Inspections and reports.* The operator shall comply with the following pollution inspection and reporting requirements and with Orders issued by the Supervisor for the control or removal of pollutants:

A. *Pollution inspections.* All drilling and production facilities shall be inspected daily. Such maintenance or repairs as are necessary to prevent pollution of ocean water shall immediately be performed.

B. *Pollution reports.*

(1) All spills of oil and liquid pollutants shall be recorded showing the cause, size of spill, and action taken, and the record shall be maintained and available for inspection by the Supervisor. All spills of less than 15 barrels (2.1 metric tons) shall be reported orally to the Supervisor within 12 hours and shall be confirmed in writing.

(2) All spills of oil and liquid pollutants of 15 to 50 barrels (2.1 to 7.1 metric tons) shall be reported orally to the Supervisor immediately and shall be confirmed in writing.

(3) All spills of oil and liquid pollutants of a substantial size or quantity, which is defined as more than 50 barrels (7.1 metric tons), and those of any size or quantity which cannot be immediately controlled, shall be reported orally without delay to the Supervisor, the Coast Guard, and the Regional Administrator,

Environmental Protection Agency. All oral reports shall be confirmed in writing.

(4) Operators shall notify each other upon observation of equipment malfunction or pollution resulting from another's operation.

3. *Control and removal.*—A. *Corrective action.* Immediate corrective action shall be taken in all cases where pollution has occurred. Each operator shall have an emergency plan for each lease for initiating corrective action to control and remove pollution and such plan shall be filed with the Supervisor. Corrective action taken under the plan shall be subject to modification when directed by the Supervisor.

B. *Equipment.* Standby pollution control equipment and materials shall be maintained by, or shall be available to, each operator at an offshore or onshore location. This shall include containment booms, skimming apparatus, clean-up materials and chemical agents, and shall be available prior to the commencement of operations. No chemicals shall be used without prior approval of the Supervisor. A list of equipment, material, their location, and the time required for deployment shall be approved for each lease operation by the Supervisor. The equipment and materials shall be inspected monthly and maintained in good condition for use. The results of the inspections shall be recorded and maintained at the site.

RODNEY A. SMITH,
Oil and Gas Supervisor,
Alaska Area.

RUSSELL G. WAYLAND,
Chief, Conservation Division.

U.S.G.S. OIL AND GAS CONSERVATION DIVISION
QUALITY MEASUREMENTS OF DISCHARGED PRODUCED WATER

OPERATOR:
LOCATION:
OCS LEASE #
OCS BLOCK AND AREA
FIELD NAME
PLATFORM NAME

COLLECTION:

	1	2	3	4
	m d y	m d y	m d y	m d y
DATE				
TIME 24 hrs.				
DISCHARGE bbls/dy				

ANALYSIS:

	m d y	m d y	m d y	m d y
DATE				
METHOD				
PARAMETER RESULTS				
TEMP. °F				
pH				
VOL. mL				
OIL CONTENT mg/L				
AVERAGE mg/L				

LAB:_____ ATTEST:_____

GULF OF ALASKA

[OCS ORDER NO. 8]

PLATFORMS, STRUCTURES AND ASSOCIATED EQUIPMENT

This Order is established pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.19(a). Section 250.19(a) provides as follows:

(a) The supervisor is authorized to approve the design, other features, and plan of installation of all platforms, fixed structures, and artificial islands as a condition of the granting of a right of use or easement under paragraphs (a) and (b) of § 250.18 or authorized under any lease issued or maintained under the Act.

The operator shall be responsible for compliance with the requirements of this Order in the installation and operation of all platforms and structures, including all facilities installed on a platform or structure, whether or not operated or owned by the operator. All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b). All applications for approval under the provisions of this Order shall be submitted to the Supervisor. References in this Order to approvals, determinations, or requirements are to those given or made by the Supervisor or his delegated representative.

1. *Design, application and certification.*—A. *Platform design.*

(1) *General design.* A platform or structure shall be designed for safe installation and operation for its intended use and service life at a specific site. Steel structures shall be designed in accordance with the provisions of API RP 2A, January 1974, Planning Designing and Constructing Fixed Offshore Platforms, that are not in conflict with this Order. The design of structures other than steel shall be evaluated on an individual basis. Consideration shall be given to conditions which may contribute to structural damage such as:

(a) Wind, wave, tidal, current, ice, and seismic forces and other environmental loading forces.

(b) Functional loading conditions including the weight of the structure and all permanently fixed equipment, and the effects of static and dynamic functional load conditions during installation and the designed operational service period.

(c) Water depth, topography, surface and subsurface soil conditions, slope stability, scour conditions and other pertinent geologic conditions based on information from on-site investigations.

(2) *Isolation of facilities.* All platforms and structures shall be designed to isolate and protect living quarters from well and production facilities.

B. *Application.* Prior to construction of a fixed platform or structure, the operator shall submit for approval, in duplicate, an application showing all essential features of the platform or structure and supporting design information including the following:

(1) *General information.*

(a) Identification data, which shall include the platform or structure designation, lease number, area name, block number, and operator.

(b) Location data including plat with coordinates in longitude and latitude, and Universal Transverse Mercator Coordinates and the distance from the nearest block and lease lines.

(c) Primary use and other intended functions including planned drilling and production operations, storage, etc.

(d) Personnel facilities, personnel access of transfer and material handling

plans including living quarters, boat landings, heliports.

(e) Procedures for installation of the platform or structure and its foundation.

(f) Operational plans including a description of each phase of operation and planned simultaneous operations for the service life of the platform or structure.

(g) The application should include design drawings and plats to clearly illustrate all essential parts, dimensions, and specifications of the platform or structure and the foundation.

(2) *Environmental information.*

(a) Description of all pertinent environmental data which may have a bearing on the installation, operation or design of the platform or structure including the source of the data.

(b) Information on the type and magnitude of the design environmental loading conditions.

(3) *Foundations.*

(a) Information on methods and extent of on-site investigations and tests including the results and supporting data.

(b) A description of foundation loads and loading conditions.

(4) *Design features.*

(a) A description of the critical design loading and design criteria taking into consideration maximum environmental and operational loading conditions expected over the service life of the platform or structure. This shall include those conditions considered under paragraph 1. A. (1) (a), (b), and (c), above.

(b) For steel structures, a description of the materials, specification, strength analyses, and allowable stresses over the design service life.

(c) For concrete structures, a description of the materials, specification, strength and serviceability requirements and analysis of the reinforcing systems.

(d) An analysis of slope and soil stability in relation to the foundation and the foundation design loads.

(e) Method of corrosion protection.

C. *Certification.*

(1) Detailed structural plans certified by a registered professional engineer shall be on file and maintained by the operator or his designee.

(2) The following certifications, signed and dated by a company representative shall accompany the application.

(a) Operator certifies that this platform has been certified by a registered professional engineer and the structure will be constructed, operated and maintained as described in the application, and any approved modification thereto. Certified Plans are on file at _____.

(b) Certification that the mechanical and electrical systems of the facility will be designed and installed under the supervision of a registered professional engineer. Maintenance of these systems will be by qualified personnel.

D. *Design features of production facilities.* Information relative to design features as follows shall be submitted in duplicate prior to installation.

(1) A flow schematic showing size, capacity, and design working pressure of separators, treaters, storage tanks, compressors, pipeline pumps, and metering devices.

(2) A schematic diagram showing pollution and safety control equipment identified according to nomenclature (Definition, Symbols and Identification) contained in API RP 14C, June 1974, Analysis, Design, Installation and Testing of Basic Surface Safety Systems on Offshore Production Platforms, accompanied by an explanation as to the function and sequence of operation.

(3) A schematic piping diagram showing the size and design working pressure with reference to welding specification(s) or code(s) used.

(4) A diagram of the fire-fighting system.

(5) Electrical system information shall include the following:

(a) Plan view of each platform deck outlining any nonhazardous area—areas which are unclassified with respect to electrical equipment installations, and areas in which potential ignition sources, other than electrical are to be installed. The area outline should include the following:

i. Any surrounding production or other hydrocarbon source and a description of deck, overhead and firewall.

ii. Location of generators, control rooms, panel boards, major cabling—conduit routes and identification of wiring method.

(b) One line electrical schematic which includes the following information:

i. Type, rating and the operating and safety controls of generators and prime movers.

ii. Main generator switchboard including interlocks, controls and indicators.

iii. Feeder and branch circuits, including circuit load, wire type and size, motor running protection and circuit breaker setting.

(c) Elementary electrical schematic of any platform safety-shutdown system with functional legend.

2. *Operations on platforms and structures.*— A. *Safety and Pollution Control Equipment and Procedures.* Operators of fixed platforms and structures shall comply with the following requirements. Any device on wells, vessels, or flowlines temporarily out of service shall be flagged. Safety devices and systems on wells which are capable of producing shall not be bypassed or locked out of service unless necessary during start-up or maintenance operations, and then only with personnel on duty aboard the platform.

(1) *Shut-in devices.* The followisg shut-in devices shall be installed and maintained in an operating condition on all vessels and water separation facilities when such vessels and separation facilities are in service.

(a) All separators shall be equipped with high and low pressure shut-in sensors and a relief valve. Vessels connected together by a system of adequate piping not containing valves which can isolate any vessel may be considered as one unit having an effective working pressure equal to the lowest rated working pressure of any component. All separators shall be equipped with low liquid level shut-in controls. High liquid level shut-in control devices shall be installed when the vessel can discharge to a flare.

(b) All pressure surge tanks shall be equipped with high and low pressure shut-in sensors, a high liquid level shut-in control, flare line, and relief valve.

(c) All atmospheric tanks that may contain possible pollutants, including oil production tanks, surge tanks, etc., shall be equipped with a high liquid level shut-in control. When two or more tanks are connected in series or parallel and the operating levels are equalized, only one high liquid level shut-in control is required, providing it is located so that it cannot be isolated from any tank and will provide adequate high-level protection for all tanks.

(d) All other hydrcarbon-handling pressure vessels shall be equipped with high and low pressure shut-in sensors and relief valves. Vessels connected together by a system of adequate piping not containing valves which can isolate any vessel may be considered as one unit having an effective working pressure equal to the lowest rated working pressure of any component. In addition, such pressure vessels shall be equipped with high and low liquid level shut-in controls.

(e) The following requirements shall apply to all gas-fired production vessels:

i. Fuel supply lines to the main and pilot burners shall be equipped with manually operated shut-off valves.

ii. A flame detector or heat sensor to determine if the pilot is adequate to light the main burner shall be installed; and, on vessels on which the pilot is not continuously lighted, shall indicate a main burner flame failure.

iii. The exhaust stack of natural draft heaters shall be equipped with spark arrestors.

iv. Natural draft air intakes shall be equipped with a flame arrestor.

v. Forced draft burners shall be equipped with a low pressure or low flow rate shut-in sensor.

vi. Vessels in which the media in contact with the fire tubes is not the primary product to be heated shall be protected by high temperature and low level shut-in sensors in the heat exchange media stream.

vii. Pressure relief valves shall be designed, installed, and maintained in accordance with applicable provisions of sections I, IV, and VIII of the ASME Boiler and Pressure Vessel Code, July 1, 1974. All relief valves and vents shall be piped in such a way as to minimize the possibility of fluid striking personnel or ignition sources.

viii. Required sensors and monitors will respond to an abnormal condition in

the vessel by automatically: (1) shutting off fuel supply and (2) shutting off combustible media inflow to the vessel. However, in closed heat-transfer systems where the heated media is temperature degradable and flows through tubes located in the fired chamber, circulation of the media shall continue until the heat exchange area has cooled below the temperature at which the media degrades.

ix. Steam generators shall be equipped with low water levels controls in accordance with applicable provisions of sections I and IV of the ASME Boiler and Pressure Vessel Code, July 1, 1974.

x. An operating procedure shall be posted in a prominent location near the controls of the unit, and personnel responsible for the unit's operation shall be properly trained.

(f) All relief valves shall be set to start relieving at the design working pressure of the vessel and shall be sized to prevent the pressure from rising more than 10 percent above the design working pressure of the vessel or as otherwise provided by section VIII of the ASME Boiler and Pressure Vessel Code, July 1, 1974. The high pressure shut-in sensor shall activate sufficiently below the design working pressure to positively insure operation before the relief valve starts relieving. The low pressure shut-in sensor shall activate no lower than 15 percent or 5 psi, whichever is greater, below the lowest pressure in the operating range.

(g) Pressure sensors may be of the automatic or nonautomatic reset type, but where the automatic reset types are used, a nonautomatic reset relay must be installed. All pressure sensors shall be equipped to permit testing with an external pressure source.

(h) All flare lines shall be equipped with a scrubber with a high level shut-in control.

(i) Surge tanks and all hydrocarbon storage tanks shall be equipped with an automatic fail-close shut-in valve located in the pump suction line as close to the tank as practical. Such valve is to be activated by pump shut-down controls and the platform emergency shutdown system.

(2) *Wellhead and flowline safety devices.* The following safety devices shall be installed and maintained in an operating condition at all times. When wells are disconnected from producing facilities and blindflanged or equipped with a tubing plug, compliance with subparagraphs (a), (b), and (c) below is not required.

(a) All wellhead assemblies shall be equipped with an automatic fail-close surface safety valve installed in the vertical run of the christmas tree.

(b) All flowlines from wells shall be equipped with high and low pressure shut-in sensors located downstream of the well choke. If there is more than 10 feet (3.1 metres) of line between the wellhead wing valve and the primary choke, an additional low pressure shut-in sensor shall be installed in this section. The high pressure shut-in sensor shall be set no higher than 10 percent above the highest operating pressure of the line, but in no case shall it exceed 90 percent of the shut-in pressure of the well or the gas lift supply pressure. The low pressure shut-in sensor shall be set no lower than 10 percent or 5 psi (0.34 atm.), whichever is greater, below the lowest operating pressure of the section of the line in which it is installed.

(c) All headers shall be equipped with check valves on the individual flowlines.

(d) The flowline and valve from each well located upstream of and including, the header valves shall be able to withstand the shut-in pressure of that well, unless protected by a relief valve bypass system with connections to rejoin the main production stream at the separator, or at a point upstream of the separator. If there is an inlet valve to a separator, the valve, flowlines, and all equipment upstream of the valve shall also be able to withstand shut-in wellhead pressure, unless protected by a relief valve bypass system with connections to rejoin the main production stream at the separator, or at a point upstream of the separator. In the event a well flows directly to pipeline before separation, the flowline and valves from the well located upstream of, and including the header inlet valve shall be able to withstand the maximum shut-in pressure of the well unless protected by a relief valve connecting to either the platform flare scrubber or some other approved location other than into the departing pipeline.

(e) On all gas lift wells, a check valve shall be installed on the gas input line to the casing.

(f) All pneumatic shut-in systems shall be equipped with fusible material at strategic points.

(g) Remote shut-in controls shall be located on the helicopter deck and on all exit stairway landings, including at least one on each boat landing. These controls shall be quick-opening valves, except that those on the boat landing may be a plastic loop.

(3) *Other equipment.*

(a) All engine exhausts with temperatures greater than 400° F. (205°C.) shall be insulated and piped away from fuel sources. Exhaust piping from diesel engines shall be equipped with spark arrestors.

(b) All pressure or fired vessels used in the production of oil or gas shall conform to the requirements stipulated in the edition of the ASME Boiler and Pressure Vessel Code, sections, I IV, and VIII, as appropriate, in effect at the time the vessel is installed. Uncoded vessels used shall be hydrostatically tested to a pressure 1.5 times their normal working pressure. The test date, test pressure, and working pressure shall be marked on the vessel in a prominent place. A record of the test shall be maintained by the operator.

(c) A hydrocarbon separator shall be installed in the glycol return line on all glycol dehydration units.

(d) The following requirements shall apply to hydrocarbon gas compressors:

i. Each compressor suction line and associated suction scrubber vessel shall be protected by high and low pressure shut-in sensors, high and low liquid level shut-in controls in the suction scrubber and a pressure relief valve.

ii. Each compressor discharge line shall be protected by a pressure relief valve and high and low pressure shut-in sensors.

iii. Each compressor interstage scrubber shall be protected by high and low pressure and high and low liquid level shut-in controls and a pressure relief valve.

iv. High and low pressure shut-in sensors and low liquid level shut-in controls protecting compressor suction and discharge piping and associated suction and/interstage scrubbers shall be designed to actuate automatic isolation valves located in each compressor suction and fuel gas line so that the compressor unit and associated vessels can be isolated from all input sources. If the compressor unit is installed in a building, the isolation valves shall be located outside the building. Each suction and interstage high liquid level shut-in control shall, as a minimum, be designed to shutdown the compressor prime motor. As an alternative, low liquid level shut-in control(s) installed in suction and interstage scrubber(s) may be designed to actuate automatic shutoff valve(s) installed in the scrubber dump line(s).

v. Each compressor discharge line shall be equipped with a check valve to prevent backflow. If the compressor unit is installed in a building, the check valve shall be located outside the buildings.

vi. Compressor units installed in inadequately ventilated buildings or enclosures shall be protected by a gas detector designed to actuate automatic isolation valves installed in the compressor suction and fuel gas lines.

vii. Automatic isolation valves installed in compressor suction and fuel gas piping shall be actuated by the platform remote manual shut-in system and fire loop, as well as by any abnormal pressure or level condition sensed in the compressor piping or associated scrubber vessels.

viii. Each compressor discharge line shall be equipped with an automatic blowdown valve actuated by the platform fire loop and remote manual shut-in system and by the compressor's gas detection system. The blowdown system must be piped to vent at a nonhazardous location away from all possible sources of ignition.

(e) Motion sensing devices shall be installed on each production platform or structure. This device shall be capable of monitoring platform motion and shall automatically activate the platform shutdown sequence in the event of structural damage or failure.

(4) *Safety device testing.* The safety devices required in paragraphs 2A (1) and (2) above shall be tested by the operator as follows or at more frequent intervals. Records shall be maintained at the field headquarters for a period of one

year, showing the present status and past history of each device, including dates and details of inspection, testing, repairing, adjustment, and reinstallation. Such records shall be available to any authorized representative of the Geological Survey.

(a) All pressure relief valves shall be tested for operation annually. Pressure relief valves shall either be bench-tested or equipped to permit testing with an external pressure source. Bench tests not witnessed by Geological Survey personnel must be certified by a third party.

(b) All pressure sensors shall be tested at least once each calendar month, but at no time shall more than six weeks elapse between tests. Any sensor which consistently varies more than ±5 percent from its set pressure shall be repaired or replaced.

(c) All automatic wellhead safety valves and check valves on all flowlines shall be checked for operation and holding pressure once each calendar month, but at no time shall more than six weeks elapse between tests. For any valve which these monthly tests indicate a shorter time interval is needed, such shorter interval shall be instituted. If any wellhead safety valve indicates leakage, it shall be repaired or replaced. A check valve sustaining a liquid flow in excess of 400 cc./min. or gas flow exceeding 15 cubic ft./min. (0.42 cubic metres/min.) shall be repaired or replaced.

(d) All liquid level shut-in controls shall be tested at least once within each calendar month, but at no time shall more than six weeks elapse between tests. These tests shall be conducted by raising or lowering the liquid level across the level control detector.

(e) Automatic inlet shut-off valves actuated by a sensor on a vessel or a compressor shall be tested for operation at least once within each calendar month, but at no time shall more than six weeks elapse between tests.

(f) All automatic shut-off valves located in liquid discharge lines and actuated by vessel low liquid level sensors shall be tested for operation once within each calendar month, but at no time shall more than six weeks elapse between tests.

(5) *Curbs, gutters, and drains.* Curbs, gutters, and drains shall be constructed in all deck areas in a manner necessary to collect all contaminants, unless drip pans or equivalent are placed under equipment and piped to a sump which will automatically maintain the oil at a level sufficient to prevent discharge of oil into ocean water.

Sump piles or open-ended sumps shall be used to collect only produced water and liquids from drip pans and deck drains. Closed sumps or sump transfer tanks shall be equipped with a high level shut-in device.

(6) *Fire-fighting system.* A fire-fighting system shall be installed and maintained in an operating condition in accordance with the following:

(a) A firewater system of rigid pipe with fire hose stations shall be installed and may include a fixed water spray system. Such a system shall be installed in a manner necessary to provide needed protection in enclosed well bay areas and areas where production-handling equipment is located. A fire-fighting system using chemicals may be used in lieu of a firewater system if determined to provide equivalent fire protection control.

(b) Pumps for the firewater systems shall be inspected and test operated weekly. A record of the tests shall be maintained at the field headquarters for a period of one year. An alternative fuel or power source shall be installed to provide continued pump operation during platform shutdown, unless an alternative fire-fighting system is provided.

(c) Portable fire extinguishers shall be located in the living quarters and in other strategic areas.

(d) Heat, infra-red or other fire sensing devices shall be installed in all enclosed areas containing wells or production facilities. These devices shall be capable of continuous monitoring for the presence of fire or open flare and shall be used for platform shut-in sequences and the operations of emergency equipment.

(e) A diagram of the fire-fighting system showing the location of all equipment shall be posted in a prominent place on the platform or structure.

(7) *Automatic gas detectors.* An automatic gas detector and alarm system shall be installed and maintained in an operating condition in accordance with the following:

(a) Gas detection systems shall be installed in all enclosed areas containing production facilities or equipment. Gas detectors shall be installed in all enclosed areas where fuel gas is used; the use of fuel gas odorant is an acceptable alternate.

In partially open buildings, enclosures or meter houses where adequate ventilation is provided in lieu of a gas detector installation, ventilation shall, as a minimum, be by natural draft at a rate not less than one enclosure air change per five minutes.

(b) All gas detection systems shall be capable of continuously monitoring for the presence of combustible gas in the areas in which the detection devices are located. The gas detector power supply must be from a continually energized power source.

(c) The central control shall be capable of giving an alarm at a point not greater than 25 percent of the lower explosive limit of the gas or vapor being monitored.

(d) A high level setting of not more than 75 percent of the lower explosive limit of the gas or vapor being monitored shall be used for platform shut-in sequences and the operation of emergency equipment.

(e) Records of maintenance and calibration shall be maintained in the field headquarters for a period of one year and made available to any authorized representative of the Geological Survey. The system shall be tested for operation and recalibrated semi-annually.

(f) An application for the installation and maintenance of any gas detection system shall be filed with the Supervisor for approval. The application shall include the following:

i. Type, location, and number of detection heads.

ii. Type and kind of alarm, including emergency equipment to be activated.

iii. Method used for detection of combustible gases.

iv. Method and frequency of calibration.

v. A functional block diagram of the gas detection system, including the electric power supply.

vi. Other pertinent information.

(g) A diagram of the gas detection system showing the location of all gas detection points shall be posted in a prominent place on the platform or structure.

(8) *Electrical equipment.* The following requirements shall be applicable to all electrical equipment and systems installed:

(a) All engines shall be equipped with a low tension ignition system of a low fire hazard-type and shall be designed and maintained to minimize release of sufficient electrical energy to cause ignition of an external combustible mixture.

(b) All electrical generators, motors, and lighting systems shall be installed, protected, and maintained in accordance with the edition of the National Electrical Code and API RP 500 B in effect at the time of installation are acceptable.

(c) Wiring Methods which conform to the National Electrical Code or IEEE 45 in effect at the time of installation are acceptable.

(d) An auxiliary power supply shall be installed to provide emergency power capable of operating all electrical equipment required to maintain safety of operations in the event of a failure in the primary electrical power supply.

(9) *Erosion.* A program of erosion control shall be in effect for wells having a history of sand production. The erosion control program may include sand probes, X-ray, ultrasonic, or other satisfactory monitoring methods. A report on the results of the program shall be submitted annually to the Supervisor.

B. *Simultaneous facility operation.* Prior to conducting activities on a facility simultaneously with production operations, which could increase the possibility of undesirable events occurring such as damage to equipment, harm to personnel or the environment, a plan shall be filed and approved by the Supervisor which will provide for the mitigation of such events. Activities requiring a plan are drilling, workover, wireline, and major construction operations. Such plans submitted for approval may cover sequential

or individual operations. The plan shall include:

1. Description of operations.

2. Schematic plans showing areas of activities.

3. Identification of critical areas of simultaneous activities.

4. Plan for mitigation of potential undesirable events including provisions for coordination and supervision of activities such that all persons involved will be informed as to all activities and be aware of critical areas.

C. *Welding practices and procedures.* The following requirements shall apply to all platforms and structures, including mobile drilling and workover structures. The period of time during which these requirements are considered applicable to mobile drilling structures is the interval from the drilling out of the drive pipe or structural casing until the BOP stack and riser are pulled in the final abandonment, suspension, or completion. These requirements shall apply to workover rigs when such rigs are performing remedial work on any wells open to hydrocarbon bearing zones.

For the purpose of this Order, the term "burning and welding" is defined to include arc or acetylene cutting and arc or acetylene welding.

Each operator shall prepare and submit to the Supervisor for approval a Welding and Burning Safe Practices and Procedures Plan, which includes company qualification standards or requirements for welders. Any person designated as a welding supervisor must be thoroughly familiar with this plan.

Prior to burning or welding operations, the operator shall establish approved welding areas. Such areas shall be constructed or noncombustible or fire resistant materials free of combustible or flammable contents and be suitable segregated from adjacent areas. NFPA Bulletin No. 51B, Cutting and Welding Processes, 1971, shall be used as a guide to designate these areas.

All welding which cannot be done in the approved welding area shall be performed in compliance with the procedures outlined below:

(1) All welding and burning shall be minimized.

(2) Such welding and burning as are necessary on a structure shall adhere to the following practices:

(a) Prior to the commencement of any burning or welding operations on a structure, the operator's designated welding supervisor at the installation shall personally inspect the qualifications of the welders to insure that they are properly qualified in accordance with the approved company qualification standards or requirements for welders. The designated welding supervisor and the welders shall personally inspect the area in which the work is to be performed for potential fire and explosion hazards. After it has been determined that it is safe to proceed with the welding or burning operation, the welding supervisor shall issue a written authorization for the work.

(b) All welding equipment shall be inspected prior to beginning any burning or welding. Welding machines located on production or process platforms shall be equipped with spark arrestors and drip pans. Welding leads shall be completely insulated and in good condition; oxygen and acetylene bottles secured in a safe place; and hoses leak free and equipped with proper fittings, gauges, and regulators.

(c) During all welding and burning operations, one or more persons as necessary shall be designated as a Fire Watch. Persons assigned as a Fire Watch shall have no other duties while actual burning or welding operations are in progress.

(d) Prior to any welding or burning, the Fire Watch shall have in his possession firefighting equipment in a condition ready to use.

(e) No welding shall be done on containers, tanks, or other vessels which have contained a flammable substance unless the contents of the vessels have been rendered inert and determined to be safe for welding or burning by the designated welding supervisor.

(f) No welding shall be permitted during wireline operations.

(g) All production shall be shut in at the wellhead while welding or burning in the wellhead or production area.

D. *Requirements for mobile drilling structures.* The requirements of paragraphs 2A(5), 2A(8), and 2C above shall apply to all mobile drilling structures used to conduct drilling or workover operations on Federal leases in the Alaska Area.

RODNEY A. SMITH,
Oil and Gas Supervisor,
Alaska Area.

Approved:
RUSSELL G. WAYLAND,
Chief, Conservation Division.

GULF OF ALASKA

[OCS ORDER NO. 9]

APPROVAL PROCEDURE FOR OIL AND GAS PIPELINES

This Order is established pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.19(b).

Section 250.19(b) provides as follows:

(b) The supervisor is authorized to approve the design, other features, and plan of installation of all pipelines for which a right of use or easement has been granted under paragraph (c) of § 250.18 or authorized under any lease issued or maintained under the Act, including those portions of such lines which extend onto or traverse areas other than the Outer Continental Shelf.

The operator shall comply with the following requirements. All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b). References in this Order to approvals, determinations, or requirements are to those given or made by the Supervisor or his delegated representative.

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

A. *Pipeline.* Lines installed for the purpose of transporting oil, gas, water, sulphur, or other minerals, including lines sometimes referred to as flow or gathering lines, but excluding lines confined to a platform or structure.

B. *Internal pressure at specified minimum yield strength (IP@SMYS).* Internal Pressure at specified minimum yield strength must be calculated by the use of equations accepted as having an established engineering basis. The Barlow equation, as referenced in Section 841.1 of ANSI Code B 31.8—1969 Gas Transmission and Distribution Piping System, should be used except where the t/D ratio exceeds 0.1, in which case the Boardman Formula, as adapted from ANSI Code B 31.3—1968 Petroleum Refinery Piping, should be used for a more accurate representation of actual stress due to internal pressure:

(a) For $t/D=0.1$ $IP@SMYS=\frac{2\,St \times E \times T}{D}$

(b) For $t/D=0.1$ $IP@SMYS=\frac{2\,St \times E \times T}{D-0.8t}$

S=The specified minimum yield strength of pipe material, in psi.
t=Nominal wall thickness, in inches.
D=Nominal outside diameter, in inches.
E=Longitudinal joint factor obtained from Appendix A.
T=Temperature derating factor:
250°F. or less=1.00
300°F.=.967
350°F.=.933
400°F.=.900.

C. *Maximum allowable pressure (MAP).* The MAP is either 60 percent or 72 percent (dictated by location) of the IP@SMYS. The applicable MAP is the maximum pressure to which a pipeline or segment of pipeline shall be subjected under maximum source pressure conditions. MAP is calculated as follows:

(1) For that portion of the pipeline located on platforms, for pipeline risers, and for submerged pipelines within 300 feet (91.4 metres) of the risers:

$$MAP=0.60\times IP@SMYS$$

(2) For submerged pipelines extending beyond 300 feet (91.4 metres) from the riser:

$$MAP=0.72\times IP@SMYS$$

D. *Maximum source pressure (MSP).* The maximum pressure to which the pipeline or segment of pipeline could be subjected in the event of a safety system malfunction. For a pipeline receiving production from a separator, (the rated maximum working pressure of the vessel will be considered the maximum pressure that vessel can impress upon the pipeline), pumps, compressors, and other pipelines, the maximum pressure which can be exerted by the source or sources will be considered the MSP. The shut-in tubing pressure of a well producing directly into a pipeline will be considered the MSP of that pipeline. When a pipeline is used to transport production from more than one well, the well with the

highest shut-in tubing pressure will constitute the MSP.

E. *Maximum operating pressure (MOP)*. The maximum pressure to which the pipeline will be subjected over a period of time under normal operations with fluid flow. The MOP shall not exceed the MAP.

F. *Minimum operating pressure*. The minimum pressure to which the pipeline will be subjected over a period of time under normal operations with fluid flow.

G. *Hydrostatic test pressure (HTP)*. HTP means the required pressure to which a pipeline will be subjected for a specified period of time using water as the testing fluid.

2. *Requirements*. All pipelines shall be designed, installed, maintained and abandoned in accordance with the following:

A. *Safety equipment*. The operator shall be responsible for the installation of the following control devices on all oil and gas pipelines connected to a platform or structure, including such pipelines which are not operated or owned by the operator. Operators of platforms or structures shall comply with the requirements of paragraph 2A(1) with regard to required check valves on pipelines departing platforms or structures.

(1) All pipelines boarding a platform or structure shall be equipped with a check valve to prevent backflow. All pipelines departing a platform or structure shall be equipped with a check valve to prevent backflow.

(2) All pipeline pumps and compressors shall be equipped with high and low pressure shut-in sensing devices which when activated will shut-in the pumps or compressors. The low pressure sensor must be located upstream of any check valves. Time delay devices are permissible for low pressure sensors provided the settings are based on continuous chart recordings that demonstrate the variance in pipeline pressures under normal conditions. The chart recordings shall be taken quarterly. The most current of these charts shall be retained in the field office.

(3) All pipelines departing a platform or structure receiving production from the platform or structure and which do not receive production from any boarding pipeline shall be equipped with high and low pressure sensors, located upstream of any check valves on any departing line, to directly or indirectly shut-in the wells on the platform or structure.

(4) All pipelines departing a platform or structure receiving production from a boarding pipeline, and which do not receive production from the platform or structure, shall be equipped with high and low pressure sensors at the departing locale, located upstream of any check valve on the departing pipeline to activate an automatic fail-close valve to be located in the upstream portion of the pipeline boarding the platform or structure. This automatic fail-close valve shall be operated by either the platform or structure automatic and manual emergency shut-in system or by an independent automatic and manual emergency shut-in system.

(5) All pipelines departing a platform or structure receiving production from a boarding pipeline, and which receive production from the platform or structure, shall be equipped with a set of high and low pressure sensors at the departing locale located upstream of any check valve on the departing pipeline and downstream of the junction point of the pipelines. These high and low pressure sensors shall activate an automatic fail-close valve located on the boarding pipeline and directly or indirectly shut-in the wells on the platform or structure. This automatic fail-close valve on the boarding pipeline shall be operated by either the platform or structure automatic and manual emergency shut-in system or by an independent automatic and manual emergency shut-in system.

(6) All pipelines boarding a platform or structure and delivering production to production vessels on the platform or structure shall be equipped with an automatic fail-close valve operated by the shut-in sensing devices of the production vessel and by the manual emergency shut-in system.

(7) All pipelines boarding a platform or structure and delivering production to a departing pipeline that does not receive production from the platform or structure shall be equipped with an automatic fail-close valve operated by high and low sensors on the departing pipeline and a manual emergency shut-in system.

(8) The deletion of safety equipment is allowed on a gas pipeline supplying gas lift to wells on platforms or structures where there is no production equipment, except that a check valve shall be installed in each casing annulus line. The gas lift gas line shall have a check valve and high and low pressure sensors to shut off the gas supply at the source in case of a malfunction.

(9) Where bidirectional gas flow is necessary for gas lift or compressor suction, deletion of check valves on departing or boarding pipelines is allowed provided high and low pressure sensors and an automatic fail-close valve are installed on or near each pipeline riser.

(10) All pressure sensors shall be equipped to permit external testing.

B. *General requirements*.

(1) The size, weight, and grade of all pipe to be installed, including valves, fittings, flanges, bolting, and other required equipment, shall be determined by the anticipated volumes and pressures pursuant to paragraphs 1A, 1B, 1C, 1D, and 2D of this Order. The MAP shall be greater than or equal to the MSP unless the system is protected by an additional independently controlled safety shut-in system. In no case shall MOP exceed the MAP.

(2) All pipelines shall be designed for the protection of the pipeline against water currents, storm scouring, soft bottoms, and other environmental factors.

(3) Pipeline risers installed on the outer portion of platform legs and braces, which could reasonably be exposed to vessel damage by virtue of proximity to normal docking facilities, shall be protected by bumper guards or similar devices.

C. *Corrosion protection*. All pipelines shall be protected against loss of metal due to corrosion using such means as protective coatings and cathodic protection in accordance with the most current National Association of Corrosion Engineers Recommended Practice entitled, "Control of Corrosion of Offshore Steel Pipelines," and as follows:

(1) All pipelines shall be provided with external protective coating capable of minimizing underfilm corrosion. This coating shall have sufficient ductility to resist cracking in required service. All pipe coating shall be inspected on the lay barge prior to installation of the pipe, and any coating damage shall be repaired to maintain overall coating integrity.

(2) All pipelines shall have a catholic protection system designed to mitigate corrosion. This system will be designed based on a minimum of two percent holidays in the protective coating and a current density of a five milliamperes per square foot (53.7 milliamperes/square metres). The cathodic protection life shall be based on a minimum of 20-year design.

(3) The cathodic protection system of a pipeline protected by sacrificial anodes attached directly to the pipeline shall be designed as if the pipeline were insulated at each end.

(4) A pipeline cathodically protected by a rectifier shall be equipped with a visual, audible, or recorded signal to alarm personnel that the rectifier is not functioning. Electrical measurements and inspections shall be conducted bimonthly to assure the system is operating properly and the conditions affecting the system have not changed.

(5) All pipelines shall be designed to facilitate the installation of internal corrosion monitoring and control devices at both ends of the pipeline where accessible.

(6) All pipelines, with the exception of pipelines transporting production from four or less wells, shall be designed for the installation of pig launchers and receivers. Pipelines transporting production from four or less wells shall be designed for installation of pig traps or be treated with paraffin solvents and corrosion inhibitors to protect the internal integrity of the pipeline.

D. *Hydrostatic testing requirements*. All pipelines shall be designed to allow for hydrostatic testing with water, to at least 1.25 times the MSP. The pipeline shall not be tested with a pressure in excess of 90 percent of the IP @ SMYS. The Supervisor may approve a higher test pressure when specially requested and justification is submitted by the operator.

(1) Prior to placing a new pipeline in service, the pipeline shall be hydrostatically tested to at least 1.25 times the MSP for a minimum period of eight hours.

(2) Prior to returning a pipeline to service after repair of a leak caused by corrosion or rupture due to exceeding the MAP, the pipeline shall be hydrostatically tested to at least 1.25 times the MSP for a minimum period of 24 hours. The Supervisor may approve alternate methods of testing.

(3) Prior to returning a pipeline to service after repair of a leak caused by damage due to foreign objects, storms, manufacturing flaw, or malfunction of a submerged valve, the pipeline shall be hydrostatically tested to at least 1.25 times the MSP for a minimum period of four hours. The Supervisor may approve alternate methods of testing.

(4) Pipelines that have operated for a period of five years or more shall not be operated at a new higher MOP exceeding 1.5 times the former high MOP unless it meets the hydrostatic test requirements for a new pipeline.

(5) A report of all hydrostatic tests conducted shall be submitted to the Supervisor. The report shall include all hydrostatic test data, including procedure, test pressure, hold time, and results.

E. *Installation requirements.* All pipelines shall be designed, installed, and maintained to be compatible with trawling operations and other uses.

(1) All pipelines installed in water depths less than 200 feet (61 metres) shall be buried a minimum of three feet (0.9 metres) below the ocean floor. Alternate methods of pipeline installation may be approved by the Supervisor where unusual conditions dictate such an alternate choice.

(2) Pipelines installed in water depths greater than 200 feet (61 metres) need not be buried unless the Supervisor has determined that the pipeline constitutes a hazard to trawling operations or other uses. In such event, the pipeline shall be buried a minimum of three feet (0.9 metres) below the ocean floor.

F. *Operating requirements.* The operator shall be responsible for the required setting of pressure sensing devices on all oil and gas pipelines connected to a platform, including pipelines which are not operated or owned by the operator.

(1) The high-pressure sensors, required by this Order, shall not be set at a pressure higher than the MAP or 10 percent above the MOP of the pipeline, whichever is less.

(2) The low-pressure sensors, required by this Order, shall not be set at a pressure lower than 30 psig (2 atms.) or 10 percent below the minimum operating pressure of the pipeline, whichever is greater.

(3) These high and low sensor settings and the time interval for any time delay device shall be determined from a pressure recording chart showing the pipeline pressure profile under normal operating conditions over a minimum continuation time span of 24 hours.

G. *Abandonment requirements.* The following procedures shall be used for pipeline abandonment:

(1) Lines shall be flushed and filled with sea water or inerted with nitrogen unless the condition of the pipeline prevents doing so.

(2) Lines shall be cut and closed below the mud line on each end if the line is to be permanently abandoned.

(3) A line to be temporarily abanboned may be either blind flanged or isolated with a closed block valve, in lieu of cutting and capping below the mud line.

(4) Pipelines to be removed shall be flushed with sea water prior to removal.

3. *Pipeline applications.* Pipeline applications shall be submitted in duplicate, to the Supervisor in accordance with the following:

A. *New pipelines.* Applications for the installation of new pipelines shall include:

(1) Plat for plats, with a scale of 1"=2,000' (1cm=240m), showing the major features and other pertinent data, including water depth, route, location, length, connecting facilities, size, type of products to be transported, and burial depth.

(2) A schematic drawing showing the following:

(a) Pipeline safety equipment and the manner in which the equipment functions.

(b) Sensing devices with associated pressure-control lines.

(c) Automatic fail-close valves.

(d) Check valves.

(e) Vessels.

(f) Manifolds.

(g) The rated working pressure of all valves and fittings.

This schematic drawing or an additional drawing shall also show the placement of corrosion monitoring equipment.

(3) General information including:

(a) Product or products to be transported by the pipeline.

(b) Size, weight, grade, and class of the pipe and risers.

(c) Length in feet (metres) of the line.

(d) Maximum and minimum water depth.

(e) Description of cathodic protection system.

If sacrificial anodes are used on the pipeline or platform or structure, specify the type, size, weight, and spacing of anodes. Provide calculations used in designing the sacrificial anode system, including anticipated life of the line. If a rectifier is to be used, include size of unit or units, voltage and ampere rating and pipelines and platforms or structures to be protected. Provide calculations used in designing the size of unit or units and maximum capacity.

(f) Description of external pipeline coating system and type coating.

(g) Description of internal protective measures including internal coating and provision for corrosion inhibition program.

(h) Specific gravity of the empty pipe.

(i) Anticipated gravity or density of the product or products.

(j) Maximum and minimum operating pressure.

(k) Maximum source pressure.

(l) Maximum allowable pressure. Provide calculations used in determining MAP.

(m) Hydrostatic water test pressure and period of time to which the line will be tested after installation. This test must conform to paragraph 2D of this Order.

(n) Type, size, pressure rating, and location of pumps and prime movers.

(o) Proposed inspection procedures.

(p) Archaeological survey.

(q) Other information as may be required by the Supervisor. (Soil data for route if no pipelines in area.)

B. *Pipeline repairs.* Applications for pipeline repair shall include:

(1) Date and time problem detected. (Example: leak, X-ray of riser indicates wall thickness less than minimum acceptable value, etc.)

(2) Estimated volume of product lost.

(3) Pipeline size and service.

(4) Location of pipeline.

(5) Approximate location of leak and distance from nearest end.

(6) Cause.

(7) Remedial action to be taken.

(8) Proposed hydrostatic pressure test. This test must conform to paragraph 2D of this Order.

C. *Pipeline abandonment.* Applications for pipeline abandonment shall include:

(1) The proposed procedure for compliance with paragraph 2G of this Order.

(2) A location plat describing the pipeline or segment of pipeline to be abandoned in such a manner as to be identifiable for reference purposes.

4. *Operational test and reporting requirements.*—A. *New pipeline completion report.* The pipeline operator shall submit a report to the Supervisor when installation of a pipeline is completed. The report shall include a drawing or plat, with a scale of 1"=2,000' (1cm=240m), showing the location of the line as installed and the hydrostatic test data required in paragraph 2D.

B. *Pipeline damage report.* Pipeline operators shall immediately report orally to the Supervisor any leak, break, flow restriction or stoppage, or other indicated damage due to the following: corrosion, stuck pig, paraffin, kinking, flattening or nondestructive testing. Proposed methods of repair may be requested and approvals granted orally subject to written confirmation as required in paragraph 3B.

C. *Pipeline repair report.* This report shall be submitted to the Supervisor within a week after completion of the repairs. The report shall include:

(1) Location of pipeline.

(2) Location of leak.

(3) Detailed description of cause.

(4) Detailed description of remedial action.

(5) Hydrostatic test results.

(6) Date returned to service.

D. *Equipment testing.* The high and low pressure sensors and shut-in valves required in paragraph 2A of this Order shall be tested for operation at least once each calendar month but at no time shall more than six weeks elapse between

tests. Check valves shall be tested periodically when operationally convenient but at intervals not to exceed a period of one year. Records of these tests shall be maintained at the field headquarters showing the present status and past history of each device including dates and details of inspection, testing, repairing, adjustments, and reinstallation.

E. *Pipeline abandonment report.* The operator shall submit written notification to the Supervisor of the date the abandonment is completed and confirm that the pipeline was abandoned as approved.

F. *Corrosion detection test and report.* All pipelines shall be tested on both ends for the possible existence of internal corrosion. This determination may be by the use of coupons, probes, water analysis (iron count, pH, and scale), or CO_2 (partial pressure) at a minimum of six-month intervals. Lines handling dry hydrocarbons (less than 7 lbs. H_2O/MMcf (0.11 kg H_2O/1,000 cubic metres) for gas and less than one percent BS&W for oil) may be excluded from this requirement. The results and conclusions shall be submitted to the Supervisor during February of each year.

5. *Inspection and reporting requirements.*—A. *Visual inspection.* All pipelines shall be inspected monthly for indication of leakage, using aircraft, floating equipment, or other methods. The results of the inspection will be retained in the company field office for one year.

B. *Hazard damage corrective action report.* If the hazards of storm scouring, soft bottoms, and other environmental factors are observed to be detrimentally affecting the pipeline, the operator shall return the pipeline to an acceptable condition and submit a report of the remedial action taken to the Supervisor.

C. *Pipeline failure investigation.* All pipeline operators shall inspect and analyze every pipeline failure and, where necessary, select samples of the failed section for laboratory examination for the purpose of determining the cause. A comprehensive written report of the information obtained shall be submitted to the Supervisor as soon as available.

D. *Cathodic protection report.* All pipeline cathodic protection facilities shall be inspected and pipe-to-electrolyte potential measurements conducted at a minimum of six-month intervals to assure their proper operation and maintenance. The results and conclusions shall be submitted to the Supervisor during February of each year.

E. *Internal corrosion inspection.*

(1) All pipelines requiring pig launchers and receivers under 2C(6) shall be pigged on a regular basis. These pipelines shall be treated with inhibitors as indicated by the results of corrosion detection tests specified in paragraph 4F. A record of pigging runs and inhibitor treatment shall be submitted to the Supervisor during February of each year.

(2) In the event a pipeline operator elects to run an instrumented pig, the Supervisor shall be notified in ample time to witness the test. The operator shall submit the results and conclusions from the data obtained to the Supervisor within two months after compilation and assimilation.

F. *Riser inspection and reports.* All pipeline risers shall be visually inspected annually for physical and corrosion damage in the splash zone. If damage is observed on protected risers, an inspection using mechanical devices, such as calipers, pit guages, etc., radiographic or ultrasonic inspection shall be conducted. The pipe shall either be inspected to determine the wall thickness and repaired or replaced. All bare risers shall be similarly inspected annually to determine wall thickness and, if necessary, repaired or replaced. The safe operating wall thickness shall be determined by the following formula and the measured thickness compared to the calculated minimum acceptable thickness:

$$t = DP/1.2 \times S \times E \times T$$

Where t = minimum acceptable thickness for the riser to remain in service
D = nominal outside diameter, in inches
P = maximum source pressure, in psi, on the pipeline at time of inspection of the riser
E = longitudinal joint factor obtained from Appendix A
T = temperature derating factor
250°F. = 1.00
300°F. = .967
350°F. = .933
400°F. = .900.
S = the specified minimum yield strength of the pipe material, in psi.

A report of all riser inspections shall be retained in the field office for two years.

If physical or corrosive damage has occurred, necessitating repair or replacement, an application shall be submitted pursuant to paragraphs 4B and 4C.

RODNEY A. SMITH,
Oil and Gas Supervisor,
Alaska Area.

Approved:

RUSSELL G. WAYLAND,
Chief, Conservation Division.

APPENDIX A—LONGITUDINAL JOINT FACTOR E

Specification No.	Pipe class	E factor
ASTM A 53	Seamless	1.00
	Electric resistance welded	1.00
	Furnace butt welded	.60
ASTM A 106	Seamless	1.00
ASTM A 134	Electric fusion arc welded	.80
ASTM A 135	Electric resistance welded	1.00
ASTM A 139	Electric fusion welded	.80
ASTM A 155	Electric fusion arc welded	1.00
ASTM A 211	Spiral welded steel pipe	.80
ASTM A 381	Double submerged-arc-welded	1.00
API 5 L	Seamless	1.00
	Electric resistance welded	1.00
	Electric flash welded	1.00
	Furnace butt welded	.60
	Furnace lap-welded [1]	.80
API 5 LX	Seamless	1.00
	Electric resistance welded	1.00
	Electric flash welded	1.00
	Submerged arc welded	1.00
API 5 LS	Electric resistance welded	1.00
	Submerged arc welded	1.00

[1] Manufacture was discontinued and process deleted from API 5 L in 1962.

GULF OF ALASKA

[OCS Order No. 11]

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

This Order is established pursuant to the authority prescribed in 30 CFR 250.1, 30 CFR 250.11, and in accordance with all other applicable provisions of 30 CFR Part 250, and the notice appearing in the FEDERAL REGISTER, dated December 5, 1970 (35 FR 18559), to provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein. This Order shall be applicable to all oil and gas wells on Federal leases in the Outer Continental Shelf of the Gulf of Alaska. All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b). References in this Order to approvals, determinations, and requirements for submittal of information or applications for approval are to those granted, made, or required by the Oil and Gas Supervisor or his delegated representative.

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

A. *Waste of oil and gas.* The definition of waste appearing in 30 CFR 250.2(h) shall apply, and includes the failure to

timely initiate enhanced recovery operations where such methods would result in an increased ultimate recovery of oil or gas under sound engineering and economic principles. Enhanced recovery operations refers to pressure maintenance operations, secondary and tertiary recovery, cycling, and similar recovery operations which alter the natural forces in a reservoir to increase the ultimate recovery of oil or gas.

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

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

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

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

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

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

H. *Property line.* A boundary dividing leases, or portions thereof, in which the lease or operating interest is not the same. The boundaries of Federally approved unit areas shall be considered property lines. The boundaries dividing leased and unleased acreage shall be considered property lines for the purpose of this Order.

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

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

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

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

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

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

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

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

3. *Oil and gas production rates.*

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

(1) *Submittal of initial MER.* Within 45 days after the date of first production or such longer period as may be approved, the operator shall submit a Request for Reservoir MER (Form 9-1866) with appropriate supporting information.

(2) *Revision of MER.* The operator may request a revision of an MER by submitting the proposed revision to the Supervisor on a Request for Reservoir MER (Form 9-1866) with appropriate supporting information. The Operator shall obtain approval to produce at test rates which exceed an approved MER when such testing is necessary to substantiate an increase in the MER.

(3) *Review of MER.* The MER for each reservoir will be reviewed by the operator annually, or at such other required or approved interval of time. The results of the review, with all current supporting information, shall be submitted on a Request for Reservoir MER (Form 9-1866).

(4) *Effective date of MER.* The effective date of an MER, or revision thereof, will be determined by the Supervisor and shown on a Request for Reservoir MER (Form 9-1866) when the MER is approved. The effective date for an initial MER shall be the first day following the completion of an approved testing period. The effective date for a revised MER shall be the first day following the completion of an approved testing period, or if testing is not conducted, the date the revision is approved.

B. *Maximum production rate (MPR).* The operator shall propose a maximum production rate (MPR) for each producing well completion in a reservoir together with full information on the method used in its determination. When an MPR has been approved for a well completion, that rate shall not be exceeded, except as provided in paragraph 4 of this Order. The MPR shall be based on well tests and any limitations imposed by (1) well tubing, safety, equipment, artificial lift equipment, surface back pressure, and equipment capacity; (2) sand producing problems; (3) producing gas-oil and water-oil ratios; (4) relative structural position of the well with respect to gas-oil or water-oil contacts; (5) position of perforated interval within total production zone; and (6) prudent operating practices. The MPR established for each well completion shall not exceed 110 percent of the rate demonstrated by a well test unless justified by supporting information.

(1) *Submittal of initial MPR.* The operator shall have 30 days from the date of first continuous production within which to conduct a potential test, as specified under subparagraphs 5.B and 6.B of this Order, on all new and reworked well completions. Within 15 days after the date of the potential test, the operator shall submit a proposed MPR for the individual well completion on a Request for Well Maximum Production Rate (MPR) (Form 9-1867), with the results of the potential test on a Well Potential Test Report (Form 9-1868). Extension of the 30-day test period may be granted. The effective date for any approved initial MPR shall be the first day following the test period. During the 30-day period allowed for testing, or any approved extensions thereof, the operator may produce a new or reworked well completion at rates necessary to establish the MPR. The operator shall report the total production obtained during the test period, and approved extensions thereof, on the Well Potential Test Report (Form 9-1868).

(2) *Revision of MPR increase.* If necessary to test a well completion at rates above the approved MPR to determine whether the MPR should be increased, notification of intent to test the well at such higher rates, not to exceed a stated maximum rate during a specified test period, shall be filed with the Supervisor. Such tests may commence on the day following the date of filing notification, unless otherwise ordered by the Supervisor. If an operator determines that the MPR should be increased he shall submit, within 15 days after the specified test period, a proposed increased MPR on a Request for Well Maximum Production Rate (MPR) (Form 9-1867), and any other available data to support the requested revision, including the results of the potential test and the total production obtained during the test period on a Well Potential Test Report (Form 9-1868). Prior to approval of the proposed increased MPR, the operator may produce the well completion at a rate not to exceed the proposed increased MPR of the well. The effective date for any approved increased MPR shall be the first day following the test period. If testing rates or increased MPR rates result in production from the reservoir in excess of the approved MPR, this excess production shall be balanced by underproduction from the reservoir under the provisions of paragraph 4.B of this Order.

(3) *Revision of MPR decrease.* When the quarterly test rate for an oil well completion or the semiannual test rate for a gas well completion required under paragraphs 5.C and 6.C of this Order is less than 90 percent of the existing approved MPR for the well, a new reduced

MPR will be established automatically for that well completion equal to 110 percent of the test rate submitted. The effective date for the new MPR for such well completion shall be the first day of the quarter following the required date of submittal of periodic well-test results under subparagraphs 5.C and 6.C of this Order. Also, the operator may notify the Supervisor on a Request for Well Maximum Production Rate (MPR) (Form 9-1867) of, or the Supervisor may require, a downward revision of a well MPR at any time when the well is no longer capable of producing its approved MPR on a sustained basis. The effective date for such reduced MPR for a well completion shall be the first day of the month following the date of notification.

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

(5) *Cancellation of MPR.* When a well completion ceases to produce, is shut in pending workover, or any other condition exists which causes the assigned MPR to be no longer appropriate, the operator shall notify the Supervisor accordingly on a Request for Well Maximum Production Rate (MPR) (Form 9-1867), indicating the date of last production from the well, and the MPR will be canceled. Reporting of temporary shut-ins by the operator for well maintenance, safety conditions, or other normal operating conditions is not required, except as is necessary for completion of the Monthly Report of Operations (Form 9-152).

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

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

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

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

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

5. *Oil Well testing procedures.*

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

B. *Potential test.* Test data to establish or to increase an oil well MPR shall be submitted on a Well Potential Test Report (Form 9-1868). The total production obtained from all tests during the test period shall be reported on such form.

C. *Quarterly test.* Tests shall be conducted on each producing oil well completion quarterly, and test results shall be submitted on a Quarterly Oil Well Test Report (Form 9-1869). Testing periods and submittal dates shall be as follows:

Testing period	Latest date for submittal of test results	For quarter beginning
Sept. 11 to Dec. 10	Dec. 10	Jan. 1.
Dec. 11 to Mar. 10	Mar. 10	Apr. 1.
Mar. 11 to June 10	June 10	July 1.
June 11 to Sept. 10	Sept. 10	Oct. 1.

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

6. *Gas Well testing procedures.*

A. *General.* Testing procedures for gas well completions shall be the same as those specified for oil well completions in subparagraph 5.A except for the initial test which shall be a multi-point back-pressure test as described in paragraph 6.D.

B. *Potential test.* Text data to establish or to increase a gas well MPR shall be submitted on a Well Potential Test Report (Form 9-1868).

C. *Semiannual test.* Tests shall be conducted on each producing gas well completion semiannually, and test results shall be submitted on a Semiannual Gas Well Test Report (Form 9-1870). Testing periods and submittal dates shall be as follows:

Testing period	For submittal of test results	For semi-annual period beginning
June 11 to Dec. 10	Dec. 10	Jan. 1.
Dec. 11 to June 10	June 10	July 1.

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

D. *Back-pressure tests.* A multi-point back-pressure test to determine the theoretical open-flow potential of gas wells shall be conducted within thirty days after connection to a pipeline. If bottom-hole pressures are not measured, such pressures shall be calculated from surface pressures using the method or other similar method found in the Interstate Oil Compact Commission (IOCC) Manual of Back-Pressure Testing of gas wells. The results of all back-pressure tests conducted by the operator shall be filed with the Supervisor, including all basic data used in determining the test results. The Supervisor may waive this requirement if multi-point back-pressure test information has previously been obtained on a representative number of wells in a reservoir.

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

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

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

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

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

(1) *Gas vapors.* When gas vapors are released from storage and other low pressure production vessels if such gas vapors cannot be economically recovered or retained.

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

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

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

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

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

E. *Content of application.* Applications under paragraph D(2) above shall include all appropriate engineering, geologic, and economic data in an evaluation showing that absence of approval to flare or vent the gas will result in premature abandonment of oil and gas production or curtailment of lease development. Applications shall include an estimate of the amount and value of the oil and gas reserves that would not be recovered if the application to flare or vent were rejected and an estimate of the total amount of oil to be recovered and associated gas that would be flared or vented if the application were approved.

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

	Oil-Well Gas (thousand cubic feet)	Gas-Well Gas (thousand cubic feet)
Sales		
Fuel		
Injected [1]		
Flared		
Vented		
Other (specify)		
Total		

[1] Gas produced from the lease and injected on or off the lease.

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

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

C. *Packer tests.* Multiple and selective completions shall be equipped to isolate the respective producing reservoirs. A packer test or other appropriate reservoir isolation test shall be conducted prior to or immediately after initiating production and annually thereafter on all multiply completed wells. Should the reservoirs in any multiply completed well become intercommunicative the operator shall make repairs and again conduct reservoir isolation tests unless some other operational procedure is approved. The results of all tests shall be submitted on a Packer Test (Form 9–1871) within 30 days after the date of the test.

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

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

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

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

B. *Distance from property line.* An operator may drill exploratory or development wells at any location on a lease in accordance with approved plans; provided that no well directionally or vertically drilled and completed after the date of this order in which the completed interval is less than 200 feet (61 metres) from a property line shall be produced unless approved by the Supervisor. For wells drilled as vertical holes, the surface location of the well shall be considered as the location of the completed interval but shall be subject to the provisions of 30 CFR 250.40(b). An operator requesting approval to produce a directionally drilled well in which the completed interval is located closer than 200 feet (61 metres) from a property line, or approval to produce a vertically drilled well with a surface location closer than 200 feet (61 metres) from a property line, shall furnish the Supervisor with letters expressing acceptance or objection from operators of offset properties.

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

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

A. *Competitive reservoir determination.* The Supervisor shall notify the operators when he has made a preliminary determination that a reservoir is competitive as defined in this Order. An operator may request at any time that

the Supervisor make a preliminary determination as to whether a reservoir is competitive. The operators, within thirty (30) days of such preliminary notification or such extension of time as approved by the Supervisor, shall advise of their concurrence with such determination, or submit objections with supporting evidence. The Supervisor will make a final determination and notify the operators.

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

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

(2) *Production plan.* A joint production plan is required for each competitive reservoir. This plan shall include (a) the proposed MER for the reservoir; (b) the proposed MPR for each completion in the reservoir; (c) the percentage allocation of reservoir MER for each lease involved; and

(d) plans for secondary recovery or pressure maintenance operations. If agreement to a joint production plan cannot be reached by the operators, each shall submit a separate plan, and any differences may be resolved in accordance with paragraph 17 of this Order.

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

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

RODNEY A. SMITH,
Oil and Gas Supervisor,
Alaska Area.

Approved.
RUSSELL G. WEYLAND,
Chief, Conservation Division.

APPENDIX A

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

The intent of this Subparagraph is to insure that a completion in a given reservoir and a specific well bore will be assigned a unique name and will retain that name permanently. For further clarification, the following guidelines and examples are offered:

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

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

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

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

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

Example No. 1: The first well drilled from the A Platform is a single completion. Well No. A-1. (Should an operator wish to use an alphabetical suffix with a single completion, he may do so.)

Example No. 2: A well drilled by a mobile rig need not carry an alphabetical prefix. Well No. 1. (If the well is later connected to and produced from a production platform, the well shall be redesignated to reflect an alphabetical prefix.)

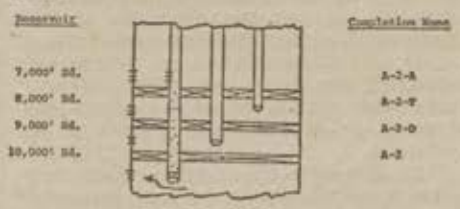
Example No. 3: The second well drilled from the A Platform is a triple completion.

First Completion—A-2.
Second Completion—A-2-D.
Third Completion—A-2-T.

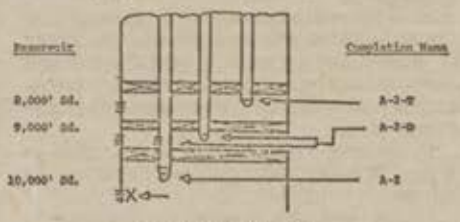
(In the above example, the letters "D" and "T" were used in naming the second and third completions utilizing current industry practice, although the intent is not to restrict operators to the use of these particular alphabetical suffixes. Any alphabetical suffix may be used as long as it is unique to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

Example No. 4: The drawing is shown to illustrate the fact that once a completion in a specific well bore is designated in a given reservoir, it will retain that name permanently. Let us consider the A-2 completion shown in Example No. 3. Should a recompletion be made in a different reservoir at a later date, it shall be renamed; however, the production from the reservoir associated with the original A-2 completion will always be identified with the A-2 completion. Once the A-2 completion in the 10,000' sand is squeezed and plugged off and the recompletion made to the 7,000' sand, the completion in the 7,000' sand would be designated A-2-A (or some other alphabetical suffix other than the "D" or "T" presently associated with other completions in the 9,000' and 8,000' sands).

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



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



GULF OF ALASKA

[OCS ORDER NO. 12]

PUBLIC INSPECTION OF RECORDS

This order is established pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.97 and 43 CFR 2.2. Section 250.97 of 30 CFR provides as follows:

Public inspection of records. Geological and geophysical interpretations, maps, and data required to be submitted under this part shall not be available for public inspection without the consent of the lessee so long as the lease remains in effect or until such time as the supervisor determines that release of such information is required and necessary for the proper development of the field or area.

Section 2.2 of 43 CFR provides in part as follows:

Determination as to availability of records. (a) Section 552 of Title 5, U.S. Code, as amended by Pub. L. 90-23 (the act codifying the "Public Information Act") requires that identifiable agency records be made available for inspection. Subsection (b)[1] of section 552 exempts several

[1] Subsection (b) of section 552 provides that:

(b) This section does not apply to matters that are—

* * * * *

(Footnote 1 continued on next page.)

categories of records from the general requirement but does not require the withholding from inspection of all records which may fall within the categories exempted. Accordingly, no request made of a field office to inspect a record shall be denied unless the head of the office or such higher field authority as the head of the bureau may designate shall determine (1) that the record falls within one or more of the categories exempted and (2) either that disclosure is prohibited by statute or Executive Order or that sound grounds exist which require the invocation of the exemption. A request to inspect a record located in the headquarters office of a bureau shall not be denied except on the basis of a similar determination made by the head of the bureau or his designee, and a request made to inspect a record located in a major organization unit of the Office of the Secretary shall not be denied except on the basis of a similar determination by the head of that unit. Officers and employees of the Department shall be guided by the "Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act" of June, 1967.

(b) An applicant may appeal from a determination that a record is not available for inspection to the Solicitor of the Department of the Interior, who may exercise all of the authority of the Secretary of the Interior in this regard. The Deputy Solicitor may decide such appeals and may exercise all of the authority of the Secretary in this regard.

The operator shall comply with the requirements of this Order. All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b).

1. *Availability of records.* It has been determined that certain records pertaining to leases and wells in the Outer Continental Shelf and submitted under 30 CFR 250 shall be made available for public inspection, as specified below, in the Area Office, Anchorage, Alaska.

A. *Form 9-152—Monthly report of operations.* All information contained on this form shall be available, except the information required in the Remarks column.

B. *Form 9-330—Well completion or recompletion report and log.*

(1) Prior to commencement of production, all information contained on this form shall be available, except Item 1a, Type of Well; Item 4, Location of Well, At top prod. interval reported below; Item 22, if Multiple Compl., How many; Item 24, Producing Interval; Item 26, Type Electric and Other Logs Run; Item 28, Casing Record; Item 29, Liner Record; Item 30, Tubing Record; Item 31, Perforation Record; Item 32, Acid, Shot, Fracture, Cement Squeeze, etc.; Item 33, Production; Item 37, Summary of Porous Zones; and Item 38, Geologic Markers.

(2) After commencement of production, all information shall be available, except Item 37, Summary of Porous Zones; and Item 38, Geologic Markers.

(3) If production has not commenced after an elapsed time of five years from date of filing Form 9-330 as required in 30 CFR 250.38(b), all information contained on this form shall be available except Item 37, Summary of Porous Zones; and Item 38, Geologic Markers. Within 90 days prior to the end of the 5-year period, the lessee or operator shall file a Form 9-330 containing all information requested on the form, except Item 37, Summary of Porous Zones; and Item 38, Geologic Markers, to be made available for public inspection. Objections to the release of such information may be submitted with the completed Form 9-330.

C. *Form 9-331—Sundry notices and report on wells*

(1) When used as a "Notice of Intention to" conduct operations, all information contained on this form shall be available, except Item 4, Location of Well, At top prod. interval; and Item 17, Describe Proposed or Completed Operations.

(2) When used as a "Subsequent Report of" operations, and after commencement of production, all information contained on this form shall be available, except information under Item 17 as to subsurface locations and measured and true vertical depths for all markers and zones not placed on production.

D. *Form 9-331C—Application for permit to drill, deepen or plug back.* All information contained on this form, and location plat attached thereto, shall be available, except Item 4, Location of Well, At proposed prod. zone; and Item 23, Proposed Casing and Cementing Program.

E. *Form 9-1869—Quarterly oil well test report.* All information contained on this form shall be available.

F. *Form 9-1870—Semi-annual gas well test report.* All information contained on this form shall be available.

G. *Multi-point back pressure test report.* All information contained on the form used to report the results of required multi-point back pressure test of gas wells shall be available.

H. *Sales of lease production.* Information contained on monthly Geological Survey computer printouts showing sales volumes, value, and royalty of production of oil, condensate, gas and liquid products, by lease, shall be made available.

2. *Filing of reports.* All reports on Forms 9-152, 9-330, 9-331, 9-331C, 9-1868, 9-1870, and the forms used to report the results of multi-point back pressure tests, shall be filed in accordance with the following: All reports submitted on these forms shall include a copy with the words "Public Information" shown on the lower right-hand corner. All items on the form not marked "Public Information" shall be completed in full; and such forms, and all attachments thereto, shall not be available for public inspection. The copy marked "Public Information" shall be completed in full, except that the items described in 1.A, B, C, and D, above, and the attachments relating to such items, may be excluded. The words "Public Information" shall be shown on the lower right-hand corner of this set. This copy of the form shall be made available for public inspection.

3. *Availability of inspection records.* All accident investigation reports, pollution incident reports, facilities inspection data, and records of enforcement actions are also available for public inspec-

RODNEY A. SMITH,
Oil and Gas Supervisor,
Alaska Area.

Approved:
RUSSELL G. WAYLAND,
Chief, Conservation Division.

[FR Doc.75-5 Filed 1-3-75;8:45 am]

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

* * * * *

(9) Geological and geophysical information and data, including maps, concerning wells.

REVISION OF OCS ORDER NO. 6

Completion of Oil and Gas Wells, Pacific and Gulf of Mexico Areas

On December 11, 1974, notice was given of the intention of the Geological Survey to develop a new Outer Continental Shelf (OCS) Order to provide requirements for oil and gas well completion and workover procedures for the Gulf of Mexico area (39 FR 43234). It is now the intention of the Geological Survey to incorporate such requirements in a revision of existing OCS Order No. 6 for both the Pacific and Gulf of Mexico Areas. These requirements will also be included in the OCS Orders being developed in the Gulf of Alaska and Atlantic OCS areas as appropriate.

Comments are solicited from the general public and interested parties concerning the procedures and operations to be included in the revised Order as shown in the December 11 Notice. Such comments should be forwarded to the Chief, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 650, 12201 Sunrise Valley Drive, Reston, Virginia 22092, on or before March 3, 1975.

W. A. RADLINSKI,
Acting Director.

[FR Doc.75-216 Filed 1-3-75;8:45 am]

Office of the Secretary

[INT FES 74-72]

ANIAKCHAK CALDERA NATIONAL MONUMENT, ALASKA

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the proposed Aniakchak Caldera National Monument in Alaska. The proposal is made in accordance with the Alaska Native Claims Settlement Act of

1971. The environmental statement considers the legislative establishment of the Aniakchak Caldera National Monument and its management by the agency indicated below.

Proposal recommends that: Approximately 440,000 acres of public lands on the Alaska Peninsula be designated by Congress as the Aniakchak Caldera National Monument, and that the entire Aniakchak River be designated a Wild River in accordance with the National Wild and Scenic Rivers Act of 1968.

Management by: National Park Service.

The final environmental statement is available for inspection at the following locations:

North Atlantic Regional Office
National Park Service
150 Causeway Street
Boston, Massachusetts 02114

Southeast Regional Office
National Park Service
3401 Whipple Avenue
Atlanta, Georgia 30344

Rocky Mountain Regional Office
National Park Service
645-655 Parfet Avenue
Denver, Colorado 80215

Western Regional Office
National Park Service
450 Golden Gate Avenue
Box 36063
San Francisco, California 94102

Fish and Wildlife Service
1500 Plaza Building, Room 288
1500 NE. Irving Street
P.O. Box 3737
Portland, Oregon 97208

Fish and Wildlife Service
Federal Building—Fort Snelling
Room 630
Twin Cities, Minnesota 55111

Mid-Atlantic Regional Office
National Park Service
143 South Third Street
Philadelphia, Pennsylvania 19106

Midwest Regional Office
National Park Service
1709 Jackson Street
Omaha, Nebraska 68102

Southwest Regional Office
National Park Service
P.O. Box 728
Santa Fe, New Mexico 87501

Pacific Northwest Regional Office
National Park Service
Room 931, 4th and Pike Building
1424 Fourth Avenue
Seattle, Washington 98101

Fish and Wildlife Service
500 Gold Avenue, SW.
Room 9018
P.O. Box 1306
Albuquerque, New Mexico 87103

Fish and Wildlife Service
17 Executive Park Drive, NE.
Room 411
Atlanta, Georgia 30329

Fish and Wildlife Service
John W. McCormack P.O. and Courthouse
Boston, Massachusetts 02109

U.S. Forest Service
Federal Building
Missoula, Montana 59801

U.S. Forest Service
Federal Building
517 Gold Avenue, SW.
Albuquerque, New Mexico 87101

U.S. Forest Service
630 Sansome Street
San Francisco, California 94111

U.S. Forest Service
1720 Peachtree Road, NW.
Atlanta, Georgia 30309

Bureau of Land Management
1600 Broadway
Room 700
Denver, Colorado 80202

Bureau of Land Management
Federal Building
300 Booth Street
Reno, Nevada 89502

Bureau of Land Management
Federal Building, Room 398
550 W. Fort Street
Boise, Idaho 83702

Bureau of Land Management
2120 Capitol Avenue
P.O. Box 1828
Cheyenne, Wyoming 82001

Fish and Wildlife Service
10597 West Sixth Avenue
Denver, Colorado 80215

U.S. Forest Service
Denver Federal Building
Denver, Colorado 80225

U.S. Forest Service
Federal Building
324 25th Street
Ogden, Utah 84401

U.S. Forest Service
319 SW. Pine Street
P.O. Box 3623
Portland, Oregon 97208

U.S. Forest Service
633 W. Wisconsin Avenue
Milwaukee, Wisconsin 53203

Bureau of Land Management
Federal Building
125 South State Street
Salt Lake City, Utah 84111

Bureau of Land Management
Federal Building
Room 3022
Phoenix, Arizona 85025

Bureau of Land Management
Federal Building
P.O. Box 1449
Santa Fe, New Mexico 87501

Bureau of Land Management
2800 Cottage Way
Room E-2841
Sacramento, California 95825

Bureau of Land Management
Federal Building
316 North 26th Street
Billings, Montana 92301

Bureau of Land Management
Robin Building
7981 Eastern Avenue
Silver Spring, Maryland 20910

Southeast Regional Office
Bureau of Outdoor Recreation
148 Cain Street
Atlanta, Georgia 30303

Mid-Continent Regional Office
Bureau of Outdoor Recreation
Denver Federal Center
Building 41, P.O. Box 25387
Denver, Colorado 80225

Northwest Regional Office
Bureau of Outdoor Recreation
1000 2nd Avenue
Seattle, Washington 98104

Bureau of Land Management
729 Northeast Oregon Street
P.O. Box 2965
Portland, Oregon 97208

Northeast Regional Office
Bureau of Outdoor Recreation
Federal Office Building
600 Arch Street
Philadelphia, Pennsylvania 19106

Lake Central Regional Office
Bureau of Outdoor Recreation
3853 Research Park Drive
Ann Arbor, Michigan 48104

South Central Regional Office
Bureau of Outdoor Recreation
5000 Marble Avenue, NE.
Albuquerque, New Mexico 87110

Pacific Southwest Regional Office
Bureau of Outdoor Recreation
450 Golden Gate Avenue
San Francisco, California 94102

A limited number of single copies of the final environmental statement is available from the following:

Department of the Interior
Alaska Planning Group
Washington, D.C. 20240

Department of the Interior
National Park Service
524 W. Sixth Avenue
Room 201
Anchorage, Alaska 99501

Department of the Interior
Fish and Wildlife Service
813 D Street
Anchorage, Alaska 99501

Dated: December 31, 1974.

STANLEY D. DOREMUS,
Deputy Assistant Secretary of the Interior.

[FR Doc.75-250 Filed 1-3-75;8:45 am]

[INT FES 74-73]

BEAVER CREEK NATIONAL WILD RIVER, ALASKA

Availability of Final Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the proposed Beaver Creek National Wild River in Alaska. The proposal is made in accordance with the Alaska Native Claims Settlement Act of 1971. The environmental statement considers the legislative establishment of the Beaver Creek National Wild River and its management by the agency indicated below.

Proposal recommends that: A 135-mile segment of Beaver Creek and 200,000 acres of adjacent public lands in Interior Alaska be designated by Congress as the Beaver Creek National Wild River.

Management by: Bureau of Land Management.

The final environmental statement is available for inspection at the following locations.

North Atlantic Regional Office
National Park Service
150 Causeway Street
Boston, Massachusetts 02114

Southeast Regional Office
National Park Service
3401 Whipple Avenue
Atlanta, Georgia 30344

Rocky Mountain Regional Office
National Park Service
645-655 Parfet Avenue
Denver, Colorado 80215

Western Regional Office
National Park Service
450 Golden Gate Avenue
Box 36063
San Francisco, California 94102

Fish and Wildlife Service
1500 Plaza Building, Room 288
1500 NE. Irving Street
P.O. Box 3737
Portland, Oregon 97208

Fish and Wildlife Service
Federal Building—Fort Snelling
Room 630
Twin Cities, Minnesota 55111

Fish and Wildlife Service
John W. McCormack P.O. and Courthouse
Boston, Massachusetts 02109

Mid-Atlantic Regional Office
National Park Service
143 South Third Street
Philadelphia, Pennsylvania 19106

Midwest Regional Office
National Park Service
1709 Jackson Street
Omaha, Nebraska 68102

Southwest Regional Office
National Park Service
P.O. Box 728
Santa Fe, New Mexico 87501

Pacific Northwest Regional Office
National Park Service
Room 931, 4th and Pike Building
1424 Fourth Avenue
Seattle, Washington 98101

Fish and Wildlife Service
500 Gold Avenue, SW.
Room 9018
P.O. Box 1306
Albuquerque, New Mexico 87103

Fish and Wildlife Service
17 Executive Park Drive, NE.
Room 411
Atlanta, Georgia 30329

Fish and Wildlife Service
10597 West Sixth Avenue
Denver, Colorado 80215

U.S. Forest Service
Federal Building
Missoula, Montana 59801

U.S. Forest Service
Federal Building
517 Gold Avenue, SW.
Albuquerque, New Mexico 87101

U.S. Forest Service
630 Sansome Street
San Francisco, California 94111

U.S. Forest Service
1720 Peachtree Road, NW.
Atlanta, Georgia 30309

Bureau of Land Management
1600 Broadway
Room 700
Denver, Colorado 80202

Bureau of Land Management
Federal Building
300 Booth Street
Reno, Nevada 89502

Bureau of Land Management
Federal Building, Room 398
550 W. Fort Street
Boise, Idaho 83702

Bureau of Land Management
2120 Capitol Avenue
P.O. Box 1828
Cheyenne, Wyoming 82001

Bureau of Land Management
Federal Building
316 North 26th Street
Billings, Montana 92301

U.S. Forest Service
Denver Federal Building
Denver, Colorado 80225

U.S. Forest Service
Federal Building
324 25th Street
Ogden, Utah 84401

U.S. Forest Service
319 SW. Pine Street
P.O. Box 3623
Portland, Oregon 97208

U.S. Forest Service
633 W. Wisconsin Avenue
Milwaukee, Wisconsin 53203

Bureau of Land Management
Federal Building
125 South State Street
Salt Lake City, Utah 84111

Bureau of Land Management
Federal Building
Room 3022
Phoenix, Arizona 85025

Bureau of Land Management
Federal Building
P.O. Box 1449
Santa Fe, New Mexico 87501

Bureau of Land Management
2800 Cottage Way
Room E-2841
Sacramento, California 95825

Bureau of Land Management
729 Northeast Oregon Street
P.O. Box 2965
Portland, Oregon 97208

Bureau of Land Management
Robin Building
7981 Eastern Avenue
Silver Spring, Maryland 20910

Southeast Regional Office
Bureau of Outdoor Recreation
148 Cain Street
Atlanta, Georgia 30303

Mid-Continent Regional Office
Bureau of Outdoor Recreation
Denver Federal Center
Building 41, P.O. Box 25387
Denver, Colorado 80225

Northwest Regional Office
Bureau of Outdoor Recreation
1000 2nd Avenue
Seattle, Washington 98104

Northeast Regional Office
Bureau of Outdoor Recreation
Federal Office Building
600 Arch Street
Philadelphia, Pennsylvania 19106

Lake Central Regional Office
Bureau of Outdoor Recreation
3853 Research Park Drive
Ann Arbor, Michigan 48104

South Central Regional Office
Bureau of Outdoor Recreation
5000 Marble Avenue, NE.
Albuquerque, New Mexico 87110

Pacific Southwest Regional Office
Bureau of Outdoor Recreation
450 Golden Gate Avenue
San Francisco, California 94102

A limited number of single copies of the final environmental statement is available from the following:

Department of the Interior
Alaska Planning Group
Washington, D.C. 20240

Department of the Interior
National Park Service
524 W. Sixth Avenue
Room 201
Anchorage, Alaska 99501

Department of the Interior
Fish and Wildlife Service
813 D Street
Anchorage, Alaska 99501

Dated: December 31, 1974.

STANLEY D. DOREMUS,
Deputy Assistant Secretary of the Interior.

[FR Doc.75-251 Filed 1-3-75;8:45 am]

NEWLANDS RECLAMATION PROJECT, NEVADA

Operating Criteria and Procedures: Truckee and Carson Rivers

On March 12, 1973, Operating Criteria and Procedures for Coordinated Operation and Control of the Truckee and Carson Rivers for Service to Newlands Project were published in the FEDERAL REGISTER (38 FR 6697) pursuant to the order of the U.S. District Court in the case entitled Pyramid Lake Paiute Tribe of Indians v. Rogers C. B. Morton, et al., 354 F. Supp. 252, D.D.C. 1973.

The criteria specifically apply to the operation of the Newlands Reclamation Project from March 1973 until October 31, 1974. However, in its memorandum, the court stated:

> While some adjustments in operating criteria may be necessary after October 31, 1974, to accommodate changing conditions, there is no reason to believe from the record before the court that the general standards established by the court's judgment and order should otherwise change.

Accordingly, the operating criteria and procedures for the Newlands Reclamation Project prescribed by the court in the above case for the period ending October 31, 1974, shall, until further notice, continue in effect for the period ending October 31, 1975, subject to the following adjustments:

1. In said operating criteria and procedures, time references relating to cyclical activities, which can be expected to recur from operating period to operating period, shall be updated by 1 year.

2. Where Truckee-Carson Irrigation District was required by said operating criteria and procedures to have performed certain actions of a noncyclical and nonrecurring nature and has failed to do so, it shall perform such actions forthwith. This shall not be deemed to waive the responsibility of the Truckee-Carson Irrigation District to have complied with said operating criteria and procedures for previous years.

3. Section c(5) is modified to provide for the installation of measuring devices on at least 20 percent of the turnouts by October 31, 1975.

JOHN C. WHITAKER,
Under Secretary of the Interior.

DECEMBER 27, 1974.

[FR Doc.75-253 Filed 1-3-75;8:45 am]

WATCHES AND WATCH MOVEMENTS

Allocation of Quotas

CROSS REFERENCE: For a document relating to rules for allocation of quotas

for the calendar year 1975 among producers located in the Virgin Islands, Guam and American Samoa, filed jointly by the Department of Commerce and the Department of the Interior, see FR Doc. 74-30533, *supra*.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

GRAIN STANDARDS

Indiana Grain Inspection Point

Notice is hereby given pursuant to §§ 26.101 of the regulations (7 CFR 26.101) under the U.S. Grain Standards Act (7 U.S.C. 71 et seq.) that the Winchester Chamber of Commerce which is designated under section 7(f) of the U.S. Grain Standards Act (7 U.S.C. 79(f)) to operate as an official inspection agency at Winchester, Indiana, has changed its name to Winchester Grain Inspection. The change in name does not involved a change in management or ownership.

Done in Washington, D.C. on: December 30, 1974.

E. L. PETERSON,
Administrator,
Agricultural Marketing Service.

[FR Doc.75-290 Filed 1-3-75;8:45 am]

Farmers Home Administration

[Designation Number A117]

KANSAS

Designation of Emergency Areas

The Secretary of Agriculture has found that a general need for agricultural credit exists in 24 counties in Kansas. The Secretary has found that this need exists as a result of natural disasters shown on the attached chart which also lists the 24 counties.

Therefore, the Secretary has designated these areas as eligible for Emergency loans, pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 93-237, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Robert B. Docking that such designation be made.

Applications for Emergency loans must be received by this Department no later than February 18, 1975, for physical losses and September 19, 1975, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated areas makes it impracticable and contrary to the public interest to give advance notice of proposed rule making and invite public participation.

Done at Washington, D.C., this 30th day of December 1974.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

KANSAS

Prolonged drought from June 1 to November 1, 1974, caused damages and losses to the following 24 counties in Kansas:

Bourbon	Marshall
Brown	Morris
Cherokee	Nemaha
Clay	Neosho
Coffey	Pottawatomie
Crawford	Riley
Franklin	Shawnee
Greenwood	Wabaunsee
Jackson	Washington
Jefferson	Wilson
Labette	Woodson
Linn	(24)
Lyon	

Also, damages and losses occurred from a severe storm (hail, wind, and rain) August 17, 1974, in the following 6 counties:

Crawford	Riley
Marshall	Shawnee
Pottawatomie	Wabaunsee

[FR Doc.75-223 Filed 1-3-75;8:45 am]

(Designation Number A110)

TEXAS

Designation of Emergency Areas

The Secretary of Agriculture has found that a general need for agricultural credit exists in 13 counties in Texas as a result of damages and losses caused by natural disasters. The following chart lists the counties, the natural disasters, and the dates during which the natural disasters occurred.

TEXAS

County	Sandstorm	Drought	Hailstorms	Cool wet weather	Exceptional rainfall and flooding	Windstorms
Bailey	June 8, 1974	Nov. 1, 1973 to Aug. 1, 1974.	Aug. 8 and 14, 1974.	Sept. 12 to 24, 1974.		
El Paso			Aug. 20, 1974		Aug. 20 to Oct. 1, 1974.	Aug. 20, 1974.
Haskell		Dec. 1, 1973 to Sept. 24, 1974.				February, March, April 1974.
Hill		Oct. 15, 1973 to Sept. 1, 1974.	June 7 to 9, 1974.		Sept. 2 to Nov. 6, 1974.	Aug. 29, 1974.
Hood		Nov. 15, 1973 to Aug. 1, 1974.				
Howard		June 1, 1973 to Sept. 15, 1974.				
Hudspeth					Sept. 14 to Oct. 1, 1974.	
Parmer		Aug. 15 to Oct. 1, 1974.				
Pecos					Sept. 15 to 24, 1974.	
Presidio					Sept. 15 to 30, 1974.	
Reeves		Aug. 1, 1973 to July 31, 1974.	Aug. 10 to Oct. 12, 1974.		Sept. 13 to Oct. 27, 1974.	
Scurry		Nov. 1, 1973 to Sept. 13, 1974.				
Terry		Oct. 1, 1973 to Sept. 21, 1974.	Oct. 6 and 27, 1974.		Sept. 21 to Nov. 1, 1974 (cold weather).	Mar. 1 to 3, 1974; Apr. 2 and 3, 1974; June 6 and 8, 1974.

Therefore, the Secretary has designated these areas as eligible for Emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 93-237, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Dolph Briscoe that such designation be made.

Applications for Emergency loans must be received by this Department no later than February 10, 1975, for physical losses and September 15, 1975, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated areas makes it impracticable and contrary to the public interest to give advance notice of proposed rule making and invite public participation.

Done at Washington, D.C., this 17th day of December, 1974.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.75-36 Filed 1-3-75;8:45 am]

[Designation Number A116]

WISCONSIN

Designation of Emergency Areas

The Secretary of Agriculture has found that a general need for agricultural credit exists in the following Wisconsin Counties as a result of the natural disasters shown:

Burnett—Freeze August 31 through September 3, 1974.

Milwaukee—Freeze September 21, 22, and 23, 1974.

Oneida—Freeze September 1, 2, 3, 18, 22, and 23, 1974. Hailstorm August 17, 1974.

Ozaukee—Freeze September 21, 22, and 23, 1974.

Washburn—Freeze August 31 through September 3, 1974.

Washington—Freeze September 21, 22, and 23, 1974.

Waushara—Freeze September 21, 1974. Excessive rainfall April 1 through May 31, 1974.

Therefore, the Secretary has designated these areas as eligible for Emergency loans, pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L.

93-237, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Patrick J. Lucey that such designation be made.

Applications for Emergency loans must be received by this Department no later than February 18, 1975, for physical losses and September 19, 1975, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated areas makes it impracticable and contrary to the public interest to give advance notice or proposed rule making and invite public participation.

Done at Washington, D.C., this 30th day of December, 1974.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.75-222 Filed 1-3-75;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

DHEW-FDA

Decision on Application for Duty-Free Entry of Scientific Article

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

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

Docket Number: 75-00070-33-46040. Applicant: Department of Health, Education, and Welfare, Food and Drug Administration, Bureau of Radiological Health, 12709 Twinbrook Pkwy, Rockville MD 20852. Article. Electron Microscope, Model JEM 100C. Manufacturer: Jeol Ltd., Japan. Intended use of article: The article is intended to be used for the examination of cultured cells following exposure to ionizing radiation with attention paid to the fibrous nature of chromosomes and how such fibrous structure is important in the formation of chromosomal aberration such as breaks, gaps, and translocations.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a side entry goniometer stage with ±60° tilt with a guaranteed resolution of 7 Angstroms point to point and a magnification range of 330x to 250,000x with the goniometer stage in place. The most closely comparable domestic instrument is the Model EMU-4C electron microscope supplied by the Adam David Company. We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated November 21, 1974 that the characteristics described above are pertinent to the applicant's research studies. HEW also advised that the EMU-4C does not have equivalent resolution with their tilt stage, an equivalent goniometer stage and equivalent magnification range without a pole piece change. We, therefore, find that the EMU-4C is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

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

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

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

[FR Doc.75-202 Filed 1-3-75;8:45 am]

UNIVERSITY OF MIAMI

Decision on Application for Duty-Free Entry of Scientific Article

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

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

Docket Number: 75-00053-33-10100. Applicant: University of Miami School of Medicine, Department of Pharmacology, P.O. Box 520875 Biscayne Annex, 1600 NW 10th Ave., 4th Flr., Miami, Florida 33156. Article: Temperature Jump Apparatus. Manufacturer: Bodo Schmidt, West Germany. Intended Use of Article: The article is intended to be used in a project in which the kinetics of Ca^{2+} binding, and the attendant membrane structural changes are to be studied with fluorescent and absorption indicators, and by the use of fluorescent probes in conjunction with the temperature jump technique.

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

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

Reasons: The foreign article measures fluorescent and absorption signals simultaneously and possess a high energy illumination system for higher optical sensitivity. The most closely comparable domestic instrument, the Durrum D115 system does not provide equal sensitivity and does not permit simultaneous absorption and fluorescence measurement. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated November 21, 1974, that the capabilities of the article described above are pertinent to the purposes for which the article is intended to be used.

For these reasons, we find the Durrum D115 system is not of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

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

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

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

[FR Doc.75-203 Filed 1-3-75;8:45 am]

UNIV. OF MINNESOTA

Decision on Application for Duty-Free Entry of Scientific Article

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

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

Docket Number: 74-00410-01-77040. Applicant: University of Minnesota, Department of Chemistry, Minneapolis 55455. Article: Mass Spectrometer, Model MS-30. Manufacturer: AEI Scientific Apparatus, United Kingdom. Intended use of article: The article is intended to be used as a service instrument for low and high resolution spectra of compounds submitted by the faculty members and their students. Secondly, it will be used as a teaching instrument in a Modern Analytical course, and finally, it will be used by graduate students for special long term studies in organic and biological chemistry. Some of the types of compounds and more specific application which will be encountered in the use of the article are:

(1) Isotopic scrambling of oxygen-18 used as a mechanistic probe in model systems for enzymatic reactions.

(2) The reaction of the diradical species SO with an unconjugated olefin producing a mixture of complex products often in low yields;

(3) Structural elucidation of the compounds, F-5-3 and F-5-4, which are related to zearalenone,

(4) Determination of location and extent of incorporation of the label by examining the isotopic patterns of fragment peaks in the labeled and unlabeled compounds of the Cinchona alkaloids,

(5) Study of the scope and mechanism of the rearrangement of substituted 5-nitronorbornenes and 2-nitronorbornanes under the Nef reaction conditions.

The article will also be used extensively for teaching as well as for research analysis in association with graduate research programs.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides an automatic sensitivity control. The most closely comparable domestic instrument, the Model 21-492, manufactured by E. I. Dupont De Nemours and Co. (Inc.) Instrument Products Division (Dupont), does not provide an automatic sensitivity control. We are advised by the National Bureau of Standards (NBS) in its memorandum dated December 4, 1974, that the automatic sensitivity control is pertinent to the applicant's isotope measurement work and to measurements for which only one spectrum can be obtained. NBS also advises that it knows of no domestic mass spectrometer of equivalent scientific value to the foreign article for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

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

[FR Doc.75-204 Filed 1-3-75;8:45 am]

UNIVERSITY OF PENNSYLVANIA

Decision on Application for Duty-Free Entry of Scientific Article

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

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

Docket Number: 75-00079-33-90000. Applicant: University of Pennsylvania, Johnson Research Foundation, School of Medicine, Philadelphia, Pa. 19174. Article: GX-6 Rotating Anode X-ray Generator. Manufacturer: Marconi-Elliott Avionic Systems, Ltd., United Kingdom. Intended Use of Article: The article is intended to be used in the investigation of the dynamic structure (molecular) of biological membranes to determine structure-function relationships in biological membranes.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a focused spot of minimal size (0.2x2 millimeters) and a rotating target for maximum x-ray power. We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated November 29, 1974, that both of the characteristics described above are pertinent to the applicant's research studies. HEW further advises that it knows of no comparable domestic instrument that provides both of the pertinent characteristics of the article.

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

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

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

[FR Doc.75-205 Filed 1-3-75;8:45 am]

UNIVERSITY OF WISCONSIN

Decision on Application for Duty-Free Entry of Scientific Article

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

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

Docket Number: 75-00078-00-46040. Applicant: University of Wisconsin, High Voltage Microscope Facility, 1675 Observatory Drive, Madison, Wisconsin 53706. Article: Double Tilting Side Entry Cold Stage for High Voltage Microscope. Manufacturer: Gatan Co., United Kingdom. Intended use of Article: The article is intended to be used with a high voltage electron microscope for studies of frozen sections of biological materials.

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

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

Reasons: The application relates to a compatible accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used and is pertinent to the applicant's purposes.

The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

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

[FR Doc.75-206 Filed 1-3-75;8:45 am]

National Oceanic and Atmospheric Administration

SOUTHWEST FISHERIES CENTER

Modification of Permit

Notice is hereby given that, pursuant to the provisions of §§ 216.33(d) and (e) of the regulations governing the taking and importing of marine mammals (39 FR 1351, January 15, 1974), the Scientific Research Permit issued to the Southwest Fisheries Center, National Marine Fisheries Service, on December 11, 1974, is modified in the following manner:

The marine mammals authorized by the permit to be taken, tagged and released, may be taken either from a commercial tuna fishing vessel engaged in commercial fishing operations, a research vessel chartered for this purpose, or a research vessel of opportunity which would otherwise be engaged in research activities in the Eastern Tropical Pacific Ocean; rather than solely from a commercial tuna fishing vessel as originally specified in the Permit.

This modification is effective on January 6, 1975.

The Permit, as modified, and documentation pertaining to the modification, is available for review in the Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235 and the Office of the Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 31, 1974.

JACK W. GEHRINGER,
Acting Director, National Marine Fisheries Service.

[FR Doc.75-305 Filed 1-3-75;8:45 am]

Office of the Secretary

WATCHES AND WATCH MOVEMENTS

Rules for Allocation of Quotas for Calendar Year 1975 Among Producers Located in the Virgin Islands, Guam and American Samoa

On December 10, 1974, the Departments of Commerce and the Interior published a joint notice of proposed rule making under Pub. L. 89-805, setting out the proposed formula for allocation of 1975 watch quotas among producers located in the Virgin Islands, Guam and American Samoa (39 FR 43096 et seq.). Interested parties were invited to participate in proposed rule making by submitting their written views on or before December 26, 1974.

There follows a summary of the substantive comments received by the Departments with respect to the proposed rules:

(1) Section 4 should be clarified to indicate that only income taxes actually paid to the Virgin Islands government be credited to producers for quota calculation purposes.

(2) In the event quota becomes available under section 2 of the regulations, whether through issuance by the Departments of a show cause order reducing or cancelling quota or through the voluntary relinquishment of quota, the available quota should be reallocated among established producers rather than being made the basis for inviting quota applications from "new firms".

The Departments do not believe the proposed rules should be modified, based on the above comments, for the following reasons:

(1) Virgin Islands' law allows firms to use either a fiscal year or calendar year basis for the purpose of computing their income taxes, which determines when the taxes are actually paid. The U.S. legislation governing watch quota allocations, however, specifies that the Departments of the Interior and Commerce make allocations each "calendar" year on a fair and equitable basis among producers in the territories. The Deparements' acceptance of income tax figures "applicable to" each producer's headnote 3(a) watch assembly operation makes it possible to give each firm, regardless of the tax computation base it has opted for, a full 12 months income tax credit for quota calculation purposes. An alternative rejected by the Departments as an unwarranted intrusion upon established government and business accounting practices in the territory would be to require all firms to use the calendar year basis for computing their income taxes.

(2) A principal objective of the duty-free watch quota legislation is to maximize the economic contributions of the territorial watch assembly industries to the territories. While recognizing the importance of preserving the established character of the watch assembly industries, the Departments consider that the economic interest of each territory can best be served by maintaining for the Departments the option to reallocate quota among established producers or to invite applications from new entrants when quota becomes available under the Section 2 provisions. Among the factors the Departments would evaluate in exercising this option are (a) the ability of established producers to utilize the quota, (b) whether the available quota is sufficient to support viable operations for one or more new firms and (c) the market for territorial watches and watch movements in the United States.

After full consideration of all comments received, and further Departmental review, the final rules have been modified as described below:

(1) The proposed provision in Section 2 concerning the Departments' issuance of a show cause order for the reason of a firm's failure over two or more consecutive calendar years to make a meaningful contribution to the economy of the territory and to promote the continued development of the duty-free watch assembly industry in the territory has been clarified in the final rules.

(2) A new section 7 is added to the final rules, and section 7 of the proposed rules is designated as section 8. The new section 7 relates to the annual allocation of quota in American Samoa, a provision which was inadvertently left out of the proposed rules, and incorporates Departmental policies concerning the American Samoan allocation.

Watch producers located in the Virgin Islands, Guam and American Samoa must receive their initial quota allocations for calendar year 1975 to avoid any interruption in their assembly operations and to enable these producers to contract for their inventory requirements and to accept and fill purchase orders for their 1975 quota allocations. Accordingly, good cause exists for making the following rules effective January 2, 1975.

SECTION 1. Upon effective date of these rules, or as soon thereafter as practicable, each producer located in the Virgin Islands, Guam, and American Samoa which received a duty-free watch quota allocation for calendar year 1974, will receive an initial quota allocation for calendar year 1975 equal to 50 percent of the number of watch units assembled by such producer in the particular territory and entered duty-free into the customs territory of the United States during the first ten months of calendar year 1974.

SEC. 2. Each producer to which an initial quota has been allocated pursuant to section 1 hereof must, on or before April 1, 1975, have assembled and entered duty-free into the customs territory of the United States at least 30 percent of its initial quota allocation. Any producer failing to enter duty-free into the customs territory of the United States on or before April 1, 1975, a number of watch units assembled by it in a particular territory equal to, or greater than, 30 percent of the number of units initially allocated to such producer for duty-free entry from that territory will, upon receipt of a show cause order from the Departments, be given an opportunity, within 30 days from such receipt, to show cause why the duty-free quota which it would otherwise be entitled to receive should not be cancelled or reduced by the Departments. Such a show cause order may also be issued whenever there is reason to believe that shipments through December 31, 1975, by any producer under the quota allocated to it for calendar year 1975 will be less than 90 percent of the number of units allocated to it. Upon failure of any such producer to show good cause, deemed satisfactory by the Departments, why the remaining, unused portion of the quota to which it would otherwise be entitled should not be cancelled or reduced, said remaining, unused portion of its quota shall be either cancelled or reduced, whichever is appropriate under the show cause order. The Departments may also issue a show cause order to any producer which, for a period of two or more consecutive calendar years, has failed through its headnote 3(a) watch assembly operation to make a meaningful contribution to the economy of the territory and to the continued development of the duty-free watch assembly industry in the territory, when compared with the performance of the territorial duty-free watch assembly industry as a whole. Among the factors the Departments may consider in taking this action include the producer's utilization of quota, amount of direct labor involved in the assembly of watches and watch movements shipped duty-free into the customs territory of the United States, and the amount of corporate income taxes paid to the government of the territory. Upon failure of the producer to show cause, deemed satisfactory by the Departments, why such action should not be taken, the firm's quota shall be cancelled and the eligibility of the firm for further allocations terminated. In the event of any quota cancellation or reduction under this section, or in the event a firm voluntarily relinquishes a part of its quota, the Departments will promptly reallocate the quota involved, in a manner best suited to contribute to the economy of the territories, among the remaining producers: *Provided however*, That if in the judgment of the Departments it is appropriate, applications from new firms may, in lieu of such reallocation, be invited for any part or all of any unused portions of quotas remaining unallocated as a result of cancellation or reduction hereunder or any quota voluntarily relinquished. Every producer to which a quota is granted is required to file a report on April 15, July 15, and October 15, of each year covering the periods January 1 to March 31, April 1 to June 30, and July 1 to September 30 respectively via registered mail on Form DIB-321-P, copies of which will be forwarded to each producer at its territorial address of record at least 15 days prior to the required reporting date. Copies of this form may also be obtained from the Special Import Programs Division, Office of Import Programs, U.S. Department of Commerce, Washington, D.C. 20230. Form DIB-321-P will provide the Departments with information regarding the producer's watch movement assembly operation in the insular possessions. Such information may include the status of beginning and ending inventories of finished watch movements and component parts, scheduled delivery dates and number of watch movement parts and components ordered, number of watch movements assembled, number of watch movements entered into the customs territory of the United States, and a list of confirmed orders for shipment of finished watch movements into the customs territory of the United States, prior to December 31, 1975. Each producer to which a quota is granted will also report on Form DIB-321-P any change in ownership and control which has occurred subsequent to the filing of an application for a watch quota on Form DIB-334-P (see section 8, below).

SEC. 3. Application forms will be mailed to recipients of initial quota allocations as soon as practicable and must be filed with the Departments on or before January 31, 1975. All data required must be supplied as a condition for annual allocations and are subject to verification by the Departments. In order to accomplish this verification it will be necessary for representatives of the Departments to meet with appropriate officials of quota recipients in the insular possessions in order to have access to company records. Representatives of the Departments plan to perform this verification beginning on or about February 15, 1975, in Guam and American Samoa and beginning on or about March 1, 1975, in the Virgin Islands, and will contact each producer locally regarding the verification of its data.

SEC. 4. (Virgin Islands only) The annual quotas for calendar year 1975 for the Virgin Islands will be allocated as soon as practicable after April 1, 1975, on the basis of (1) the number of units assembled by each producer in the territory and entered by it duty-free into the customs territory of the United States during calendar year 1974, (2) the total dollar amount of wages subject to FICA taxes paid by such producer in the territory during calendar year 1974 to persons whose pay was attributable to its Headnote 3(a) watch assembly operation, and (3) the total net dollar amount of income taxes applicable to its calendar year 1974 Headnote 3(a) watch assembly operation. In making allocations under this formula, an equal weight of 40 percent will be assigned to production and shipment history and to wages subject to FICA taxes, and a weight of 20 percent will be assigned to the total net dollar amount of income taxes applicable to calendar year 1974 Headnote 3(a) watch assembly operations.

SEC. 5. (Guam only) The annual quotas for calendar year 1975 for Guam will be allocated as soon as practicable after April 1, 1975, on the basis of the number of units assembled by each producer in the territory and entered by it duty-free into the customs territory of the United States during calendar year 1974, and the total dollar amount of wages subject to FICA taxes paid by such producer in the territory during calendar year 1974 to persons whose pay was attributable to its Headnote 3(a) watch assembly operation. In making allocations under this formula, equal weight will be assigned to production and shipment history and to wages subject to FICA taxes.

SEC. 6. (Virgin Islands and Guam) For purposes of allocating watch quotas for calendar year 1975 under Sections 4 and 5 above, any watches or watch movements shipped from the Virgin Islands or Guam during calendar year 1974 for duty-free entry into the customs territory of the United States against a producer's 1974 watch quota, and which were lost prior to entry into the customs territory of the United States, shall nevertheless be considered as having been entered into the customs territory for purposes of quota fulfillment:

Provided, That the Departments have been satisfied that shipment was in fact made but lost prior to entry into the customs territory.

SEC. 7. (American Samoa only) The annual quota for calendar year 1975 will be allocated to the producer in the territory as soon as practicable after April 1, 1975. Policies relative to the allocation of quota in American Samoa are set forth in the Departments' notice of June 9, 1967 (32 FR 8316 et seq.).

SEC. 8. The rules restricting transfers of duty-free quotas issued on January 29, 1968 and published in the FEDERAL REGISTER on January 31, 1968 (33 FR 2399), are hereby incorporated by reference as applicable to transfers of quotas issued during calendar year 1975 except that detailed reporting of ownership and control will be reported on an annual basis on Form DIB-334-P at the time the producer applies for an annual duty-free watch quota for calendar year 1975. Subsequent change in ownership and control will be reported on April 15, July 15, and October 15, 1975, on Form DIB-321-P required in section 2 above.

Any interested party has the right to petition for the amendment or repeal of the foregoing rules and may seek relief from the application of any of their provisions upon a showing of good cause under the procedures relating to reviews by the Secretaries of Commerce and the Interior which were published in the FEDERAL REGISTER on November 17, 1967 (32 FR 15818).

Dated: December 31, 1974.

ALAN POLANSKY,
Acting Deputy Assistant Secretary for Resources and Trade Assistance, Department of Commerce.

STANLEY S. CARPENTER,
Director, Office of Territorial Affairs, Department of the Interior.

[FR Doc.74-30533 Filed 12-31-74;1:46 pm]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

NATIONAL CANCER INSTITUTE

Meeting

Notice is hereby given of a change in the Workshop on Evaluation of the State of the Art in Bioassay Design and Potential Carcinogenicity of Pesticides January 7, 1975 from 9 a.m., to 5 p.m., and January 8, 1975, from 9 a.m. to 12:30 p.m., at the National Institutes of Health, Bethesda, Maryland, Building 31, Conference Room 10. Notice was published in the FEDERAL REGISTER on December 10, 1974 (39 FR 43098).

This Workshop was to have convened on January 7, 1975 at 9 a.m. but has been changed to January 29, 1975 from 9 a.m. to 5 p.m., and January 30, 1975 from 9 a.m. to 12:30 p.m. at the Landow Building, 7910 Woodmont Avenue, Room C418, Bethesda, Maryland. The entire meeting will be open to the public. Attendance will be limited to space available.

For further information, Dr. Thomas P. Cameron, NCI, Landow Building, Room C319, phone 496-4875, and Dr. H. F. Kraybill, NCI, Landow Building, Room C337, phone 496-1625, may be contacted.

Dated: January 3, 1975.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.75-506 Filed 1-3-75;11:02 am]

Social and Rehabilitation Service

RESEARCH AND DEMONSTRATIONS OFFICE

Statement of Organization, Functions, and Delegation of Authority

Part 5 of the Statement of Organization, Functions, and Delegation of Authority for the Department of Health, Education, and Welfare, Social and Rehabilitation Service (34 FR 1279, January 25, 1969, as amended), is hereby further amended to reflect establishment of Divisions in the Office of Research and Demonstrations, Office of Planning, Research, Evaluation. For such purposes, section 5-K is amended as follows:

Following "Office of Research and Demonstrations" (39 FR 16914, May 10, 1974), insert the following:

Division of Health Services Research and Demonstrations. Responsible for initiating, directing, and coordinating all social service research and demonstrations projects in the area of health care services to the poor as authorized under sections 1110 and 1115 of the Social Security Act, as amended. Designs and develops research programs and research projects geared to resolve major national problems encompassing the delivery of health care services to the poor and the operation of the Medicaid program, and provides technical assistance in formulating and designing international projects involving the delivery of health care to low-income populations. The research program is designed to carry out the overall agency mission of providing needed health care services to low-income medicaid-eligible populations and reducing dependency and promoting human welfare through the provision of essential health care services.

Division of Income Maintenance Research and Demonstrations. Responsible for initiating, directing, and coordinating Social and Rehabilitation Service research and demonstration projects in the areas of: (1) Public Assistance income maintenance administration, and (2) benefit payments to AFDC and other poor families as authorized under Title XI, sections 1110 and 1115 of the Social Security Act, and Title IV-A as amended, pertaining to the AFDC program. Designs and develops domestic projects and provides relevant research assistance to the formulation of international projects authorized under the Special Foreign Currency Program in income maintenance. The research and demonstration projects are designed to carry out the overall agency mission of providing needed income maintenance to the AFDC population and improve the effectiveness and efficiency of the AFDC program.

Division of Social Services Research and Demonstrations. Responsible for initiating, directing, and coordinating all Social and Rehabilitation Social Service research and demonstration projects in the area of social services to the poor as authorized under sections 1110, 1115, and 426 of the Social Security Act as amended and pertaining to social services.

Designs and develops domestic projects and provides relevant technical research assistance to the formulation of international projects which are related to the social service programs. The research and financing, organization, and delivery of demonstration programs are designed to carry out the overall agency mission of providing needed social services to low-income or otherwise eligible populations to help reduce dependency and promote human welfare through the provision of essential social services.

Dated: December 24, 1974.

JOHN OTTINA,
Assistant Secretary for Administration and Management.

[FR Doc.75-109 Filed 1-3-75;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N 74-257]

NATIONAL MOBILE HOME ADVISORY COUNCIL

Nominations

Pursuant to the provisions of section 605, Title VI of Pub. L. 93-383, notice is hereby given that members of the public wishing to nominate persons for appointment to the National Mobile Home Advisory Council should submit such nominations in writing to David M. deWilde, Acting Assistant Secretary for Housing Production and Mortgage Credit, Room 6100, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, on or before January 30, 1975.

Title VI of Pub. L. 93-383 authorizes the Secretary of the Department of Housing and Urban Development (HUD) to establish Federal Construction and Safety Standards for Mobile Homes. The Act provides for the appointment by the Secretary of a National Mobile Home Advisory Council with the following composition: eight members selected from among consumer organizations, community organizations, and recognized consumer leaders; eight members from the mobile home industry and related groups including at least one representative of small business; and eight members selected from government agencies including Federal, State and local governments. The National Mobile Home Advisory Council will provide advice to the Secretary on initial standards, and on changes to or revocation of standards established pursuant to Title VI (Pub. L. 93-383). Compensation shall not exceed $100 per day (including travel time) while engaged in actual duties of the Advisory Council.

Nominations may be made for representatives of consumer, industry and Governmental viewpoints.

Nominations should include the following information:

1. Name of Nominee
2. Home address and telephone number of Nominee
3. Business address and telephone number of Nominee
4. Sector (i.e., consumer, industry or Government) that Nominee represents
5. Occupation, business or profession of Nominee
6. Pertinent experience and/or background of Nominee that is believed to qualify the Nominee as an appropriate member of the Advisory Council
7. Name of group or person(s) making nomination if other than Nominee.
8. The following additional data should be furnished for those nominated as official representatives of organized consumer, or industrial groups or associations.
   a. Name and address of organization
   b. Number of official members in organization
   c. Nominee's position in organization
9. The name of the Government agency, its location and the Nominee's position or title should be provided for those nominated to represent Governmental agencies.

The nominees selected by the Secretary will be announced by publication in the FEDERAL REGISTER at a later date but prior to the first meeting and annually thereafter.

Washington, D.C., December 30, 1974.

DAVID M. DEWILDE,
Acting Assistant Secretary-Commissioner.

[FR Doc.75-228 Filed 1-3-75;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 74 306]

COAST GUARD ACADEMY ADVISORY COMMITTEE

Renewal

This is to give notice in accordance with the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) of October 6, 1972, that the United States Coast Guard Academy Advisory Committee has been renewed by the Secretary of Transportation for a two year period beginning January 16, 1975 through January 16, 1977.

The Academy Advisory Committee was originally established in 1937. Its purpose is to advise the Coast Guard on matters relating to the courses of instruction given at the Academy and give advice and guidance for the improvement of the curriculum to maintain the Academy's academic standards and needs.

Interested persons may seek additional information by writing:

Capt. P. E. Schroeder, USCG
Executive Secretary,
USCG Academy Advisory Committee
c/o Commandant (G-PTE/72)
U.S. Coast Guard
Washington, D.C. 20590

or by calling: 202-426-1381.

Dated: December 24, 1974.

R. W. DURFEY,
Chief, Office of Personnel.

[FR Doc.75-240 Filed 1-3-75;8:45 am]

[CGD 74-308]

COAST GUARD RESEARCH ADVISORY COMMITTEE

Renewal

This is to give notice in accordance with the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) of October 6, 1972, that the United States Coast Guard Research Advisory Committee has been renewed by the Secretary of Transportation for a two year period beginning January 16, 1975 through January 16, 1977.

The Research Advisory Committee was originally established on May 11, 1969 as the Science Advisory Committee. The new title more clearly identifies the Committee's deliberations and recommendations relative to the Committee's central purpose which is providing a broad, continuing overview of the Coast Guard's research, development, test, and evaluation effort.

Interested persons may seek additional information by writing:

Dr. Charles C. BATES
Executive Director, Research Advisory Committee
c/o Commandant (G-DS/62)
U.S. Coast Guard
Washington, D.C. 20590

or by calling: 202-426-1037.

Dated: December 26, 1974.

A. H. SIEMENS,
Rear Admiral, U.S. Coast Guard, Chief, Office of Research and Development.

[FR Doc.75-241 Filed 1-3-75;8:45 am]

[CGD 74-296]

HOUSTON-GALVESTON VESSEL TRAFFIC SYSTEM

Operating Manual

The Coast Guard is establishing a voluntary Vessel Traffic System in the Houston-Galveston area effective February 4, 1975.

The voluntary Vessel Traffic System is a vessel movement reporting system the Coast Guard is undertaking on a provisional basis for a period of procedural testing and evaluation. It will use a VHF-FM communication network manned continuously by personnel in the Coast Guard Vessel Traffic Center in Houston, Texas. The Center will process information received from vessels which provide voluntary reports and will disseminate information to other participating vessels operating in the vessel traffic system area. It is the goal of the system to improve vessel transit safety by providing participating vessels advance information of other vessel movements occurring within the area of the vessel traffic system.

An Operating Manual, to provide the user with information necessary to participate in the system, is being prepared by the Commander, Eighth Coast Guard District.

Copies of this Operating Manual will be available at the following Coast Guard offices:

Commander (m)
Eighth Coast Guard District
Customhouse
New Orleans, La. 20130

U.S. Coast Guard
Houston-Galveston VTS
9640 Clinton Drive
Galena Park, Texas

U.S. Coast Guard
Captain of the Port
Coast Guard Base
Galveston, Texas

Commanding Officer
OCMI
7300 Wingate Street
Houston, Texas

Commanding Officer
OCMI
Room 201
Customhouse
Galveston, Texas

Dated: December 26, 1974.

R. I. PRICE,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.75-239 Filed 1-3-75;8:45 am]

[CGD-74 303]

NATIONAL BOATING SAFETY ADVISORY COUNCIL

Renewal

This is to give notice in accordance with the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) of October 6, 1972, that the National Boating Safety Advisory Council has been renewed by the Secretary of Transportation for a two year period beginning December 20, 1974 through December 20, 1976.

The National Boating Safety Advisory Council was established under section 33 of the Federal Boat Safety Act of 1971 (46 U.S.C. 1482) to advise the Secretary on any policy matters relating to recreational boating safety.

Interested persons may seek additional information by writing:

Capt. David E. Metz, USCG
Executive Director, National Boating Safety Advisory Council
c/o Commandant (G-BR/62)
U.S. Coast Guard
Washington, D.C. 20590

or by calling: 202-426-4176.

Dated: December 26, 1974.

JOHN F. THOMPSON,
Rear Admiral, U.S. Coast Guard Chief, Office of Boating Safety.

[FR Doc.75-237 Filed 1-3-75;8:45 am]

ADVISORY COUNCIL ON HISTORIC PRESERVATION

PUBLIC INFORMATION

Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) and section 800.5(c) of the Advisory Council's "Procedures for the Protection of Historic and Cultural Properties" (36 CFR 800) that on January 21, 1975, at 7:30 p.m., a public information meeting will be held at the Charleston Municipal Auditorium, 77 Calhoun Street, Charleston, South Carolina, so that representatives of national, State, and local units of government, representatives of public and private organizations, and interested citizens can receive information and express their views on a proposed undertaking of the Federal Highway Administration that will have an adverse effect upon properties that are included in or that may be eligible for inclusion in the National Register of Historic Places. The proposed undertaking is the contruction of the James Island Expressway and Bridge extending easterly from the proposed Inner Belt Freeway on James Island, South Carolina, across the Ashley River via a fixed span bridge terminating at Calhoun Street in Charleston, South Carolina. The property included in the National Register is the Charleston Historic District. The property that may be eligible for inclusion in the National Register is the area north of the existing Charleston Historic District.

A summary of the agenda of the public information meeting follows:

I. Explanation of the procedures and purposes of the meeting by representatives of the Executive Director of the Advisory Council.

II. Explanation of the project by representatives of the Federal Highway Administration.

III. Statement by the South Carolina Historic Preservation Officer on the project.

IV. Statements from the public on the project.

Speakers will be permitted to present their views on the project and should limit their statements to approximately ten minutes. Statements should be limited to the undertaking, its effects on historic and cultural properties, and alternate courses of action. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting and for two weeks thereafter. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1522 K Street, NW, Washington, D.C. 20005, (202-254-3974)

Dated: January 2, 1975.

ROBERT R. GARVEY, Jr.

[FR Doc.75-422 Filed 1-3-75;8:45 am]

ATOMIC ENERGY COMMISSION

HANFORD WASTE MANAGEMENT OPERATIONS

Public Hearings Concerning Draft Environmental Impact Statement and Further Extension of Comment Period

On Monday, September 30, 1974, the Atomic Energy Commission (AEC) announced in the FEDERAL REGISTER (39 FR 35199) the issuance of its draft environmental impact statement (DES), WASH-1538, entitled "Waste Management Operations, Hanford Reservation, Richland, Washington." That notice also requested that comments concerning the DES from interested individuals, organizations and governmental agencies be sent to the AEC by November 26, 1974, and announced that a public hearing would be conducted in connection with the DES in Richland, Washington, on December 10, 1974. A subsequent FEDERAL REGISTER notice (39 FR 42411, Thursday, December 5, 1974) postponed the hearing in order to provide additional time for public review of the DES and for appointment of a hearing panel.

Additional comments on the draft statement are requested from interested individuals, organizations and governmental agencies and the period for receipt of comments is hereby extended until January 23, 1975. Comments received by close of business on that date will receive careful consideration in the preparation of the final environmental impact statement. Comments should be sent to the Assistant General Manager for Biomedical and Environmental Research and Safety Programs, U.S. Atomic Energy Commission, Washington, D.C. 20545 or submitted at the hearings mentioned hereafter. Single copies of the draft statement may be obtained from the same address.

As comments are received, copies will be available for inspection at the Public Document Room, 1717 H Street, NW., Washington, D.C.; the Richland Operations Office, Federal Building, Richland, Washington; the Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho; the Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina; and the San Francisco Operations Office, 1333 Broadway, Oakland, California. Copies of the draft statement are also available for inspection at these locations.

Notice is hereby given that the public hearing concerning the DES and the Hanford waste management program initially scheduled for December 10, 1974, has been rescheduled to commence at 9 a.m. on January 21, 1975, at the Hanford House, 802 George Washington Way, Richland, Washington.

Additionally, due to numerous requests from interested persons and organizations, a second hearing will be conducted, beginning at 9 a.m., January 23, 1975, in the Weyerhaeuser Room, Memorial Coliseum Complex, 1401 North Wheeler Street, Portland, Oregon 97208. Portland was chosen as the site for an additional hearing because of its location near the center of the populous areas which may be interested in the Hanford waste management operations.

The purpose of the hearings is to afford further opportunity for public comment regarding the draft statement and for the furnishing of any additional information which will assist the Agency in

determining the future of the waste management program at Hanford.

The public hearings will be legislative rather than adjudicatory in nature. Formal discovery, subpoena of witnesses, cross-examination of witnesses and similar formal procedures appropriate to a trial-type hearing will not be provided. The hearing will be conducted by a Presiding Board composed of Mr. Robert W. Hamilton, Chairman, and Mr. Thomas Parkinson and Mr. James A. Kittrick, members. Procedures to be followed in the hearings have been revised as follows:

Persons, organizations or governmental agencies are encouraged to become "full participants" in the proceedings by filing with the Assistant General Manager for Biomedical and Environmental Safety and Research Programs not later than the close of business on January 17, 1975, a notice of intention to participate. The notice shall set forth: (1) the name and address of the participant; (2) the location (Richland or Portland) at which the appearance will be made; (3) the nature of the participant's interest in the proceeding, or his organizational affiliation; (4) the text of any statements to be presented at the hearing, or a reasonably detailed summary thereof; (5) the names and addresses of all witnesses to be produced at the hearing by the participant and a summary of the substance of the proposed testimony; and (6) the amount of time desired to complete the presentation. The Presiding Board will endeavor to schedule the full amount of time requested by full participants (those who file a timely notice) subject to the imposition of such reasonable time limits as may be consistent with orderly procedures and as will assure other full participants a meaningful opportunity to present their views.

Persons, organizations, or governmental agencies wishing to participate but who do not file a timely notice as specified herein, may notify the Assistant General Manager for Biomedical and Environmental Research and Safety Programs before the hearing or the Presiding Board during the hearing of their desire to make a presentation. Such parties shall be admitted as "limited participants" and shall be heard at such times as the Presiding Board shall permit for a period of not more than ten (10) minutes each, unless the Presiding Board, in its discretion, allows additional time.

Copies of notices of intention to participate will be made available for inspection by the public in the Public Document Room, 1717 H Street, NW., Washington, D.C., in the Richland Operations Office, Federal Building, Richland, Washington, and in the other locations indicated in the third paragraph of this notice, as soon after receipt by the Agency as practicable.

The Presiding Board may permit participants (a) in the course of their presentations, to request other participants, witnesses or Agency spokesmen to respond to specific questions, or (b) to submit written questions to the Presiding Board, which will, in its discretion, make provision for the answering of such questions as it deems appropriate.

Participants may, but need not, be represented by counsel. Participants and their counsel will reference and produce, on request of the Presiding Board, the documents on which they rely.

The Agency will make available appropriate witnesses to explain the background and purpose of the Hanford waste management program and the contents of the draft environmental statement and to respond to appropriate questions.

Two members of the Presiding Board will constitute a quorum, if one of the members is the Chairman.

Consistent with the full and true disclosure of the facts, duplicative, redundant, irrelevant, or otherwise unproductive testimony will not be permitted and the Presiding Board will impose suitable restrictions to that end. The Presiding Board is authorized to take appropriate action to control the course of the hearing, including authority to maintain order; rule on offers of, and receive, evidence; dispose of procedural requests or similar matters; allocate among participants the time available for presentations; provide for consolidation of presentations as appropriate; examine witnesses; and hold conferences before or during the hearing for the purpose of delineating contested issues or for other purposes within the authority of the Presiding Board.

Transcripts of the hearings will be made and together with copies of all documents presented at the hearing, will constitute the record of the hearings. The record will be placed in the Public Document Room, 1717 H Street, NW., Washington, D.C., at the Richland Operations Office, Federal Building, Richland, Washington, and at the other locations indicated in the third paragraph of this notice, where it will be available for inspection by members of the public.

After the conclusion of the hearings, the Presiding Board, without rendering any decision or making any recommendations, will forward the record of the hearings to the Agency together with its identification of issues raised at the hearing. These documents will be considered in the preparation of the final impact statement and in determinations concerning the future of the Hanford waste management program.

Dated at Germantown, Maryland, this 30th day of December, 1974.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.75-442 Filed 1-3-75;8:45 am]

URANIUM HEXAFLUORIDE

Charges, Enriching Services, Specifications, and Packaging: Revisions

The U.S. Atomic Energy Commission (AEC) hereby announces a proposed revision of its notice entitled "Uranium Hexafluoride: Base Charges, Use Charges, Special Charges, Table of Enriching Services, Specifications, and Packaging," as published in the FEDERAL REGISTER on November 29, 1967 (32 FR 16289), and as amended in 34 FR 14039, September 4, 1969; 35 FR 13457, August 25, 1970; 36 FR 4563, March 9, 1971; 36 FR 11877, June 22, 1971; 38 FR 4432, February 14, 1974; 38 FR 13593, May 25, 1973; 38 FR 21518, August 9, 1973; 38 FR 22908, August 27, 1973; 38 FR 27962, October 10, 1973; and 38 FR 22182, June 20, 1974 (referred to herein as the notice).

AEC planning of uranium enrichment operations contemplates a two-step increase in the transaction tails assay from the present 0.20 weight percent U-235. These steps are: (1) the presently proposed increase to 0.275 weight percent U-235 on July 1, 1976, and (2) a further increase to 0.30 weight percent U-235 on July 1, 1981. The increased natural uranium feed deliveries to AEC from toll enriching customers resulting from these increases in transactions tails assay will provide an increase in the AEC's enriched uranium reserve stockpile and, by the resulting increase in the market for natural uranium, will help encourage further exploration and development of additional uranium resources. The proposed revision of the Standard Table of Enriching Services to become effective on July 1, 1976 is based on a transaction tails assay of 0.275 weight percent U-235; the planned subsequent revision, to be effective July 1, 1981, is based on a transaction tails assay of 0.30 weight percent U-235. The Commission is seeking any comments on these proposed and planned changes in the Standard Table of Enriching Services from its enrichment services customers, the uranium producing industry and others.

In the future, with the establishment of adequate new domestic enrichment capacity, there would be an opportunity to reduce the presently planned 0.30 weight percent U-235 transaction tails assay as the steady-state condition. The Commission would appreciate receiving views from the affected industry and others on the appropriate ultimate transaction tails assay on which planning should be based; such views will be weighed carefully by the AEC in developing its own future plans.

The Commission is also planning to consider the possibility of offering to the AEC Gaseous Diffusion Plant customers holding fixed-commitment contracts some degree of flexibility in selecting the transaction tails assay applicable to their enriching services transactions, after steady-state operation of the AEC enriching plants has been reached at the intended 0.30 weight percent U-235 tails assay. Under this approach, the toll enriching customer would be allowed, within defined limits, to use the separative work specified in Appendix A of the toll enriching contract to produce more or less enriched uranium. The Commission desires comments from the affected industry on the desirability of this concept and suggestions as to how

it might be implemented: e.g., the desired range of possible tails assays considered to be realistic. The Commission would also be interested in knowing the extent to which industry views on this concept would be affected by whether present AEC policies regarding return of tails and the assay of such tails are continued in effect.

The proposed revision of the Standard Table of Enriching Services to become effective on July 1, 1976, is as follows. Table 1 of the notice is deleted and the following Table 1 is substituted in lieu thereof:

All interested persons who desire to submit written comments for consideration in connection with the proposed and planned revisions of the notice, as well as the other subjects discussed herein, should send them to the Secretary, U.S. Atomic Energy Commission, Washington, DC, 20545, on or before March 7, 1975. Unless suspended or rescinded within 60 days after the period provided for public comments as a consequence of any substantive comment received, the proposed revision will become effective on July 1, 1976. Public comments received after the aforementioned comment period will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed within the period specified.

Dated at Germantown, Maryland this 31st day of December 1974.

GORDON M. GRANT,
Assistant Secretary of the Commission.

TABLE 1.—*Standard table of enriching services*

Assay (weight percent U-235)	Feed component (normal kilograms uranium feed/kilogram uranium product)	Separative work component (SWU/kilogram uranium product)	Assay (weight percent U-235)	Feed component (normal kilograms uranium feed/kilogram uranium product)	Separative work component (SWU/kilogram uranium product)
0.275	0	0	2.40	4.874	2.502
.30	.067	−.033	2.60	5.333	2.864
.35	.172	−.078	2.80	5.791	3.233
.38	.241	−.095	3.00	6.250	3.607
.40	.287	−.103	3.20	6.709	3.986
.42	.333	−.109	3.40	7.167	4.369
.44	.378	−.112	3.60	7.626	4.756
.46	.424	−.112	3.80	8.085	5.146
.48	.470	−.111	4.00	8.544	5.539
.50	.516	−.109	4.50	9.690	6.533
.52	.562	−.104	5.00	10.837	7.541
.54	.608	−.098	5.50	11.984	8.559
.56	.654	−.091	6.00	13.131	9.587
.58	.700	−.083	7.00	15.424	11.666
.60	.745	−.073	8.00	17.718	13.769
.65	.860	−.044	9.00	20.011	15.890
.70	.975	−.008	10.00	22.305	18.026
.711	1.000	.000	12.00	26.892	22.333
.75	1.089	.032	14.00	31.479	26.677
.80	1.204	.077	16.00	36.067	31.048
.85	1.319	.126	18.00	40.654	35.442
.90	1.433	.178	20.00	45.241	39.854
.95	1.548	.234	25.00	56.709	50.949
1.00	1.663	.292	30.00	68.177	62.116
1.10	1.892	.416	35.00	79.644	73.340
1.20	2.122	.549	40.00	91.112	84.613
1.30	2.351	.689	50.00	114.048	107.287
1.40	2.580	.834	60.00	136.984	130.122
1.50	2.810	.986	70.00	159.920	153.135
1.60	3.039	1.141	80.00	182.856	176.382
1.70	3.268	1.301	85.00	194.323	188.142
1.80	3.498	1.464	90.00	205.791	200.063
1.90	3.727	1.631	92.00	210.378	204.908
2.00	3.956	1.800	93.00	212.672	207.356
2.20	4.415	2.147	94.00	214.966	209.838

All values are computed on the basis of taking normal uranium, having an assay of 0.711 weight percent U-235, as having a zero separative work component, and on the basis of a tails (waste) assay of 0.275 weight percent U-235.

The feed and separative work components for assays not shown will be determined by linear interpolation between the nearest assays listed above.

Inquiries concerning the availability, feed component and separative work component of material of specified assays above 94.00 weight percent U-235 should be addressed to the Chief, Toll Enriching Branch, USAEC, Oak Ridge Operations Office, Post Office Box E, Oak Ridge, Tennessee 37830.

[FR Doc.75-357 Filed 1-3-75;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 26943]

AEROAMERICA, INC., GAC CORPORATION, AND MODERN AIR TRANSPORT, INC.

Acquisition Agreement; Postponement of Hearing

Notice is given that the hearing now scheduled for January 7, 1975 (39 FR 42940, December 9, 1974), is hereby postponed to January 8, 1975 at 10 a.m. (local time) in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C. before the undersigned.

Dated at Washington, D.C., DECEMBER 31, 1974.

[SEAL] ALEXANDER N. ARGERAKIS,
Administrative Law Judge.

[FR Doc.75-297 Filed 1-3-75;8:45 am]

[Docket No. 26943]

AEROAMERICA, INC., GAC CORPORATION, AND MODERN AIR TRANSPORT, INC.

Acquisition Agreement; Reassignment of Proceeding

This proceeding is hereby reassigned from Administrative Law Judge Hyman Goldberg to Administrative Law Judge Alexander N. Argerakis. Future communications should be addressed to Judge Argerakis.

Dated at Washington, D.C. DECEMBER 30, 1974.

[SEAL] ROBERT L. PARK,
Chief Administrative Law Judge.

[FR Doc.75-295 Filed 1-3-75;8:45 am]

[Docket No. 27067; Order 74-12-89]

ALLEGHENY AIRLINES, INC., ET AL.

Order Authorizing Discussions Regarding Pricing Policies and Practices of Fuel Suppliers

Correction

In FR Doc. 74-30366 appearing in the issue of Monday, December 30, 1974, make the following changes:

1. The docket number should read as set forth above.

2. In the second line of the second column on page 45065 the number reading "384" should read "385".

[Docket Nos. 27256, 27263, 27259; Order 74-12-128]

AMERICAN AIRLINES, INC. ET AL.

Order of Suspension Regarding Domestic Air Freight Rate

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 31st day of December, 1974.

By tariff revisions variously posted and issued and marked to become effective January 1, 15, or 16, 1975, American Airlines, Inc. (American), Eastern Air Lines, Inc. (Eastern), Trans World Airlines, Inc. (TWA), and United Air Lines, Inc. (United) propose, inter alia, to revise domestic air freight rates as follows:

American:

1. Increase bulk and container general and specific commodity rates, as well as bulk minimum charges between 5 and 12 percent, varying by direction and distance; and

2. Cancel the current exception rating on human remains and establish specific commodity rates reflecting lower levels.

Eastern:

1. Increase minimum charges per shipment between $1.00 and $3.00, up to $15.00;

2. Increase bulk and container general and specific commodity rates by between 5 and 15 percent; and

3. Cancel a number of specific commodity rates.

TWA:

1. Increase minimum charges per shipment by $1.00, up to $16.00;

2. Increase all general commodity bulk and container rates between 8 and 12 percent;

3. Increase specific commodity and daylight container rates by 10 percent; and

4. Increase small package charges by $5.00 per shipment.

United:

1. Increase minimum charges per shipment by $1.00, up to $16.00 ($17.00 to Honolulu);

2. Increase general commodity bulk and container rates between 8 and 15 percent, varying by market, direction, and length of haul;[1]

3. Increase specific commodity rates by 10 percent; and

4. Increase small package charges by $3.00 per shipment.

Complaints requesting suspension pending investigation have been directed specifically against United's filing by the Hawaii Air Cargo Shippers Association (HACSA) and The National Small Shipments Traffic Conference (NSSTC).

HACSA's complaint is directed specifically against United's increases from and to Hawaii. HACSA alleges, inter alia, that the proposed 15 percent increase in the Hawaiian market is far larger than proposed in any other market, and consequently, discriminates against shippers to and from Hawaii; that general freight rate increases already permitted during 1974 have already accounted for substantial increases for Hawaiian shippers; that large volume shippers, forwarders, and shippers' associations would bear almost the total cost of the proposed increases applicable to higher weight-break bulk rates and container rates; that no reason is suggested why Hawaii is treated differently from other markets; that if rapid cost escalations, especially fuel, require a rate increase, such an increase should be borne equally by all shippers; that the proposal will divert air freight to surface; that the proposal does not take into account demand elasticity for air freight, which is of special significance to the economy of Hawaii, where land costs are high and warehousing expenses substantial in proportion to other costs; and that United's support for the proposal is based upon all-cargo operations which the Board has said is not representative of current conditions in the industry.

NSSTC's complaint alleges that United's support based upon all-cargo operations is not sufficient, since few commodities receive all-cargo service and most are in combination aircraft.

In support of the proposed increases, American, Eastern, TWA, and United all essentially assert that the proposals are consistent with rates and charges approved for The Flying Tiger Line Inc. (Tiger) in Order 74-11-63 and reflect increases in industry-average costs of approximately 17.9 percent over those forecast in the Domestic Air Freight Rate Investigation (DAFRI). The carriers' justifications are outlined below:

American:

1. Its own costs were 28 cents per revenue ton-mile, or 19.4 percent over that forecast in DAFRI; and

2. It estimates that this proposal will result in $8.1 million in revenues, or an 8.2 percent increase in total domestic revenue.

Eastern:

1. The general increases proposed herein are within the cost of providing the service. The rates in medium and long-haul markets reflect the cost levels that have been recognized by the Board in its recent evaluation of freight rate tariff proposals, with a 5 percent escalation factor added to compensate for upward expense adjustments;

2. Even with the proposed increases, Eastern will merely reduce losses on freight operations, but not achieve a break-even situation; and

3. As a result of this proposal, Eastern estimates that it will receive $4.2 million additional revenue annually.

TWA:

1. The proposed increases are necessary as interim relief from continued freighter losses and unit cost increases; and

2. The proposal is expected to produce approximately $5.7 million in additional freight revenues annually, and the increase is estimated to reduce the all-cargo operating loss from $14.3 million to $11.0 million.

United:

1. United's cost formula is based upon the Bureau's underlying cost criteria with an adjustment for fuel and non-fuel related capacity cost increases;

2. United complies with Order 74-7-120, which specified that BE's criteria would be applied by the Board in evaluating interim rate increases pending the issuance of a decision in DAFRI;

3. The carrier's all-cargo operations have not produced an annual return on investment since 1968;

4. While during the first and second quarters of 1974 load factors were up, increased utilization has not and will not alleviate the basic problem of below-cost rates; and

5. For the 12 months ended June 1974, United had an operating loss of $7.1 million in all-cargo operations, and it estimates that this filing will increase freight revenues by $11.6 million, or 7.1 percent.

The proposed rates and charges come within the scope of DAFRI, and their lawfulness will be determined in that proceeding. The issue now before us is whether to suspend the proposals or to permit them to become effective pending investigation.

As indicated, the complainants allege that United supports its increases by costs of all-cargo operations, but these are not representative of the method of carriage of most air freight, which moves in combination aircraft. Consistent with our statutory responsibility under Section 102(a), to encourage the present and future needs of the commerce of the United States, we have considered, in resolving the suspension issues, industry-averages for operations within the 50 states for all types of aircraft. We have looked at all-cargo aircraft, but since they account for approximately one-half of the total freight traffic, we conclude that both all-cargo and combination aircraft costs should be considered.[2] Consequently, the Board has consistently reviewed such proposals in the light of industry-average costs of carrying air freight in all-cargo and combination aircraft (including a full return on investment) and including recent average increases in fuel and non-fuel related capacity costs for the period January–September 1974. Moreover, the average fully allocated costs of freight in both all-cargo and combination aircraft are only slightly less than the costs in all-cargo aircraft, which the complainants contend are being used and which they oppose. The following table compares these costs:

[1] United's bulk increases in the Hawaiian market apply to weight-breaks 1,000 pounds and over.

[2] For a haul of 2,500 miles, approximately the distance between Hawaii and the West Coast, the average industry costs for all types of aircraft is only 2 percent below the all-cargo costs. (Note: The average costs for both types of aircraft is obtained by weighting the costs of each by the percentage of tons enplaned by each type.)

1972 Operating Costs Per 100 Lb (Capacity and Non-Capacity) by Aircraft Type, Domestic Services Trunks, and Flying Tiger

Mileage block	Per 100 lb			All types as percent of all-cargo	All-cargo tons enplaned as percent of total
	Combination aircraft	All-cargo aircraft	All types aircraft		
100	$9.70	$9.97	$9.77	98	23.1
525	11.44	11.74	11.54	98	33.8
1,000	13.91	15.70	14.58	93	33.2
1,600	16.34	16.51	16.45	99.6	57.6
2,500	18.73	19.85	19.53	98	71.1

Based on these criteria, the Board finds a limited number of the proposed rates, typically in the longer haul markets, to be excessive in relation to costs.

HACSA also complains that United is increasing rates to and from Hawaii by 15 percent, which is considerably more than other markets, without any reason. Based upon rates between Honolulu and Los Angeles/San Francisco, it appears that Hawaiian markets have enjoyed a lower level of rates than Mainland markets of similar length of haul, except for rates for 100-pound shipments, and the proposed rates in the aforementioned markets would continue to be lower than rates in equivalent Mainland markets. However, to the extent that such proposed rates (as well as rates between Hawaii and other Mainland points) exceed the Board's cost-rate criteria, they will be suspended. With respect to United's

only increasing rates applicable to higher weights, current rates at lower weight-breaks approach or exceed our cost criteria, and little or no increases would be permitted (see Appendix C[8]).

Essentially, the rates and charges which exceed costs are, for American, bulk rates from eastern points to San Francisco and Types D and LD-5 container minimum charges in selected markets, and for United, a number of bulk specific commodity rates and lower-deck container charges from Mainland points to Honolulu. In addition, a number of high-density container rates for all the carriers have been found to exceed costs. Furthermore, a number of American's bulk specific commodity rates would exceed the general commodity rates in the same market, and will be suspended. We believe that general commodity rates should be higher than specific commodity rates, unless the latter apply to commodities involving special characteristics resulting in higher costs.

Upon consideration of the complaints and all other relevant factors, the Board finds that these proposals, to the extent they apply to the rates and charges set forth in detail in Appendices A and B, should be suspended. The remaining portions of the proposals, including the increased bulk minimum charges per shipment and the remaining increased bulk and container general and specific commodity rates and charges, appear sufficiently related to costs that the Board will permit them to become effective.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That: 1. Pending hearing and decision by the Board, the increased rates, charges, and provisions described in Appendix A[8] hereto are suspended, and their use deferred to and including March 31, 1975; and the increased rates, charges, and provisions described in Appendix B[8] hereto are suspended, and their use deferred to and including April 19, 1975, unless otherwise ordered by the Board, and that no change be made therein during the period of suspension, except by order or special permission of the Board;

2. Except to the extent granted herein, the complaints of the Hawaii Air Cargo Shippers Association in Docket 27256 and The National Small Shipments Traffic Conference in Docket 27263, are dismissed; and

3. Copies of this order shall be filed with the tariffs.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, *Secretary*.

[FR Doc.75-300 Filed 1-3-75;8:45 am]

[8] Appendices filed as part of the original document.

[Docket Nos. 26838, 27247; Order 74-12-126]

DELTA AIR LINES, INC.

Priority Reserved Air Freight Rates Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 31st day of December 1974.

By tariff revisions bearing a posting date of December 2, 1974, and marked to become effective January 16, 1975, Delta Air Lines, Inc. (Delta) proposes to establish premium rates for a new on-line "air express service." The proposed rates amount to 150 percent of the applicable general or specific commodity rate or minimum charge.

Under the proposal, air express shipments will be given boarding priority over all other shipments of air freight, except those transported under Delta's expedited small-package service. The air express shipments must be tendered to the carrier at the air freight terminal at least 90 minutes prior to the scheduled departure of the flight on which the shipper requests that the shipment be transported. At the time of tender of the shipment to carrier, the shipper shall notify the carrier as to the flight on which he requests reserved space for transportation of the shipment from the point of origin. The carrier shall record on the airbill at the time of acceptance of the shipment, the flight and date on which reserved space is confirmed by the carrier for transportation of the shipment from point of origin.

If the shipment is not delivered on the specified flight on which the reservation is made, the carrier will refund to the shipper the difference between the proposed rates and charges and the applicable rates and charges for standard service, unless such misdelivery is caused by weather conditions, mechanical delay of the aircraft, or other occurrences not under the direct control of Delta.

The proposal bears an expiry date of May 31, 1975.

A complaint requesting suspension and investigation of Delta's proposed rates has been filed by The National Small Shipments Traffic Conference, Inc. (NSSTC). The complaint alleges, inter alia, that the proposed rates are not just and reasonable; that an earlier Delta proposal required a 30 percent premium, whereas the current proposal amounts to a 50 percent premium and NSSTC finds it difficult to believe that costs have spiraled enough to justify such an increase in Delta's original rates; and that the proposed rates are extremely inflationary. The complaint further contends that it is Delta's duty to provide this necessary service and believes that the carrier has tried to capitalize on furnishing this service at the public's expense.

In support of its proposal and in answer to the complaint, Delta contends, inter alia, that (1) the new service is a result of its withdrawal from participation in the traditional air express service provided by the air carriers and REA Express, Inc. (REA); (2) until an interline priority airport-to-airport service has been devised to replace REA's, Delta wishes to provide an on-line service which will continue until the inter-carrier service is implemented; (3) the proposal has distinct advantages not found in the priority reserved service heretofore offered by Continental Air Lines, Inc. and Western Air Lines, Inc.; (4) the proposed rates for many shipments are generally lower than the airport-to-airport rates of REA; and (5) the quantified costs of providing the proposed service amount to 85 percent over that of air freight, but an increase of 50 percent, although not fully compensatory, could be promoted effectively, and shippers will support the new air express service.

The carrier further contends that although the proposal is expected to generate $1.9 million additional annual revenue, the additional costs involved in taking over the functions now handled by REA will more than offset the additional revenues, and the new service will be operated at a loss initially. Delta anticipates, however, that this problem will be rectified as a result of the current Domestic Air Freight Rate Investigation (DAFRI), and that after the decision in that case, air express can be provided on a profitable basis.

Upon consideration of all relevant factors, the Board finds that the tariff proposal may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. The Board further concludes that the tariff should be suspended pending investigation.

In support of its contention that the costs of its proposed air express service are 85 percent greater than for air freight, Delta has presented capacity and non-capacity cost data. However, an examination of these cost data reveals serious deficiencies. For example, in computing the relative traffic servicing cost of air express and air freight, Delta assumes a shipment size of 256.4 pounds for air freight and 28.3 pounds for air express. The carrier then calculates a total terminal handling time per pound which it states is 171 percent greater for air express than for air freight, and adjusts its costs accordingly.

We do not believe, however, that comparing the costs per pound of a 256.4-pound air freight shipment with a 28.3-pound air express shipment represents a valid comparison. As indicated in Delta's comparison, certain unit handling costs are the same for both sizes of shipments per pound, certain costs are the same per piece, and certain costs are the same per shipment. But since the smaller shipment has fewer pounds the total handling costs as computed by Delta on a per-pound basis will be biased in favor of the larger size shipment.[1]

[1] While Delta states that its proposed service "is designed to accommodate typical air express shipments with an average weight of 28.3 pounds," we note that practically all of its bulk traffic would qualify for express movements under its tariff at the same percentage of premium.

The Board notes Delta's statement that a number of its proposed rates are below the rates in effect for REA Express, Inc. We cannot find that this comparison supports the premium proposed by Delta. The rate structure upon which Delta's premium rates are based is significantly different from the REA rate structure, reflecting a different operation, and a number of Delta's proposed rates are above REA rates. As indicated, the operations are different, with the REA service involving inter-line carriage and ground services, which are generally performed by the indirect carrier.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That: 1. An investigation is instituted to determine whether the rates, charges, and provisions for account of the carrier "DL" in Rule No. 72 on 5th, 6th, and 7th Revised Pages 38-E of Airline Tariff Publishers, Inc., Agent, Tariff C.A.B. No. 169, and rules, regulations, or practices affecting such rates, charges, and 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 charges and provisions, and rules, regulations, or practices affecting such charges and provisions;

2. Pending hearing and decision by the Board, the rates, charges, and provisions for account of the carrier "DL" in Rule No. 72 on 5th, 6th, and 7th Revised Pages 38-E of Airline Tariff Publishers, Inc., Agent, Tariff C.A.B. No. 169, are suspended and their use deferred to and including April 15, 1975, 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 investigation instituted herein is hereby consolidated into the Priority Reserved Air Freight Rates Investigation, Docket 26838;

4. Except to the extent granted herein, the complaint of The National Small Shipments Traffic Conference, Inc. in Docket 27247 is hereby dismissed; and

5. Copies of this order shall be served upon Delta Air Lines, Inc., which is hereby made a party to Docket 26838.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, *Secretary*.

[FR Doc.75-299 Filed 1-3-75;8:45 am]

[Docket 27330; Order 74-12-111]

DOMESTIC COMMON FARES

Order of Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 27th day of December, 1974.

Phase 9 of the Domestic Passenger Fare Investigation (Docket 21866-9) concerned the relationships among normal fares in the various markets within the 48 contiguous states. While the principal controversies in that case were the proper formula for computing coach fares and the relationship between coach fares and fares for other classes of service, there were a number of other questions at issue, including what consideration should be given to common-faring.

By Order 74-3-82, the Board issued its opinion in Phase 9, in which it found that fares should generally be based on a formula applied to the carrier's shortest-authorized mileage for each pair of points. Certain exceptions were allowed, however, which can result in the common-faring of two or more points. First, in cases where two or more points are within a single metropolitan area (e.g., San Francisco and Oakland), the Board's order provided that the fare to those points from another point should be based on the geographic mid-point between the airports. Secondly, the Board's order permitted, subject to complaint, common-faring in instances where a carrier provides single-plane service to a point by way of an intermediate point which is more distant from the origin; such common fares are to be based on the mileage to the closer of the common-fared points. Finally, the Board determined that in the case of other common-fared points, the fare to such points should be based on the traffic-weighted average mileage to/from the common-fared points. This latter category of common-faring is typified by the carriers' practice of common-faring points along the West Coast with respect to various points in the northeastern quadrant of the United States. The Board found that the permissibility vel non of this type of common-faring should be considered on an ad hoc basic, and the Board did not pass upon the lawfulness of existing common-faring practices. In our Opinion and Order on Reconsideration in Phase 9,[1] however, we have determined, for the reasons given therein, that a separate investigation of the latter type of common-faring is necessary. This order implements that determination.

The parties in Phase 9, in light of the magnitude of the issues in that case, understandably gave relatively little attention to the issue of common-faring. Common fares have long been a fixture in the domestic rate structure for air transportation (and indeed other forms of transportation as well), and have historically been justified on the basis, inter alia, that they place competing localities on an equal footing. However, we believe it is time to examine anew the rationale for permitting common-faring in light of the policies adopted by the Board in Phase 9. By departing from the basic domestic fare formula, common fares raise questions of reasonableness, unjust discrimination and undue preference and prejudice. It is our intention that the parties in this investigation direct their attention to the traditional common-faring practices, i.e., to existing common fares other than those permitted pursuant to footnote 94 and the first proviso of paragraph 2 in our Phase 9 Opinion and Order on Reconsideration. In addition, we have determined to place in issue the proper method of computing common fares since the lawfulness of common-faring particular points may be affected by the basis on which those common fares are computed.

Accordingly, pursuant to the Federal Aviation Act of 1958 and particularly Sections 204(a), 403, 404, and 1002 thereof;

It is ordered that: 1. An investigation be and it hereby is instituted to determine whether the fares charged for air transportation within the 48 contiguous states and the District of Columbia to/from common-fared points (other than common fares permissible pursuant to paragraph 2 of Order 74-12-109), and rules, regulations or practices affecting such fares and 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 fares and provisions, and rules, regulations, and practices affecting such fares and provisions;

2. The investigation ordered herein be assigned before an Administrative Law Judge of the Board at a time and place hereafter to be designated; and

3. Copies of this order be served upon American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Trans World Airlines, Inc., United Air Lines, Inc., Western Air Lines, Inc., Allegheny Airlines, Inc., Frontier Airlines, Inc., Hughes Air Corp., North Central Airlines, Inc., Ozark Air Lines, Inc., Piedmont Aviation, Inc., Southern Airways, Inc., and Texas International Airlines, Inc., which are hereby made parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, *Secretary*.

[FR Doc.75-48 Filed 1-3-75;8:45 am]

[Docket 26568; Order 74-12-124]

HUGHES AIR CORP., ET AL.

Order Regarding Liability Rules of Domestic Certificated Carriers Pursuant to the Carriage of Live Animals as Baggage

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 31st day of December, 1974.

By order 74-4-20, dated April 4, 1974, the Board tentatively found that certain tariff provisions[1] of various certificated

[1] Order 74-12-109. That order is being issued simultaneously herewith.

[1] These tariff provisions are listed in Appendix A to Order 74-4-20.

air carriers,[2] which purport to exculpate carriers from liability for their own negligence in the carriage of live animals as baggage, were inconsistent with the Board's decision in Docket 21474,[3] and were therefore unlawful. The Board further tentatively found that hearing was not required, as all of the issues relevant to a determination of the lawfulness of the liability rules in question were fully and thoroughly litigated in Docket 21474, and that all air carriers had been parties to that innvestigation. The Board therefore directed the air carriers and all interested parties to show cause why the Board should not make final its tentative findings and conclusions, and upon such basis order the carriers to cancel the tariffs in question. Responses were directed to be filed within twenty days following service of the order.

Objections to the Order to Show Cause have been received from Delta Air Lines, Inc. (Delta), North Central Airlines, Inc. (North Central), Reeve Aleutian Airways, Inc. (Reeve), and United Air Lines, Inc. (United).

Delta does not object to the Board's findings insofar as they apply to those portions of the tariff rules which operate to relieve the carrier from liability for its own negligence. Delta contends, however, that the rules in question contain matters other than exemption from liability, and that the Board may unintentionally apply its findings of unlawfulness to those elements as well.

In a similar tone, North Central states that it is filing its petition solely to obtain clarification of the intended reach of the Board's Order to Show Cause. North Central requests that the Board make it clear that only those portions of the rules providing for carrier exclusion from liability are unlawful, and that those parts which pertain to other matters may remain in effect. North Central specifically requests that the Board make it clear that the carriers may refile their rules if "purged of the offensive language."

United objects to the tentative finding that Rule 345(D)(4) is unlawful.[4] United contends that this rule does not exclude the carrier from any liability for its own negligence, but merely serves to impose upon the pet owners the obligation to comply with all applicable government regulations and restrictions.

Reeve objects to the Board's tentative finding that its liability rules for live animals are unlawful, for a number of reasons. First, Reeve points out that it was not a party to Docket 21474, and that the Board's findings in that case were not based on a record containing evidence as to the application of the liability rules to its operations. Second, Reeve claims that because of the "unique nature" of its operations, Reeve's liability rule for live animals moving as baggage is not unlawful. Reeve points out that the severe weather conditions, and the fact that there are no veterinary facilities anywhere in the Aleutians, makes them particularly vulnerable to injury and death claims.

The objections of Delta and North Central raise no material issues of fact, and do not prevent affirmation of our tentative findings. Our Order to Show Cause clearly pointed out that the tariff provisions in question are unlawful to the extent they exculpate carriers from liability for their own negligence. We recognize that these tariff rules contain additional matter, and we do not comment on the lawfulness of such provisions at this time. Of course, the carriers remain free to amend or refile their rules, so long as the provisions are consistent with this order.

The Board does not agree with United's contention that rule 345(D)(4) does not exculpate carriers from liability for their own negligence. We have no problem with the first sentence of this rule, which places upon the pet owner the burden of complying with the necessary governmental regulations, such as the obtaining of a health certificate. However, under the terms of the second sentence, the carrier would not be liable if the pet were refused entrance into any country, state, or territory, even if such refusal is attributable to the negligence of the carrier. This second provision is far too broad, and instances might arise whereby it could operate to absolve the carrier from liability for negligence. For example, the pet owner may have secured all proper governmental permits, but the carrier's negligence causes these permits to be misplaced. In addition, this rule might be interpreted to allow the carrier to act with impunity with regard to the welfare of the animal in the event passage of the animal into another state or country is refused. Further, we note that even if United's interpretation of the rule is correct, i.e., it does not operate to absolve the carrier from liability for its own negligence, our action has not prejudiced United, but merely serves to clarify an otherwise ambiguous provision of the tariff. Under these circumstances, United has not raised a material issue of fact which would preclude finalization of the Order to Show Cause.

Although Reeve is correct in its assertion that it was not a party to Docket 21474, it has presented no material reason why the finding in that case should not be made applicable to its liability rule. The Board's decision that a carrier rule exculpating itself from liability for its own negligence is unlawful on its face is consistent with long established legal principles,[5] and Reeve has presented no reason why the Board should depart from these principles. Reeve's argument that the severe weather conditions and lack of veterinary facilities makes it particularly vulnerable to injury or death claims is not relevant to our finding. The order to show cause does not make the carriers absolutely liable for loss, but merely provides that they should be fully liable for the consequences of their own negligence. In the case of a loss allegedly caused by severe weather conditions, nothing in our order prevents Reeve from proving that it was not negligent and therefore should not be liable. Reeve has presented no material issue of fact preventing us from finalizing our tentative finding that its liability rule, to the extent it absolves Reeve from liability for negligence, is unlawful.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, and 404 thereof,

It is ordered, That:

1. The tentative findings and conclusions in Order 74-4-20, dated April 4, 1974, are hereby affirmed as to: Hughes Air Corp., d/b/a Airwest, Alaska Airlines, Inc., Allegheny Airlines, Inc., Aloha Airlines, Inc., American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., Frontier Airlines, Inc., Hawaiian Airlines, Inc., National Airlines, Inc., New York Airways, Inc., North Central Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines, Inc., Pan American World Airways, Inc., Piedmont Aviation, Inc., Reeve Aleutian Airways, Inc., Southern Airways, Inc., Texas International Airlines, Inc., Trans World Airlines, Inc., United Air Lines, Inc., Western Air Lines, Inc., and Wien Air Alaska, Inc.;

2. The carrier parties named in ordering paragraph 1 above, upon not less

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[2] Hughes Air Corp., d/b/a Airwest, Alaska Airlines, Inc., Allegheny Airlines, Inc., Aloha Airlines, Inc., American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., Frontier Airlines, Inc., Hawaiian Airlines, Inc., National Airlines, Inc., New York Airways, Inc., North Central Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines, Inc., Pan American World Airways, Inc., Reeve Aleutian Airways, Inc., Southern Airways, Inc., Texas International Airlines, Inc., Trans World Airlines, Inc., United Air Lines, Inc., Western Air Lines, Inc., and Wien Air Alaska, Inc.

[3] Investigation of Premium Rates for Live Animals and Birds, Order 73-6-103, dated June 26, 1973. At p. 36 of that order, the Board found to be unreasonable on its face a provision which exculpated carriers from liability for their own negligence with respect to live animals carried as freight.

[4] Rule 345(D)(4), Airline Tariff Publishers, Inc., Local and Joint Passenger Rules Tariff No. PR-6, C.A.B. No. 142, provides: "The owner of the pet shall be responsible for compliance with all governmental regulations and restrictions, including the furnishing of valid health and rabies vaccination certificates where required. Carrier is not responsible in the event any pet(s) is refused passage into, or through any country, state, or territory."

[5] The Supreme Court of the United States has consistently held it to be against public policy for a common carrier, by special or express contract, to exempt itself from liability for loss or damage due to its own negligence. See, United States v. Atlantic Mutual Insurance Co. *et al.*, 343 US 236 (1952); The Ansaldo San Giorgio I v. Rheinstrom Brothers Co., 294 US 494 (1935); Union Pacific Railroad Co. v. Burke, 255 US 317 (1921); Knott v. Botany Mills, 179 US 69 (1900); Liverpool and Great Western Steam Co. v. Phenix Insurance Co., 129 US 397 (1889).

than 30 days' notice to the Board and to the general public, shall publish, post, and file tariffs to be effective within 45 days after service of this order, canceling all tariffs inconsistent with this order: *Provided, however*, That, instead of canceling said tariffs, the carriers may, within the time provided, publish, post, and file tariffs modifying their tariffs to conform with the decision herein; and

3. Copies of this order will be served upon the carriers listed in ordering paragraph 1 hereof.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, *Secretary*.

[FR Doc.75-301 Filed 1-3-75;8:45 am]

[Docket 26494 Agreement C.A.B. 24818 Agreement C.A.B. 24821; Order 74-12-91]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

North Central Pacific and Intra-Pacific Air Fares

Issued under delegated authority December 23, 1974.

Agreements have been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA). The agreements, proposed to be effective April 1, 1975 through March 31, 1976 would establish fares over the North/Central Pacific and within the Pacific.

The agreements would increase all fares for U.S. originating travel over the North/Central Pacific and within the Pacific by eight percent; eliminate the presently available individual inclusive tour fare; and impose stopover restrictions on various promotional fares not heretofore so restricted. Free stopovers in connection with individual excursion fares, affinity group fares, and group inclusive tour fares would be limited to a total of four, with additional stopovers available at a charge of $15 each.

The purpose of this order is to establish dates for the submission of carrier justifications in support of the subject agreements, and comments from other interested persons. The carriers' justifications should include historical data, as reported to the Board in Form 41 reports by functional account, for total Pacific services for the year ended September 30, 1974, adjusted to exclude charter and cargo operations so as to establish the present economic status of passenger services in the areas covered by the subject agreements.[1] The carriers will also be expected to include a forecast for the year ending March 31, 1976, both including and excluding the increased fares for which they seek approval. Although Northwest Airlines is not a party to the IATA agreement, we will nevertheless expect it to provide data comparable to that requested from the U.S. IATA members.

In addition to the above information, we request that the North/Central Pacific carriers also address the question of fare structure on this route; including proposed continuation of a number of promotional fares at discounts in excess of 50 percent, the relatively high yields from Alaska-Far East fares compared with fares to/from other United States gateways, and the rationale for the cancellation of the individual inclusive tour fares.

Accordingly, it is ordered that. (1) All United States air carrier members of the International Air Transport Association shall file within twenty days after the date of service of this order, full documentation and economic justification (as described above) in support of the subject agreement;

2. Northwest Airlines, Inc. shall file within twenty days after the date of service of this order, data similar to that required of the IATA carriers;

3. Comments and/or objections from interested persons shall be submitted within thirty days after the date of service of this order; and

4. Tariffs implementing the subject agreements shall not be filed in advance of Board action on the subject agreements.

This order will be published in the FEDERAL REGISTER.

By James L. Deegan, *Chief, Passenger and Cargo Rates Division, Bureau of Economics*.

[SEAL] EDWIN Z. HOLLAND, *Secretary*.

[FR Doc.75-49 Filed 1-3-75;8:45 am]

[Docket 26494; Agreement C.A.B. 24852, 24853, 24854; Order 74-12-100]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

Issued under delegated authority December 26, 1974.

Agreements have been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreements which were adopted by mail vote have been assigned the above-designated C.A.B. agreement numbers.

Agreement C.A.B. 24852 would amend the resolution governing special rules for fares currency adjustments to provide for proration on a coupon basis, worldwide; Agreement C.A.B. 24853 would postpone Air France's inaugural flight Paris/Dakar/Rio de Janeiro/Sao Paulo to a date not later than March 31, 1975, and Agreement C.A.B. 24854 would add Guayaquil to the specific routing of an existing excursion fare between Los Angeles and Santiago.

We are approving Agreements C.A.B. 24852 and 24854 as they would directly apply in air transportation as defined by the Act. They are essentially clarifying or technical in nature and are not found to be adverse to the public interest or in violation of the Act. We will disclaim jurisdiction on Agreement C.A.B. 24853 as it does not affect air transportation within the meaning of the Act.

Accordingly, it is ordered that: 1. Agreements C.A.B. 24852 and 24854 be and hereby are approved; and

2. Jurisdiction is disclaimed with respect to Agreement C.A.B. 24853.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be placed in the FEDERAL REGISTER.

By James L. Deegan, *Chief, Passenger and Cargo Rates Division, Bureau of Economics*.

[SEAL] EDWIN Z. HOLLAND, *Secretary*.

[FR Doc.75-52 Filed 1-3-75;8:45 am]

[Docket 26494 Agreement C.A.B. 24834 R-1 through R-4; Order 74-12-101]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Passenger Fares

Issued under delegated authority December 26, 1974.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreement, adopted at the 1964 San Diego Composite Passenger Traffic Conference, has been assigned the above C.A.B. agreement number.

The agreement would revalidate by means of a standard revalidation resolution two transpacific construction rules governing round or circle trip journeys and permitting adjustment of transpacific fares and practices in response to changes in fares and/or practices within other conference areas in order to maintain pre-existing historical relationships or prevent undercuts, as well as a resolution governing individual fares for ship's crews.[1] Additionally, the agreement

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[1] A suggested format is shown in the Appendix (filed as part of the original) which should also be used to set forth historical and forecast information relating to traffic and capacity.

[1] The resolution governing individual fares for ship's crews has previously been conditioned not to apply in air transportation.

adopts two new resolutions: (1) Enabling the carriers to meet when certain presently unknown user and service charges associated with use of the new, unopened Narita airport in Japan are known in order to determine how these charges should be reflected in IATA fares, and (2) governing construction of fares for round the Pacific journeys to/from Mexico City using Acapulco as a transit point. Finally, the agreement would preclude absorption of certain en route expenses for passengers traveling on a transpacific inclusive tour based on a special fare.

We will approve the revalidating resolution, subject to any applicable conditions previously imposed by the Board, since it merely reestablishes current practices and procedures and will likewise approve the remaining resolutions, which are procedural or technical in nature.

Pursuant to authority duly delegated by the Board in the Board's Regulations 14 CFR 385.14 it is not found that the following resolutions, incorporated in Agreement C.A.B. 24834 as indicated, are adverse to the public interest or in violation of the Act provided that aproval is subject to any applicable conditions previously imposed by the Board:

Agreement CAB	IATA No.	Title	Application
24834:			
R-1	002	Standard Revalidation Resolution	3/1.
R-2	003n	Fares Adjustment Resolution—Opening of Narita Airport (new).	3/1.
R-3	014dd	Construction Rule for JT31 (new)	3/1.
R-4	102	Passenger Expenses en Route (amending)	3/1.

Accordingly, IT IS ordered that: Those portions of Agreement C.A.B. 24834, R-1 through R-4 specified in the finding paragraph above be and hereby are approved subject to any applicable conditions previously imposed by the Board.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

By James L. Deegan, *Chief, Passenger and Cargo Rates Division, Bureau of Economics.*

[SEAL] EDWIN Z. HOLLAND, *Secretary.*

[FR Doc.75-51 Filed 1-3-75;8:45 am]

[Docket 26494; Agreement C.A.B. 24805 R-1 and R-2; Order 74-12-105]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Passenger Fares

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 27th day of December, 1974.

An agreement has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreement proposed for effectiveness on January 10, 1975, was adopted at the Composite Traffic Conference in San Diego during September 1974.

The agreement would increase individual excursion fares and group inclusive tour fares between various U.S. mid-western cities and cities in Mexico by six percent and eleven percent, respectively[1], and would permit individual return travel on the group inclusive tour fares.

It is our understanding that the substance of this expedited agreement is to be continued and incorporated into the fare package being negotiated for effect April 15, 1975, which, according to available information, will propose an increase in all other fares of six percent, except that individual inclusive tour fares would be increased ten percent. The final agreement for April effectiveness, however, has not as yet been filed.

The Board has decided to defer action on the agreement before us. By Order 74-12-49 (December 13, 1974), the carriers were directed to furnish certain economic data for each of the geographical areas which together comprise IATA Traffic Conference 1. In that order, the Board also approved a general increase of six percent in U.S.-Mexico fares (except those to/from the West Coast), with the intention of reevaluating their continued approval in light of the additional information to be supplied. In this context, the Board considers it appropriate to defer action so that the fares can be reviewed as part of the overall package to become effective in April 1975 and against the background of more adequate justification than is now available. We take the opportunity, however, to reiterate our position that individual return travel should not be permitted at the group fares, and again state the expectation that carriers will address this issue in connection with finalizing the April 1975 fare package.

Accordingly, it is ordered that: Action be and hereby is deferred with respect to Agreement C.A.B. 24805, R-1 and R-2 until such time as the Board receives and acts on a complete U.S.-Mexico fare package.

This order will be placed in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

[SEAL] EDWIN Z. HOLLAND, *Secretary.*

[FR Doc.75-46 Filed 1-3-75;8:45 am]

[1] Excursion fares between Acapulco and Houston/San Antonio, between Denver and Guadalajara and between Mexico City and Chicago, Dallas, Denver, Kansas City, Oklahoma City, St. Louis, San Antonio, Tulsa and Wichita. GIT fares between Acapulco/Mexico City and Chicago, Dallas, Denver, Houston, Kansas City, Minneapolis, St. Louis, San Antonio and Wichita and between Kansas City and Monterrey.

[Docket 26494; Agreement C.A.B. 24823 R-1 through R-14; Order 74-12-102]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Passenger Fares and Currency Matters

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreement, adopted at the 1974 San Diego Composite Passenger Traffic Conference, has been assigned the above C.A.B. agreement number.

In general, the agreement would revalidate by means of standard revalidation resolutions numerous resolutions governing passenger and currency matters among and within the various conference areas. Additionally, there are a number of technical, clarifying or editorial changes to and revalidations of resolutions governing conference procedures, currency conversion and adjustments and filing requirements. More specifically, the agreement would add or delete numerous city-pairs to that part of the IATA Mileage Manual listing non-IATA sectors; edit the definition of Europe to show more closely certain national territorial/jurisdictional relationships; public new rates of exchange for the Argentinian peso for purposes of conversion of local sector and/or non-IATA fares into basic currency, as well as new rates for the Venezuelan bolivar and amended rates for currencies tied to the Australian dollar reflecting the increased value of those currencies against the US dollar; and add a new rate governing conversion of US dollars into Thai baht for dollar sales in Thailand. Further, the agreement edits numerous examples of currency conversion procedures set forth in Resolution 021L to reflect present currency surcharge percentages; establishes new procedures governing application of surcharges on fares determined as a percentage of a normal full fare and conversion of minimum tour prices/per

diem prices for GIT or IIT fares expressed in basic currency into local selling prices and amends a resolution governing filing of government requirements and authorizations to specify that any such notices not refiled as of February 1, 1972 shall be deemed not effective.

We will approve, those portions of the agreement which are consistent with past Board actions subject to any applicable conditions previously imposed by the Board. However, we will disapprove that portion of the agreement which refers to the three percent currency surcharge on U.S.-originating travel over the North/Central Pacific and within the Pacific except American Samoa consistent with our action in Order 74-11-153 of November 29, 1974.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14:

1. It is not found that the following resolutions, incorporated in Agreement C.A.B. 24823 as indicated, are adverse to the public interest or in violation of the Act provided that approval is subject, where applicable, to conditions previously imposed by the Board:

Agreement CAB	IATA No.	Title	Application
24823:			
R-1	001	Permanent Effectiveness Resolution (amending)	1; 2; 3; 1/2; 2/3; 3/1; 1/2/3.
R-2	002	Special Revalidation Resolution	3; 1/2; 1/2/3.
R-3	002	Standard Revalidation Resolution	1; 2; 3; 1/2; 2/3; 3/1; 1/2/3.
R-4	002	Standard Revalidation Resolution (except insofar as it would validate resolution 002 in air transportation).	1; 2; 3; 1/2; 2/3; 3/1; 1/2/3.
R-5	011a	Mileage Manual Non-IATA Sectors (revalidating and amending).	1; 2; 3; 1/2; 2/3; 3/1; 1/2/3.
R-6	012	Definition of Europe (amending)	1; 2; 3; 1/2; 2/3; 3/1; 1/2/3.
R-7	021b	Rates of Exchange (revalidating and amending)	1; 2; 3.
R-8	021b	Rates of Exchange (amending)	1; 2; 3.
R-9	021L	Special Rules for Fares Currency Adjustments (revalidating and amending). (Insofar as it does not relate to the 3 percent currency surcharge on passenger sales in air transportation over the North/Central Pacific and within the Pacific except American Samoa set forth in resolutions 022e and 022g).	1; 2; 3.
R-10	021t	Conversion of Minimum Tour Prices Expressed in Basic Currency (new).	1; 2; 3.
R-11	023a	Rounding-Off Passenger Fares (amending)	1; 2; 3; 1/2; 2/3; 3/1; 1/2/3.
R-12	200g	Filing of Government Requirements and Authorizations (revalidating and amending).	1; 2; 3; 1/2; 2/3; 3/1; 1/2/3.
R-13	200h	Free and Reduced Fare Transportation for Inaugural Flights (revalidating and amending).	1; 2; 3; 1/2; 2/3; 3/1; 1/2/3.
R-14	810s	Multiple Ticket Issuance By Agents (amending)	1; 2; 3.

2. It is found that the following resolutions, incorporated in Agreement C.A.B. 24823 as indicated, are adverse to the public interest and in violation of the Act:

Agreement CAB	IATA No.	Title	Application
24823:			
R-4	002	Standard Revalidation Resolution (insofar as it would validate resolution 002 in air transportation).	1; 2; 3; 1/2; 2/3; 3/1; 1/2/3.
R-9	021L	Special Rules For Fares Currency Adjustments (revalidating and amending) (Insofar as it relates to the 3 percent currency surcharge on passenger sales in air transportation over the North/Central Pacific and within the Pacific except American Samoa set forth in resolutions 022e and 022g).	1; 2; 3.

Accordingly, *it is ordered*, That:

1. Those portions of Agreement C.A.B. 24823 set forth in finding paragraph 1 above be and hereby are approved; subject, where applicable, to conditions previously imposed by the Board; and

2. Those portions of Agreement C.A.B. 24823 set forth in finding paragraph 2 above be and hereby are disapproved.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

By James L. Deegan, *Chief, Passenger and Cargo Rates Division, Bureau of Economics.*

[SEAL] EDWIN Z. HOLLAND, *Secretary.*

[FR Doc.75-53 Filed 1-3-75;8:45 am]

[Docket 25280; Agreement C.A.B. 24850 R-1 and R-2; Order 74-12-90]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Specific Commodity Rates

Issued under delegated authority December 23, 1974.

An agreement has been filed with the Board pursuant to section 412(a) of the

Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA), and adopted pursuant to the provisions of resolution 590 dealing with specific commodity rates.

The agreement names additional specific commodity rates, as set forth below, reflecting reductions from general cargo rates, and were adopted pursuant to unprotested notices to the carriers and promulgated in an IATA letter dated December 12, 1974.

Agreement CAB	Specific commodity item No.	Description and rate
24850:		
R-1	2203	Clothing and footwear, outerwear, undergarments, n.e.s.,[1] 221 ¢/kg, minimum weight 500 kg. From Mauritius to New York.
R-2	2418	Shoes, and slippers, finished,[1] 110 ¢/kg, minimum weight 500 kg, 104 ¢/kg, minimum weight 1,000 kg. From Nicosia to New York.

[1] See tariff for complete commodity descriptions.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions hereinafter ordered.

Accordingly, it is ordered that: Agreement C.A.B. 24850, R-1 and R-2, be and hereby is approved, provided that approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publications, provided further that tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing.

Persons entitled to petition the Board for review of this order, pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

By James L. Deegan, *Chief, Passenger and Cargo Rates Division, Bureau of Economics.*

[SEAL] EDWIN Z. HOLLAND, *Secretary.*

[FR Doc.75-50 Filed 1-3-75;8:45 am]

[Order 74-12-106]

OZARK AIR LINES, INC.

Order of Rejection

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 27th day of December, 1974.

Ozark Air Lines, Inc. (Ozark) by Embargo Notice No. 74-11, effective December 16, 1974, gave notice that it was embargoing certain specified live animal shipments systemwide on all flights, and certain specified live animal shipments systemwide on passenger flights. The embargo bears an expiration date of January 14, 1975. The stated reason for the embargo is to clarify Ozark's non-acceptance of certain live animal shipments pending the approval of certain tariffs specifying the acceptance and/or non-acceptance of certain live animal shipments.

The Board's Economic Regulations Part 228, Embargoes On Property (14 CFR Part 228) provide, inter alia, that "embargo" means the temporary refusal by an air carrier to accept for transportation property where because of lack of facilities, personnel, other priority traffic or because of other compelling reasons not within the control of the carrier, it is temporarily unable to perform all of the transportation services requested of it. The reason advanced in support of the embargo on certain specified shipments of live animals, clearly fails to meet any of the foregoing criteria and is inconsistent with the Board's Embargo Regulations. The embargo is simply being used as a device to refuse shipments which are tendered in accordance with Ozark's presently effective tariffs on file with this Board.

Further comment is warranted as to why the Board cannot find that it should accept an embargo of the type filed. Section 228.2(c) provides that the embargo regulations shall not be construed as relieving any carrier of any duty otherwise imposed upon it to furnish transportation service or to observe all requirements of the Federal Aviation Act, and the rules and regulations thereunder. Thus Ozark has not been relieved of its obligations to provide service under its certificate authority. We believe that Ozark's common carrier responsibilities require that it accept all live animal shipments in accordance with its tariff rules presently in effect and on file with this Board. In this regard, we should like to point out that the Board has endeavored to help Ozark meet its common carrier responsibilities and has made subsidy payments to Ozark over the past five years totaling in excess of twenty-nine million dollars. In the most recent twelve-month period above (October 1, 1973 through September 30, 1974), the Board has made subsidy payments in excess of eight million dollars.

Upon consideration of the reason advanced in support of the embargo notice and relevant materials, the Board finds that the public interest requires that it reject Ozark's embargo notice as being inconsistent with the Federal Aviation Act of 1958 and the Board's Embargo Regulations.

Accordingly, pursuant to the provisions of the Federal Aviation Act of 1958, and particularly Sections 204(a), and 404 and the provisions of Part 228 of the Board's Economic Regulations (14 CFR 228),

It is ordered That: 1. Embargo Notice No. 74-11 filed by Ozark Air Lines, Inc., is hereby rejected; and

2. A copy of this order be served upon Ozark Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, *Secretary.*

[FR Doc.75-47 Filed 1-3-75;8:45 am]

[Docket No. 26487]

TRANSATLANTIC, TRANSPACIFIC AND LATIN AMERICAN SERVICE MAIL RATES INVESTIGATION

Reassignment of Proceeding

This proceeding is hereby reassigned from Administrative Law Judge Harry H. Schneider to Administrative Law Judge Arthur S. Present. Future communications should be addressed to Judge Present.

Dated at Washington, D.C., December 31, 1974.

[SEAL] ROBERT L. PARK, *Chief Administrative Law Judge.*

[FR Doc.75-296 Filed 1-3-75;8:45 am]

THE COMMISSION ON FINE ARTS

MEETING

DECEMBER 27, 1974.

The Commission of Fine Arts will meet on Wednesday, January 15, 1975, at 11:30 a.m. in the Commission offices at 708 Jackson Place NW., Washington, D.C. 20006 to discuss various public projects affecting the appearance of Washington, D.C. Inquiries regarding the agenda and requests to submit written or verbal statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

CHARLES H. ATHERTON, *Secretary.*

[FR Doc.75-201 Filed 1-3-75;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

STAGE II VAPOR RECOVERY REGULATIONS

Deferral of Certain Incremental Dates

This order defers until further notice the January 1, 1975, date for submittal of control plans, the March 1, 1975, date for signing contracts and the May 1, 1975,

date for initiation of on-site construction for Stage II (vehicular fueling) vapor recovery systems for twelve air quality control regions.

Statement of considerations. The Environmental Protection Agency has been considering data and public comments on vapor recovery during fueling of motor vehicles with the intention of stating in more precise terms current requirements. The necessity of this task has been demonstrated by the conflicting claims made by major oil companies, independent control system manufacturers and local air pollution control agencies. A proposed test procedure is being prepared for publication shortly which will require that systems pass a test designed to reflect their ability to achieve 90 percent recovery under "real world" conditions. In addition, modifications to the existing regulations are in preparation.

Since these dates will, in all likelihood, fall due before the regulations can be finalized, before the test procedure is issued and before systems can be tested, they are being deferred until further notice. The purpose of this deferral is not to slow down the development of vapor recovery equipment. Rather the requirement of a strict performance test is intended to speed up such development. This deferral is also intended to clarify any doubt which exists with respect to a source's current obligations under the existing regulations.

It is therefore ordered, That the date for submission of control plans, for signing contracts and for the initiation of on-site construction for Stage II gasoline vapor recovery in the following regulations is deferred until set by a new publication to include the proposed test procedures.

Colorado: 40 CFR 52.337(g)
California: 40 CFR 52.256(g)
District of Columbia: 40 CFR 52.488(g)
Massachusetts: 40 CFR 52.1147(b)
Maryland: 40 CFR 52.1087(g); 52.1102(g)
New Jersey: 40 CFR 52.1599(g)
Texas: 40 CFR 52.2288(h); 52.2289(f)
Virginia: 40 CFR 52.2439(g)

Dated: December 30, 1974.

JOHN QUARLES,
Acting Administrator.

[FR Doc.75-272 Filed 1-6-75;8:45 am]

[FRL 315-4]

STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY

Effluent Limitations and Guidelines and New Source Performance Standards

On October 8, 1974, the Agency published a notice of regulations establishing effluent limitations and guidelines and new source performance standards for the steam electric power generating point source category (39 FR 36186). Reference was made in the preamble to that notice of a technical report prepared by the Agency in connection with the development of these regulations.

An advance copy of that report, entitled "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Steam Electric Power Generating Point Source Category" is now available for inspection and duplication at the Agency's Public Information Office, Room 206 West Tower, Waterside Mall, 4th and M Streets SW., Washington, D.C.

The Agency anticipates that printed copies of the Development Document will be available in approximately four to eight weeks from the Government Printing Office, Washington, D.C. 20402.

Dated: December 31, 1974.

JAMES L. AGEE,
Water Administrator for Water and Hazardous Materials.

[FR Doc.75-277 Filed 1-3-75;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

CPI MICROWAVE, INC. ET AL.

[Docket No. 20199]

Instituting Investigation & Hearing

1. We instituted the above-captioned proceeding pursuant to section 201(a) of the Communications Act by our Memorandum Opinion and Order, adopted on September 25, 1974 and released on October 3, 1974, F.C.C. 74-1029 (Designation Order). At paragraph 8 of our Designation Order we set forth the following issue for investigation:

a. Whether it is necessary or desirable in the public interest to establish physical connections between CPI and MRC facilities on the one hand, and AT&T facilities on the other hand, to establish through routes and charges applicable thereto and the division of such charges, and to establish and provide facilities and regulations for operating such through routes, within the meaning of section 201(a) of the Act; and, if so, what connections, through routes, charges, divisions, facilities, and regulations should be established.

In addition to naming Midwestern Relay Company (MRC), CPI Microwave, Inc. (CPI) and the various Bell companies (hereinafter referred to as AT&T) as parties we also named Western Telecommunications, Inc. (WTCI) at paragraph 13 of our Designation Order as a party.[1] The interconnection contemplated concerns interconnection of the program transmission facilities of CPI, MRC and WTCI with similar facilities of AT&T.[2]

2. We now have before us numerous petitions for leave to intervene in this proceeding filed by other communications common carriers[3] contending primarily that such intervention is appropriate because they provide, or intend to provide, program transmission services and therefore are, or will be, subject to the same alleged restrictions[4] that concern CPI, MRC, and WTCI. We also have before us petitions for leave to intervene filed by the three major commercial television networks, namely, American Broadcasting Companies, Inc. (ABC), Columbia Broadcasting Systems, Inc. (CBS) and National Broadcasting Company, Inc. (NBC). Such networks are principal purchasers of program transmission services and therefore state they are clearly a party in interest. All of the parties seeking intervention claim their participation will substantially aid the Commission in resolving the issues in this proceeding. We also have before us AT&T's oppositions to all the various petitions. In opposing such petitions, AT&T stresses the speculative nature of many of the petitioners' interests and the adverse impact their intervention would have on pending negotiations in the proceeding conducted under the aegis of the Chief, Common Carrier Bureau.[5]

3. Our original intention in instituting this proceeding was to resolve the specific and immediate operational concerns that existed between CPI, MRC, and WTCI on the one hand, and AT&T on the other hand. With this purpose in mind the aforementioned negotiations were initiated. It now appears that a question exists as to whether AT&T's intermediate link and point of connection tariff provisions[6] are lawful within the meaning of sections 201(b) or 202(a) of the Communications Act. Further, it appears that questions exist regarding the relationship that obtains between the miscellaneous common carriers and AT&T on the one hand in the provision of program transmission services, and the relationship between the specialized and domestic satellite communications common carriers and AT&T on the other hand in the provision of such services. For example, it appears that differences may exist as to operating and rate matters and a question is raised as to whether such relationships should be governed by

[1] WTCI' petition for clarification requesting that we broaden the above stated issue to name WTCI specifically shall be granted to the extent indicated later herein.

[2] Although we do not refer specifically to audio services in this order we believe any findings or conclusions reached herein would also be generally applicable to the provision of audio services.

[3] Petitions were filed by RCA Global Communications, Inc. (RCA Globcom), The Western Union Telegraph Company (Western Union), United Video, Inc. (United) and Microwave Transmission Corporation (MTC). MTC's petition was improperly addressed to the Administrative Law Judge but we shall consider it upon our own motion herein.

[4] See Section 3.2.7(B)(2)(h) of AT&T's Tariff F.C.C. No. 260.

[5] By order adopted on November 7, 1974, and released on November 11, 1974, the Chief, Common Carrier Bureau postponed indefinitely the procedural dates in this Docket. We have also received replies to the oppositions of AT&T from RCA Globcom, Western Union, United, ABC, MTC, CBS, and NBC.

[6] *Supra*, note 4.

tariff or contract. The impact such relationships may have on the users of program transmission services is also of concern. Since it is clear that a resolution of the issues arising in Docket No. 20199 will affect directly other communications common carriers providing, or intending to provide, program transmission services, it is appropriate that such other carriers participate in the resolution of issues under consideration in Docket No. 20199. Likewise, the there major television networks, as significant users of program transmission services, should participate in the resolution of such issues. Therefore, we shall grant all petitions to intervene.

4. In regard to those specific and immediate operational concerns voiced by the original parties, and which prompted the institution of this proceeding, we encourage the parties in the further proceedings of this Docket to give primacy to the resolution of such immediate operational concerns. In order to encourage a resolution of such matters we shall direct that the negotiations presently underway continue under the aegis of the Chief, Common Carrier Bureau.[7] Of course, we are hopeful that the continuation of such negotiations will result in a desirable and equitable resolution of all of the various matters concerning all parties, original and intervening. However, to the extent that such final resolution is not readily obtainable we encourage the parties to work towards a temporary or interim resolution of the matters most directly concerning CPI, MRC, and WTCI. Thereafter, a final resolution of all issues may be pursued during the second phase of the revised proceeding herein. Of course, any party agreeing to any temporary or interim action with respect to the matters most directly concerning CPI, MRC, and WTCI may do so without prejudice to any position he may take upon the issues during the second phase of this revised proceeding.

5. The second phase of this proceeding, if required, shall be conducted as follows. Our intention in this second phase is to resolve the issues set forth in paragraph 8 below and consider the matters discussed in paragraph 3 above, looking towards taking any action that might be appropriate. On or before a date to be set by the Chief, Common Carrier Bureau all parties shall file comments setting forth what further specific issues, if any, they believe warrant inquiry. The parties shall explain the reasons why such specific issues should be addressed and what specific prejudice may result if they are not. Further, all parties shall be specific as to the nature of the proceedings required to resolve such issues. We stress that it is our hope that the negotiations presently underway will lead to a desirable and equitable resolution of the matters concerning all parties thereby making further proceedings unnecessary.

6. Accordingly, *it is ordered*, That paragraphs 7 through 15 of our Designation Order are modified to the extent indicated hereinafter.

7. *It is further ordered*, That, pursuant to sections 4(i), 4(j), 201 (a) and (b), 202, 204, 205, and 403 of the Communications Act an investigation and hearing shall be held in the form and manner herein provided.

8. *It is further ordered*, That without in anyway limiting the scope of the investigation, this revised proceeding shall include inquiry into the following:

(1) Whether it is necessary or desirable in the public interest to establish physical connections between CPI, MRC, WTCI and other miscellaneous common carriers' program transmission facilities on the one hand, and AT&T program transmission facilities on the other hand, to establish through routes and charges applicable thereto and the division of such charges, and to establish and provide facilities and regulations for operating such through routes, within the meaning of Section 201(a) of the Act; and, if so, what connections, through routes, charges, divisions, facilities, and regulations should be established;[8]

(2) Whether section 3.2.7(B)(2)(h) of AT&T's Tariff F.C.C. No. 260, including any cancellations, amendments or re-issues thereof is unlawful within the meaning of sections 201(b) or 202(a) of the Communications Act;

3. If sections 3.2.7(B)(2)(h) of AT&T's Tariff F.C.C. No. 260 should be found to be unlawful, in whole or in part, whether the Commission, pursuant to Section 205 of the Communications Act, should prescribe charges, classifications, practices and regulations for the service governed by the tariffs and, if so, what should be prescribed.

9. *It is further ordered*, That the petitions to intervene filed by RCA Global Communications, Inc., The Western Union Telegraph Co., American Broadcasting Co., Inc., Columbia Broadcasting Systems, Inc., National Broadcasting Co., Inc., Microwave Transmission Corp. and United Video, Inc. are granted.

10. *It is further ordered*, That AT&T, Bell Telephone Co. of Pennsylvania, C&P Telephone Co. of Washington, D.C., C&P Telephone Co. of Maryland, C&P Telephone Co. of Virginia, C&P Telephone Co. of West Virginia, Cincinnati Bell, Inc., Illinois Bell Telephone Co., Indiana Bell Telephone Co., Michigan Bell Telephone Co., Mountain States Telephone and Telegraph Co., New England Telephone and Telegraph Co., New Jersey Bell Telephone Co., New York Telephone Co., The Pacific Telephone and Telegraph Co., The Southern New England Telephone Co., South Central Bell Telephone Co., Southern Bell Telephone and Telegraph Co., Southwestern Bell Telephone Co., and Wisconsin Telephone Co. are jointly and severally named respondent parties herein.

11. *It is further ordered*, That the parties herein are directed to meet on December 17, 1974, at the place designated by the Chief, Common Carrier Bureau regarding the matters set forth in paragraph 4 herein.

12. *It is further ordered*, That the parties herein shall file comments as set forth in paragraph 6 herein on or before a date to be designated by the Chief, Common Carrier Bureau.

13. *It is further ordered*, That the Petition for Clarification of WTCI is granted to the extent indicated herein and is otherwise denied.

14. *It is further ordered*, That interested persons wishing to intervene in this proceeding shall file with the Commission a notice of intention to participate within 15 days of the release date of this order.

15. *It is further ordered*, That the Secretary of the Commission shall send copies of this order by certified mail, return receipt requested to all parties specified in paragraphs 9 and 10 herein as well as CPI, MRC, WTCI and the Trial Staff of the Common Carrier Bureau.

Adopted: December 9, 1974.

Released: December 18, 1974.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.75-210 Filed 1-3-75;8:45 am]

[Docket No. 20199]

CPI MICROWAVE, INC. ET AL.

Rescheduling Hearing

1. The meeting previously scheduled for December 17, 1974, in the above-captioned proceeding has been rescheduled for 10:30 a.m., Wednesday, January 8, 1975, in Room 752, 1919 M Street NW. If you should have any questions regarding such meeting please contact Mr. Daniel J. Harrold of the Common Carrier Bureau staff.

2. Accordingly, *it is ordered*, Pursuant to the authority delegated under section 0.303(c) of the Commission's rules that the next meeting in the above-captioned proceeding shall be at the time and place specified above.

3. *It is further ordered*, That such further informal conferences as are appropriate will be held at a time and place to be specified by the Chief, Common Carrier Bureau.

Adopted and Released: December 30, 1974.

[SEAL] WALTER R. HINCHMAN,
Chief, Common Carrier Bureau.

[FR Doc.75-209 Filed 1-3-75;8:45 am]

[Docket Nos. 20296, 20297; File Nos. BP-19637, BP-19752]

DAVID B. JORDAN AND THE BOULDIN CORP.

Construction Permits

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to

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[7] The next scheduled meeting in Docket No. 20199 is on December 17, 1974.

[8] AT&T is presently required to interconnect with the specialized and domestic satellite communications common carriers for all their authorized services, such services, of course being subject to the provisions of Section 214 of the Communications Act. *Bell System Tariff Offerings*, Docket No. 19896, 46 F.C.C. 2d 613 (1974).

delegated authority, has under consideration the above-captioned applications which are mutually exclusive in that they seek the same frequency in the same community.

2. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

3. Accordingly, *it is ordered*, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

a. To determine which of the proposals would, on a comparative basis, better serve the public interest.

b. To determine, in light of the evidence adduced pursuant to the foregoing issue, which, if either, of the applications should be granted.

4. *It is further ordered*, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to section 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

5. *It is further ordered*, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by section 1.594(g) of the rules.

Adopted: December 20, 1974.

Released: December 27, 1974.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.75-211 Filed 1-3-75;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CP75-172]

MICHIGAN WISCONSIN PIPELINE CO.

Application

DECEMBER 23, 1974.

Take notice that on December 13, 1974, Michigan Wisconsin Pipeline Company (Applicant), one Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP75-172 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas exchange service with Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), along with attendant facilities, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Applicant proposes to abandon the exchange of gas with Tennessee authorized by the Commission order issued July 16, 1971, in Docket No. CP71-249 as an interim measure for permitting Applicant to make available immediately to its main pipeline system natural gas from Block 71, West Cameron area, offshore Louisiana.

Applicant states that it was authorized in the July 16, 1971 order to construct 16.5 miles of 30-inch pipeline from a point on the 20-inch West Cameron Block 68 pipeline of Tennessee in Cameron Parish, Louisiana, to the Block 71 Field as the first step of a pipeline project capable of transporting large additional volumes of natural gas from other offshore blocks onshore. Applicant further states that by order issued July 17, 1972, in Docket No. CP72-125 (Phase II) it was authorized to construct and operate facilities to connect Applicant's offshore reserves, including the Block 71 reserves, to its main line transmission system on a permanent basis. Applicant, therefore, states that the need for the interim exchange agreement with Tennessee is obviated and that it terminated the agreement, according to the agreement's terms, on November 1, 1972.

In conjunction with the abandonment of the exchange with Tennessee, Applicant proposes to abandon and remove and salvage two 12-inch meter runs with related and appurtenant facilities at Applicant's West Cameron check meter station. These meter runs were used in measuring the subject exchange gas.

Applicant further states that Tennessee has filed in Docket No. CP71-260 an application for authorization to abandon the exchange of gas with Applicant and that termination of said exchange did not adversely affect Tennessee, since the termination was in accordance with the terms of the exchange agreement.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 13, 1975, 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 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.75-19 Filed 1-3-75;8:45 am]

[Docket No. E-9058]

MISSISSIPPI POWER AND LIGHT CO.

Order Accepting for Filing and Suspending Rate Increases, Rejecting Fuel Clauses, Granting Waivers, Granting Motion To Withdraw, and Granting Interventions

DECEMBER 20, 1974.

On October 9, 1974, Mississippi Power and Light Company (MP&L) tendered for filing a proposed change in rates for Service to its wholesale customers.[1] MP&L serves seven Electric power associations and four municipalities under its currently effective rate schedules. On November 22, 1974, after negotiations with the electric power associations, MP&L filed additional rate schedules[2] in substitution for the rate schedules filed on October 9, 1974. These rate schedules represent a reduction in the originally proposed increase based on the negotiations with the electric power associations. MP&L states that it is voluntarily proposing corresponding reductions to its municipal customers. MP&L requests an effective date for the FPC rate schedule nos. REA-13 and MW-13 of December 6, 1974, 30 days from the date MP&L completed its October 9 filing pursuant to a request for additional data by the Secretary of this Commission. MP&L accordingly requests waiver of the notice requirements of the Commission's regulations.

Notice of the October 9, 1974 filing was issued October 17, 1974, with protests or petitions to intervene due on or before October 30, 1974. Timely protests were received from the municipal customers, the Cities of Leland, Canton, Durant, and Kosciusko, all in Mississippi. These protests generally protest the rate increase and changes in certain terms and conditions, but are not petitions to intervene. An untimely protest and petition to intervene and for rejection of the

[1] Rate Schedule Nos. REA-12 and MW-12.
[2] Rate Schedule Nos. REA-13 and MW-13.

rate schedules was filed by the 7 electric power associations (EPAs).[3] Notice of the November 9 filing was issued on December 3, 1974. The EPAs, on December 4, 1974, filed a Motion to Withdraw their Protest and Petition to Intervene, in which they request the Commission to accept the November 22 filing in substitution for the rate schedules filed on October 9, 1974, and moved that they be permitted to withdraw their petition. On December 13, 1974, the City of Kosiusko and the Light and Water Commission of the City of Kosciusko (Kosciusko) filed a petition to intervene.

Since MP&L made its filing of November 22, 1974, in substitution for its filing of October 9, 1974, we shall confine our review to the later filing, except as to certain statements made in the letter of transmittal filed on October 9, 1974, regarding service to the City of Durant. In this regard, MP&L states that its contract with Durant is a fixed rate contract. We agree with this interpretation of the contract with Durant. We do not, however, agree with MP&L's proposal to bill Durant under rate schedule MW-5 until May 1, 1975.[4] By its own admission, MP&L agrees that this is a fixed rate contract. Therefore, the *Mobile-Sierra*[5] rule prohibits a unilateral rate increase as contemplated by MP&L's proposal to bill Durant under rate schedule MW-5 rather than MW-11, the presently effective contract rate applicable to Durant. We therefore reject this proposal by MP&L.

MP&L has filed a notice of cancellation of its contract with Durant on April 26, 1974, consistent with the requirement that one year's notice be given of the intention of either party to terminate the contract. MP&L states that MW-12 would be applied after the termination of the existing contract. We shall assume that MP&L intended to also substitute rate schedule MW-13 for service to Durant by its November 22 filing. We shall therefore permit it to serve Durant thereunder after the expiration of its fixed rate contract. However, consistent with the requirements of Municipal Electric Utility Association v. F.P.C.,[6] we shall require MP&L to file a superseding service agreement at least 30 days prior to the termination of the existing contract. We shall also grant waiver of the ninety-day notice requirement in this regard.

The fuel cost adjustment clause contained in the November 22 filing conforms to neither the existing regulation nor to the amended regulation to become effective on January 1, 1975. MP&L has stated that it agrees to amend its fuel clause within 30 days of the effective date of its new rate schedules to conform the fuel cost adjustment clause to the amended § 35.14, promulgated by Order No. 517.[7] Accordingly, we shall reject the proposed fuel cost adjustment clause and permit MP&L to file an amended clause within 30 days of the effective date of this order which conforms with the requirements of Order No. 517.

MP&L's proposed rate schedules also contain a tax adjustment clause. We believe that any change in rates resulting from the operation of this clause should be substantiated by data and computations showing the basis for such change and shall so order.

Kosciusko states that MP&L, by its proposed increase, has eliminated a discount currently being received by it under Rate Schedule MW-11, that MP&L has increased the rates to the municipalities by a greater percentage than it has increased the rates to the EPAs, and that the proposed increase is based on facts and circumstances existing prior to April 5, 1974, the date of the last amendment to the agreement between it and MP&L. We believe that this last allegation is without merit. There is no contractual bar to a rate increase by MP&L to Kosiusko and our filing requirements dictate, inter alia, costs for the most recent twelve months for which data are available in order to justify a rate increase. However, we believe that the other two allegations require an evidentiary hearing and accordingly shall accept MP&L's proposed rate schedules for filing and suspend them for one day, when they will be permitted to become effective, subject to refund. We agree with MP&L that its voluntary filing of these rates lower than those originally filed should not result in a delay of the effectiveness of these rate schedules. We shall therefore grant waiver of the notice requirements of the Commission's regulations, accept the rate schedules for filing, suspend them for one day, when they will be permitted to become effective, subject to refund, as of December 7, 1974.

The Commission finds: (1) It is necessary and proper in the public interest and to aid in the enforcement of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in MP&L's proposed rate schedules and that these rate schedules be accepted for filing and suspended for one day, as hereinafter ordered.

(2) Good cause exists to reject MP&L's proposed fuel cost adjustment clause.

(3) Good cause exists to reject MP&L's proposal to bill the City of Durant under rate schedule MW-5 rather than MW-11 until May 1, 1975.

(4) Good cause exists to grant waiver of the 30 and 90 day notice requirements to permit the proposed rates to become effective on December 7, 1974, and to permit MP&L to file more than 90 days prior to the proposed effective date for service to the City of Durant.

(5) EPA's Motion to withdraw its protest and petition to intervene should be granted.

(6) Good cause exists to grant Kosciusko's petition to intervene.

The Commission orders: (A) Pending hearing and decision thereon, MP&L's proposed change in rates and charges, tendered on November 22, 1974, is hereby accepted for filing and suspended for one day, when it is permitted to become effective, subject to refund, on December 7, 1974.

(B) Pursuant to the authority of the Federal Power Act, particularly Section 205 thereof, and the Commission's Rules and Regulations (18 CFR, Chapter I), a hearing for the purposes of cross-examination concerning the lawfulness and reasonableness of the rates and charges contained in the rate schedules filed by MP&L on November 22, 1974, shall be held on April 29, 1975, at 10 a.m., e.s.t., in a hearing room of the Federal Power Commission, 825 North Capitol Street NE, Washington, D.C. 20426.

(C) On or before March 18, 1975, the Commission Staff shall file its prepared testimony and exhibits. Any intervenor evidence shall be filed on or before April 1, 1975. Any rebuttal evidence by MP&L shall be filed on or before April 15, 1975.

(D) A Presiding Administrative Law Judge to be designated 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 the Commission's rules of practice and procedure.

(E) The City of Kosciusko is hereby permitted to intervene in these proceedings subject to the rules and regulations of the Commission; Provided, however, that participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; and Provided, further, that the admission of such intervenor shall not be construed as recognition that it might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(F) MP&L's proposal to bill the City of Durant under rate schedule No. MW-5 until May 1, 1975, is hereby rejected.

(G) Waiver of the 30 day notice requirements to permit these rate schedules to become effective, after a one day suspension, December 7, 1974, except for service to Durant, is hereby granted.

(H) Waiver of the 90 day notice requirement for a change in service to the City of Durant is hereby granted, provided that, 30 days prior to the termination of service under rate schedule No. MW-11 to the City of Durant, MP&L will file with the Commission a superseding

[3] Coahoma Electric Power Association, Delta Electric Power Association, Magnolia Electric Power Association, Southern Pine Electric Power Association, Southwest Mississippi Electric Power Association, Twin County Electric Power Association, and Yazoo Valley Electric Power Association.

[4] MP&L is currently serving Durant under Rate Schedule MW-11, Rate Schedule MW-5 is the Rate Schedule which was included in MP&L's Agreement for Service dated May 1, 1950.

[5] United Gas Pipeline Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956); F.P.C. v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

[6] 485 F.2d 967 (1973).

[7] Docket No. R-479, issued November 13, 1974.

service agreement to serve as notice of termination of the contractual service.

(I) The fuel clause contained in MP&L's November 22, 1974, filing is hereby rejected, without prejudice to MP&L's right to file, within thirty days of the issuance of this order, a fuel clause conforming to the requirements of § 35.14 of the Commission's regulations, as amended by Order No. 517.

(J) Any change in rates resulting from the operation of the tax adjustment clause contained in MP&L's rate schedules shall be substantiated by data and computations in sufficient detail to demonstrate the basis for such a change.

(K) EPA's Motion to Withdraw is hereby granted.

(L) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-20 Filed 1-3-75;8:45 am]

NATIONAL GAS SURVEY SUPPLY–TECHNICAL ADVISORY COMMITTEE

Order Designating an Additional Member

DECEMBER 23, 1974.

By orders issued April 6, 1971, 36 FR 25183, and December 28, 1973, 39 FR 1540, the Federal Power Commission established and renewed, respectively, the Supply–Technical Advisory Committee of the National Gas Survey.

1. Membership. An additional member to the Supply–Technical Advisory Committee, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

David W. Calfee, Attorney-at-Law, Washington Representative, Environmental Policy Center.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-27 Filed 1-3-75;8:45 am]

NATIONAL GAS SURVEY SUPPLY–TECHNICAL ADVISORY COMMITTEE

Order Designating an Additional Member

DECEMBER 23, 1974.

By orders issued April 6, 1971, 36 FR 25183, and December 28, 1973, 39 FR 1540, the Federal Power Commission established and renewed, respectively, the Supply–Technical Advisory Committee of the National Gas Survey.

1. Membership. An additional member to the Supply–Technical Advisory Committee, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Christopher Burke, Energy Coordinator, National Consumers Congress.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-26 Filed 1-3-75;8:45 am]

[Docket No. E-8721]

NEVADA POWER CO.

Postponement of Hearing

DECEMBER 20, 1974.

On December 18, 1974, Staff Counsel filed a motion to extend the hearing date fixed by order issued May 31, 1974, as most recently modified by notice issued November 25, 1974, in the above-designated matter. The motion states that the parties have been notified and have no objection.

Upon consideration, notice is hereby given that the hearing date in the above matter is postponed until February 4, 1975, at 10 a.m. e.s.t.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-21 Filed 1-3-75;8:45 am]

[Docket No. RP75-31-1]

NORTHWEST PIPELINE CORP. ET AL.

Order Denying Interim Relief, Setting Hearing Procedures, and Granting Interventions

DECEMBER 23, 1974.

On November 4, 1974, the Public Utility Commissioner of the State of Oregon (Oregon) filed, on behalf of Reichhold Chemicals, Inc. (Reichhold), a petition for extraordinary relief pursuant to § 1.7 (a) of the Commission's rules of practice and procedure. Oregon requests interim and permanent extraordinary relief from the curtailment plan of Northwest Pipeline Corporation (Northwest). Reichhold is an industrial customer of Northwest Natural Gas Company (Northwest Natural), a distributor customer of Northwest. On November 6, 1974, Reichhold filed its own petition for extraordinary relief, substantially reiterating the statements made by Oregon.

Petitioners state that Reichhold has a firm contract with Northwest Natural providing for maximum daily delivery of 50,000 therms [1] and an interruptible contract providing for up to 50,000 therms. Petitioners state that Reichhold has been advised that due to curtailments on Northwest's system, Reichhold's firm volumes will be totally curtailed approximately 15–20 days during the 1974–75 winter season. Petitioners further state that Reichhold has been advised that it will receive virtually no interruptible gas from November 1, 1974 until March 31, 1975. Petitioners state, however, that the firm curtailment is scheduled to coincide with a plant shutdown for maintenance.

Petitioners state that Reichhold is engaged in the manufacture of nitrogen products, including ammonia, urea, and ammonium nitrate for use in agricultural fertilizer. Reichhold claims that the curtailment of 50,000 therms of interruptible volumes per day during the 1974–75 winter season will result in a limitation of its nitrogen production to 115 tons per day rather than the full capacity of 205 tons per day. Petitioners state that the fertilizer situation in the Northwest is critical and that it is therefore essential that Reichhold be permitted to produce at full capacity. Reichhold requests initial relief of 35,000 therms of interruptible gas per day to be used for process gas. It states that in December, 1974, it will have installed additional propane facilities for up to 22,000 therms per day. Reichhold states that when such propane or butane is available it would request only 13,000 therms of natural gas per day.

Oregon states that as the duly authorized regulatory agency of the State of Oregon having jurisdiction inter alia over natural gas service rendered in the State of Oregon by Northwest Natural to residential, commercial and industrial customers, including Reichhold, it has standing to petition the Federal Power Commission for extraordinary relief. Oregon further states it has ordered Northwest Natural to deliver to Reichhold any volumes obtained through the petition under a firm industrial rate schedule.

By telegram of November 19, 1974, petitioners were required to file additional evidence with regard to a fertilizer shortage in the Northwest and the effect of the requested relief. Oregon was requested to direct Northwest Natural to supply information indicating its inability to provide the requested relief from within its own system. On November 29, Oregon filed additional evidence, including an affidavit from the Director of the State Department of Agriculture indicating that for the 1975 planting season the Pacific Northwest would experience a short fall of 100,000 tons of Nitrogen, of which Oregon's shortage would be 25,000 tons. Oregon also filed information from Northwest Natural that for 110 days during the 1974–75 heating season, it anticipates serving only Priority 1 and 2 customers and that any increase in deliveries to Reichhold would increase curtailment to Priority 2 customers.

The petitions filed by Oregon and Reichhold were noticed by the Commission on November 15, 1974 with responses due by November 27, 1974. Petitions to intervene were filed by:

Washington Water Power Company, Washington Natural Gas Company, Cascade Natural Gas Corporation, Northwest Natural Gas Company, Southwest Gas Corporation, Intermountain Gas Company,[2] Mountain Fuel Supply Company.[2]

In addition, notice of intervention was filed by the Washington Utilities and Transportation Commission.[2]

With the exception of Northwest Natural Gas Company which did not state a position, the distributor customers of Northwest either opposed the requested relief or requested formal hearings. Southwest Gas Corporation and Cascade Natural Gas Corporation both moved for dismissal of the petitions. Southwest stated that the petitions involved intrastate matters outside the scope of Commission jurisdiction and

[1] One therm equals .09634 Mcf at 1033 Btu per cubic foot.

[2] This petition was filed out of time.

Cascade stated that petitioners had failed to allege an emergency warranting relief.

Washington Natural Gas Company, Washington Water Power Company, and Intermountain Gas Company propose that the Commission deny the request for temporary relief and set the matter for formal hearing. It is contended that a question of standing arises from the petitions by Oregon and Reichhold and that the petitions fail to disclose the chemical production at the Reichhold plant not utilized for fertilizer and the specific plans for conversion to alternate fuel. Washington Natural further argues that denial of interim relief will not be accompanied by severe local economic dislocations and irreparable losses. The petition filed by Mountain Fuel Supply Company takes no position on the petitions, but requests a formal hearing.

At the present time, we do not believe there are sufficient facts to warrant determination that an emergency exists with respect to service to Reichhold. Therefore, the request for interim relief shall be denied. In light of the questions raised relating to the standing of Petitioners as well as the questions of need for additional volumes and the effect of such relief on the curtailment in general and the other customers in particular, a formal hearing should be convened. Information on file in the Northwest curtailment proceeding, Docket No. RP74-49[3] indicates that more than 19 million Mcf of gas is annually utilized by the chemical industry in the Pacific Northwest. Since a substantial amount of this gas may be used in the production of fertilizer, the hearing should determine not only the need and effect or the requested relief but also the possible need for further relief of such type and the resultant impact on the Northwest system.

The Commission finds: (1) Sufficient facts have not been submitted for a finding that an emergency exists with respect to natural gas service to Reichhold Chemicals, Inc. as would warrant the granting of interim relief.

(2) It is necessary and appropriate that the proceeding in Docket No. RP75-31-1 be set for formal public hearing.

(3) Participation by the above-mentioned interveners may be in the public interest.

The Commission orders: (A) The interim relief requested by Petitioners is denied.

(B) A formal hearing shall be convened in the proceeding in Docket No. RP75-31-1 in a hearing room of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C., 20426, on February 3, 1975 at 10 am (e.s.t.). The Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for the purpose—see Delegation of Authority 18 CFR 3.5(d)—shall preside at the hearing in this proceeding and shall prescribe relevant procedural matters not herein provided.

(C) The direct case of Petitioners and the supporting testimony of all interveners as to all issues referred to in the order shall be filed on all parties of record including the Commission Staff on or before January 13, 1975.

(D) Northwest Pipeline Corporation is directed to file testimony on or before January 13, 1975 indicating the possible effect of the requested relief on its system and its position with respect to the Petitions.

(E) The Oregon Public Utilities Commissioner is requested to direct Northwest Natural Gas Company to file testimony on or before January 13, 1975, indicating the existing situation on its distribution system.

(F) The above-mentioned interveners are permitted to intervene in this proceeding subject to the rules and regulations of the Commission; *Provided, however,* That participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in the petitions to intervene, and *Provided, further,* That the admission of such interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in this proceeding.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-22 Filed 1-3-75;8:45 am]

[3] Exhibit No. 8.

[Project No. 199]

SOUTH CAROLINA PUBLIC SERVICE AUTHORITY

Order To Cease Construction Activities and Order To Show Cause

DECEMBER 23, 1974.

It appearing that: (a) On July 30, 1974, we issued an order in this docket setting a hearing on all pending applications relating to Project No. 199 and further stated:

> * * * we will consolidate these matters and issues and any application of a similar nature into a single proceeding.

(b) Numerous applications have been filed with the Army Corps of Engineers for permits to construct bulkheads, embankments, subimpoundments, and to perform dredging and other forms of excavation to construct canals within the project area. None of these alterations is the subject of an application to this Commission.

(c) The proposed alterations may or have resulted in substantial alteration to project lands or waters.

(d) To date the Licensee has not filed any information regarding these applications to the Army Corps of Engineers nor has it filed application for permission to allow any such alterations in project lands or waters.

The Commission upon its own motion, orders that South Carolina Public Service Authority shall:

(1) Show cause, if any there be on or before January 20, 1975, why South Carolina Power Authority should not immediately cease or cause to have ceased all construction activities affecting Project No. 199 lands or waters which have not been specifically approved by this Commission.

(2) Show cause, if any there be, on or before January 20, 1975, why application should not be made to the Commission for permission to approve such alterations in the lands or waters of Project No. 199.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-23 Filed 1-3-75;8:45 am]

[Docket No. RP74-39-8]

TEXAS EASTERN TRANSMISSION CORP. ET AL.

Order Granting Intervention, Denying Motion for Stay, Granting Application for Rehearing, and Reopening the Record

DECEMBER 20, 1974.

On November 26, 1974, we issued an Order denying a petition, requesting extraordinary relief from curtailment imposed by Texas Eastern Transmission Corporation (TETCO), filed by the North Alabama Gas District (North Alabama) on behalf of the Cherokee Alabama plant of the Agri-Chemical Division of United States Steel Corporation (USS or Ag-Chem). On December 10, 1974, we issued a further Order denying a Motion by North Alabama for stay of the Order of November 26, 1974, pending application for rehearing. Now before us are a Petition to Intervene and a Motion for Stay filed on December 12, 1974, by USS, and an Application for Rehearing and a Supplement to Application for Rehearing filed on December 9 and 12, 1974, by North Alabama (in which USS joins). We have determined that USS's Petition to Intervene should be granted, and that its Motion for Stay should be denied. We will also reopen the record in this proceeding to receive additional evidence on certain specified issues and to give North Alabama another opportunity to prove that extraordinary relief is required. Our November 26, 1974, Order, which denied permanent relief and thereby terminated temporary relief, will remain in effect without modification or rescission during rehearing, for North Alabama has not proven on this record that an extraordinary exception is justified. However, we will expedite the procedures for recept of additional evidence and waive intermediate decision.

I. U.S. Steel's Petition and Motion. We will permit USS to intervene in this proceeding even at this late date. USS owns and operates the Ag-Chem plant which receives all of the gas that TETCO delivers to North Alabama; it is undisputed that USS is the real party in interest here. USS has also moved for

stay of the Order denying relief pending decision on the application for rehearing, or in the alternative, for an interim stay of ten days pending request for judicial relief. USS contends that the irreparable injury to Ag-Chem and the national interest, which will result from curtailment of its gas and reduction of its fertilizer output prior to the exhaustion of the administrative process, plainly outweighs any harm that might result from reinstitution of temporary extraordinary relief.

In one sense, it is not necessary to consider USS's literal request, as we are herein acting upon the application for rehearing, and as USS has already sought judicial relief and is about to receive a hearing on that request. Yet, we have weighed the merits of USS's request and have concluded that it would not be in the public interest to require TETCO to deliver any extraordinary relief gas to North Alabama in addition to the gas provided under the TETCO interim curtailment plan which already allows Ag-Chem the highest service priority given to industrial gas users.

In any extraordinary relief proceeding the petitioner has the burden of proving that an extraordinary exception or exemption is required. We previously determined that North Alabama had not met its burden of proof and that therefore, extraordinary relief was not justified and should cease immediately. Upon Motion of North Alabama for stay we reviewed and affirmed that determination. Although we agreed that Ag-Chem's gas supply situation was acute and that the result of our action would be unfortunate, we denied stay based upon the facts that Ag-Chem had two additional sources of limited gas volumes of gas and could apparently operate at reduced capacity without shutdown, layoffs or financial losses which would imperil Ag-Chem's financial integrity, and, more importantly, upon our recognition that Ag-Chem's problem is a direct result of TETCO's equally severe gas supply shortage. Furthermore, we cannot conclude that diversion of additional gas to Ag-Chem, through stay of the order denying relief, would not result in significant harm to TETCO's other customers. North Alabama has conceded that its receipt of extraordinary relief gas would not be in the public interest if TETCO is curtailing into category one, the first service priority; and it appears that TETCO is rapidly approaching that point.[1] A stay is not appropriate where the petitioner has not proven on the record that extraordinary relief is in the public interest, and where temporary extraordinary relief would be provided upon possible risk that residential and small commercial service might be curtailed.

II. North Alabama's Application for Rehearing. North Alabama's Application for Rehearing describes the unanticipated severity of TETCO's current curtailment and emphasizes its argument that the impact of this curtailment and of the Commission's denial of extraordinary relief is in direct conflict with national policy and the national interest. In its Brief on Exceptions filed in August, North Alabama estimated that Ag-Chem would receive 7,489 Mcf/d from TETCO during December. In fact, it is stated that Ag-Chem is now allocated only 2,483 Mcf/d from TETCO, and consequently, is able to produce only 150 tons of ammonia per day. The resulting production loss of 365 tons of ammonia per day is equated to a daily loss of 591,300 bushels of corn.

North Alabama repeats its assertions as to the degree of severity of the nitrogen fertilizer shortage and states again that increased fertilizer production and exportation is in the public interest and is necessary in order to lower food prices, increase relief food exports, and reduce our trade deficit. The Application also reiterates the arguments that there are no realistic alternatives to natural gas for the operation of Ag-Chem's plant, and specifically, that conversion to permit the substitution of fuel oil for process gas would be both impractical and unreasonable. It is stated that the Commission, in finding that North Alabama has failed to substantiate the technical infeasibility of fuel oil use as required by the order setting a hearing, "bootstraps the credibility of its findings by equating that which is 'technically possible' with that which is technically feasible." North Alabama further alleges that it has been denied due process of law, in that we based our previous orders upon Staff's ex post facto suggestion that North Alabama could acquire gas storage facilities, and upon our Statement of Policy in Order No. 467-B, rather than upon the record in this case. Finally, it is suggested that we have singled out North Alabama for arbitrary and discriminatory treatment.

The cornerstone of our denial of extraordinary relief was neither staff's suggestion regarding storage facilities, nor the Order No. 467-B end-use service priorities; in fact, our decision was based upon our factual understanding of Ag-Chem's specific circumstances and TETCO's gas supply situation, and upon our conclusion that North Alabama has not proven the existence of sufficiently "extraordinary circumstances" or presented sufficient evidence to support its claim for extraordinary relief. Ag-Chem's supply deficiency is a direct result of its dependence upon a pipeline whose gas supply situation is extremely acute. Ag-Chem receives its curtailed entitlement from TETCO under the highest priority afforded industrial gas users. Ag-Chem also takes limited volumes of gas from two other suppliers and is, therefore, in a better position than almost all of TETCO's other industrial customers. The Ag-Chem plant apparently can operate at significantly reduced capacity without shutdown or layoffs; and we doubt that curtailment of Ag-Chem's gas supply and production threatens USS's financial integrity. Finally, Ag-Chem has not substantiated the technical infeasibility of fuel oil conversion as required by our Order of February 5, 1974.

We are aware of the current fertilizer shortage and sympathetic to the need for increased food production; yet, as was stated in the last paragraph of our Order of December 10, 1974, we do not believe that the public interest would be best served by singling out Ag-Chem for exemption from an unavoidably severe curtailment based on general evidence of end product social utility rather than specific evidence of the individual petitioner's "extraordinary circumstances". Nevertheless, we will order the reopening of the record in this proceeding for the receipt of additional evidence. This course of action will permit full exploration of the changed circumstances alleged in North Alabama's Motion for Stay and Application for Rehearing and give North Alabama another opportunity to prove that extraordinary relief is fully justifiable and necessary. The evidence to be submitted by North Alabama, Staff and various intervenors must be relevant and material to the following five significant issues.

First, North Alabama is again directed to demonstrate the technical infeasibility of plant conversion to permit the use of fuel oil instead of process gas and particularly, the absolute inability of Ag-Chem to acquire No. 2 fuel oil with the requisite low metallic content. In making this showing, North Alabama should be mindful of our previous admonition:

> "* * * that the natural gas shortage and the resulting curtailments may require that curtailed industrial gas users utilize the best available technology and take steps which are both difficult and inconsistent with immediate profit maximization, but which are in the long-term, best interests of industry and the nation."

Second, North Alabama should present additional evidence on the use of Ag-Chem's end product: where and for what agricultural purpose is the fertilizer used; how much of it is exported; how and where is the non-agricultural ammonia production used. Third, North Alabama and the other parties should submit any additional available evidence on the current and projected fertilizer shortage, and specifically should attempt to resolve the disparity between the estimates of the Department of Agriculture and the other evidence. Fourth, we believe that additional evidence, on the current and projected future ability of

[1] By telegram dated November 29, 1974, TETCO informed the Commission that it would increase its level of curtailment to 700,000 decatherms per day (approximately 700,000 Mcf per day). Based on the end use data on file with the Commission, this level of curtailment will result in a calculated curtailment of two percent of category one, the highest priority encompassing residential and small commercial service. If temporary emergency relief is granted, and assuming that Ag-Chem's other suppliers continue to provide their full firm and interruptible contractual volumes, Ag-Chem would receive approximately 245,000 Mcf's of gas per month in addition to its current curtailment entitlement. If Ag-Chem's interruptible service is also terminated, Ag-Chem would receive an additional 110,000 Mcf's per month of temporary relief gas.

Ag-Chem's two additional suppliers to provide gas to Ag-Chem, is important and necessary. Finally, North Alabama should explore and respond to Staff's suggestions that construction or lease of storage facilities, negotiation of exchange agreements, and production or purchase of liquefied natural gas or synthetic natural gas may be feasible options here.

We hope to receive and will welcome evidence responsive to these five issues from all participants in this proceeding; but we note again that the petitioner, North Alabama, has the primary burden of proving the existence of extraordinary circumstances which warrant the grant of extraordinary relief. Although we are granting rehearing, our Order of November 26, 1974, is not herein rescinded and it remains in effect. On the record before us now, North Alabama has not proven that the public interest requires extraordinary relief. Interim extraordinary relief will not be ordered pending our further rehearing and reconsideration for the same reason, and as we cannot conclude that delivery of relief volumes to Ag-Chem would not substantially harm TETCO's other customers. However, we will expedite the procedures for receipt of the additional evidence and waive the intermediate decision procedure.

The Commission finds: (1) Participation in this proceeding by the United States Steel Corporation may be in the public interest.

(2) Sufficient good cause does not exist nor would it be in the public interest to stay the Order of November 26, 1974, in this proceeding.

(3) Sufficient good cause exists and it is appropriate and in the public interest to grant rehearing of the Order of November 26, 1974, and to reopen the record in this proceeding to receive limited additional evidence as hereafter ordered.

The Commission orders: (A) Petitioner, United States Steel Corporation, is hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission: Provided, however, that the participation of the Petitioner as an intervenor shall be limited to matters affecting rights and interests specifically set forth in its petition to intervene, and Provided, further that the admission of Petitioner as an intervenor shall not be construed as recognition by the Commission that USS, or any intervenor, might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(B) The Motion for Stay of the Order of November 26, 1974, filed on December 12, 1974, by United States Steel Corporation is hereby denied.

(C) The Application for Rehearing of the Order of November 26, 1974, filed December 9, 1974, by the North Alabama Gas District and in which United States Steel Corporation joins, is hereby granted.

(D) The record in this proceeding is hereby reopened only for the limited purpose of receipt of additional evidence which is relevant and material to the following five issues:

(1) The technical feasibility of conversion of Ag-Chem's plant to use fuel oil instead of process gas, and particularly, the ability of Ag-Chem to acquire No. 2 fuel oil with a sufficiently low metallic content;

(2) The use of Ag-Chem's end product: where is the fertilizer used and for what specific agricultural purposes, how much is exported, how and where is the non-agricultural production used;

(3) The degree of severity of the fertilizer shortage and particularly, the current supply and demand projections of the Department of Agriculture;

(4) The current and projected future ability of Ag-Chem's two other gas suppliers to provide gas to Ag-Chem;

(5) The technical feasibility of construction or lease of storage facilities, negotiation of exchange agreements, or production or purchase of LNG or SNG.

(E) A public hearing shall be held on January 23, 1975, at 10 a.m. e.s.t., in a hearing room of the Federal Power Commission, concerning the five issues specified above. Administrative Law Judge Samuel Kanell shall preside—unless another Administrative Law Judge is designated by the Chief Administrative Law Judge, shall prescribe the relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in the Commission's rules of practice and procedure.

(F) On or before January 8, 1974, North Alabama, Staff and intervenors shall serve their prepared direct testimony and exhibits. On or before January 17, 1974, North Alabama, Staff and intervenors shall serve their prepared rebuttal testimony and exhibits.

(G) Upon completion of the hearing, the Presiding Administrative Law Judge shall certify the record and transmit it to the Commission forthwith. Any appropriate briefs or pleadings concerning the evidence received at hearing shall be filed with the Commission within ten days after completion of the hearing. Any appropriate reply briefs or pleadings shall be filed with the Commission within seventeen days after completion of the hearing.

By the Commission. Commissioner Springer, concurring in part and dissenting in part, filed a separate statement.[1]

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-24 Filed 1-3-75;8:45 am]

[Docket No. RP75-16-3]

TRANSCONTINENTAL GAS PIPE LINE CORP. AND SOUTH JERSEY GAS CO.

Order Granting Interventions and Providing for Hearing and Establishing Procedures

DECEMBER 23, 1974.

On October 17, 1974, South Jersey Gas Company (South Jersey) filed a petition for "immediate extraordinary relief" from the curtailment provisions of its sole pipeline supplier, Transcontinental Gas Pipe Line Corporation (Transco), during the 1974–75 winter period (November 16, 1974 to April 15, 1975). South Jersey requests that the Commission issue an order directing Transco to supplement its deliveries by an amount sufficient to total 14,542,361 Mcf during the 1974–75 winter period (November 16, 1974 through April 15, 1975) with provisions for a monthly peak requirement of 3,353,300 Mcf and a daily peak requirement of 124,300 Mcf. South Jersey states that deliveries would be made pursuant to Transco's CD-3 natural gas supply contract with South Jersey. On November 25, 1974, South Jersey filed a motion pursuant to § 1.12 of the Commission's rules of practice and procedure, "for Interim Emergency Extraordinary Relief from Curtailment Plan Pendente Lite" in which it allegedly clarified its need for interim relief pendente lite, as well as for permanent extraordinary relief.

South Jersey states that the requested gas volumes are required in order to protect winter service to essential firm industrial requirements of certain of South Jersey's customers. Specifically, South Jersey requests relief on behalf of 19 large firm industrial customers whose alleged use is for plant protection, feedstock and process, and on behalf of firm industrial customers whose requirements are no greater than 300 Mcf per day. South Jersey claims that under a 30% curtailment by Transco, it will have to curtail its industrial customers by 50%, which would necessitate a reduction in operations that will result in layoffs of up to 8,200 workers and loss of business.

By telegram issued November 18, 1974, the Secretary of the Commission informed South Jersey that its petition for extraordinary relief filed October 17, 1974, did not contain the minimal information required by § 2.78(a)(ii) of the Commission's rules as amended by Order No. 467-C for each of its customers for which it seeks relief. On November 27, 1974, South Jersey responded to the deficiency telegram. We are constrained to find that South Jersey has not cured the defects in its October 17, 1974 filing by its filing of November 27, 1974. Specifically South Jersey has failed to provide the following information required by our rules:

(1) A breakdown of all natural gas requirements on a monthly basis at the plant site by specific end uses.

(2) The internal plant scheduling within each particular end-use without the relief requested.

(3) The estimated peak day volumes of natural gas available with and without the requested relief.

(4) The estimated monthly volumes of natural gas available with and without the requested relief for the period specified in the request (December 1, 1974 through March 1, 1975).

(5) Details regarding any flexibility available by effectuating additional curtailment to existing customers.

Pursuant to the notice of the instant petition, issued November 1, 1974 (39

[1] Commissioner Springer's statement filed as part of the original.

FR 39609) timely petitions to intervene were filed by Philadelphia Electric Company, Farmers Chemical Association, Inc., and Consolidated Edison Company of New York, Inc. Untimely petitions to intervene were filed by Long Island Lighting Company, Public Service Electric and Gas Company, Piedmont Natural Gas Company, Inc., Owens-Corning Fiberglas Corporation and Public Service Company of North Carolina, Inc. Petitions to intervene and requests for hearing were filed by Philadelphia Gas Works, Columbia Gas Transmission Corporation, General Motors Corporation and the Brick Institute of America. Petitions to intervene and protests to grant of interim relief were filed by Elizabethtown Gas Company and Transcontinental Gas Pipe Line Corporation. All of the above-named petitioners will be permitted to intervene in this proceeding.

The Commission finds: (1) Good cause exists to set for formal hearing the application for extraordinary relief.

(2) Based on the facts presented on the petition, extraordinary relief, *pendente lite* should be denied.

(3) Participation of the above-named petitioners may be in the public interest.

The Commission orders: (A) The application for extraordinary relief filed in Docket No. RP75-16-3 is hereby set for hearing.

(B) Pursuant to the authority contained in and subject to the authority conferred upon the Federal Power Commission by the Natural Gas Act, including particularly sections 4, 5, 15 and 16, and the Commission's rules and regulations under that Act, a public hearing shall be held commencing January 21, 1975, at 10 a.m. at a hearing room of the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426 concerning whether extraordinary relief should be granted on a permanent basis.

(C) Petitioner, South Jersey, and any supporting parties shall file their testimony and evidence at the Commission on January 7, 1975, and serve on all parties including Staff Counsel on that date. The deficiencies cited in this order should be cured in the testimony and evidence submitted by South Jersey. In addition, Petitioner for relief should be prepared at the hearing to:

(a) Demonstrate compliance with subparagraph 2.78(a)(ii) of the Commission's General Policy and Interpretations, adopted by Order No. 467-C issued April 4, 1974 (mimeo pp. 5-6).

(b) Identify, explain and provide the South Jersey volumes reported to Transco (for purposes of curtailment implementation) applicable to the customers for whom relief is sought for the months of September 1974 through May 1975.

(c) Show the South Jersey and New Jersey Public Service Commission priority categories in which the customers for whom relief is sought are placed.

(d) Show, for South Jersey, the disposition of volumes received from Transco, for September, October, and November 1974, by FPC priorities, and by customer for each of the FPC categories in which the customers for whom relief is sought are placed. Estimate, to the extent feasible, similar data for the period following actual data through May 1975. Include, separately identified, disposition of volumes not sold, e.g. storage injection volumes and company use and unaccounted for volumes.

(e) Submit pertinent Transco curtailment tariff sheets in effect pendente lite at the time of the application herein and thereafter, to date of hearing. Submit similar sheets which show entitlements of South Jersey. Submit similar sheets of South Jersey relevant to sales to the customers for whom relief is sought. Provide a textual description of each submittal.

(f) End use data and information for the firm industrial customers whose requirements are no greater than 300 Mcf per day.

Participants will be expected to explain the effect on South Jersey's claim for relief in Docket No. RP75-16-3 of (1) the Court of Appeals for the District of Columbia circuit order issued November 26, 1974, and (2) the provisions of the Interim Settlement Agreement now in effect on the Transco system.

(D) Rebuttal testimony shall be filed at the Commission on January 14, 1975, and served on all parties at the hearing on that day.

(E) Extraordinary relief pedente lite is hereby denied.

(F) The above-named petitioners are hereby permitted to become intervenors in these proceedings subject to the Rules and Regulations of the Commission: Provided, however, that the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petitions to intervene; and provided, further, that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in this proceeding.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.7-25 Filed 1-3-75;8:45 am]

GOVERNMENT PRINTING OFFICE

DEPOSITARY LIBRARY COUNCIL TO THE PUBLIC PRINTER

Meeting

The Depository Library Council to the Public Printer will meet 2 p.m. to 6 p.m. on January 25, 1975. Meeting place will be Parlor H located on the 6th floor of the Palmer House, State and Monroe Street—Chicago, Illinois. The purpose of this meeting is to nominate officers, discuss previous meeting, and report on recommendations made to Public Printer.

The meeting will be open to the public. Any member of the public who wishes to attend shall notify the Assistant Public Printer (Superintendent of Documents) Government Printing Office—Washington, D.C. 20402.

General participation by members of the public, or questioning of Council members or other participants shall be permitted with approval of the chairman.

Dated: DECEMBER 30, 1974.

T. F. MCCORMICK, *Public Printer.*

[FR Doc.75-207 Filed 1-3-75;8:45 am]

[Temporary Regulation F-319]

GENERAL SERVICES ADMINISTRATION

FEDERAL PROPERTY MANAGEMENT REGULATIONS

Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in an electric rate proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Public Utilities Commission of Ohio involving the application of the Dayton Power and Light Company for an increase in electric rates (Application No. 74-283-Y).

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

DECEMBER 27, 1974.

ARTHUR F. SAMPSON, *Administrator of General Services.*

[FR Doc.75-110 Filed 1-3-75;8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

ARCHITECTURE PLUS ENVIRONMENTAL ARTS ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby

given that renewal of the Architecture Plus Environmental Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE,
Administrative Officer National Endowment for the Arts National Foundation on the Arts and the Humanities.

[FR Doc.75-257 Filed 1-3-75;8:45 am]

DANCE ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that renewal of the Dance Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc.75-259 Filed 1-3-75;8:45 am]

EXPANSION ARTS ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that renewal of the Expansion Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc.75-260 Filed 1-3-75;8:45 am]

FEDERAL ARCHITECTURE TASK FORCE ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that renewal of the Federal Architecture Task Force Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc.75-258 Filed 1-3-75;8:45 am]

FEDERAL GRAPHICS EVALUATION ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Federal Graphics Evaluation Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc.75-261 Filed 1-3-75;8:45 am]

FEDERAL-STATE PARTNERSHIP ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that renewal of the Federal-State Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the

National Council on the Arts with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc.75-262 Filed 1-3-75;8:45 am]

LITERATURE ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Literature Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc.75-263 Filed 1-3-75;8:45 am]

MUSIC ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that renewal of the Music Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc.75-264 Filed 1-3-75;8:45 am]

PUBLIC MEDIA ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that renewal of the Public Media Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc.75-265 Filed 1-3-75;8:45 am]

THEATRE ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Theatre Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc.75-266 Filed 1-3-75;8:45 am]

VISUAL ARTS ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Visual Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc.75-267 Filed 1-3-75;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

BBI, INC.

[File No. 500-1]

Suspension of Trading

DECEMBER 24, 1974.

The common stock of BBI, Inc., being traded on the American Stock Exchange and the Philadelphia-Baltimore-Washington Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of BBI, Inc. 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 exchanges 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 December 25, 1974, through January 3, 1975.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.75-190 Filed 1-3-75;8:45 am]

BIO-MEDICAL SCIENCES, INC.

[File No. 500-1]

Suspension of Trading

DECEMBER 27, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Bio-Medical Sciences, Inc. 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 December 30, 1974, through January 8, 1975.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc. 75-191. Filed 1-3-75; 8:45 am]

[File No. 500-1]

EQUITY FUNDING CORPORATION OF AMERICA

Suspension of Trading

DECEMBER 27, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, warrants to purchase the stock, 9½% debentures due 1990, 5½% convertible subordinated debentures due 1991, and all other securities of Equity Funding Corporation of America 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 December 28, 1974 through January 6, 1975.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.75-192 Filed 1-3-75;8:45 am]

[Rel. No. 8624; 812-3685]

GENERAL ELECTRIC OVERSEAS CAPITAL CORP.

Application for Issuance of Certain Debt Securities

DECEMBER 27, 1974.

Notice is hereby given that General Electric Overseas Capital Corporation ("Applicant") a wholly-owned finance subsidiary of General Electric Company ("GE"), 750 Lexington Avenue, New York, New York has filed an application pursuant to Subparagraph (c)(2) of Rule 6c-1 under the Investment Company Act of 1940 ("Act") for an order permitting Applicant to issue certain debt securities to purchasers in foreign countries notwithstanding the expiration of the United States Interest Equalization Tax ("IET"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a New York corporation, was formed by GE in 1965 primarily to raise funds abroad for GE's foreign operations. As a "finance subsidiary", pursuant to Rule 6c-1 under the Act, Applicant is exempt from all provisions of the Act, subject to the conditions in Rule 6c-1. Subparagraph (c)(2) of Rule 6c-1 provides that a finance subsidiary will not issue, without an order of the Commission, any securities (except to its parent company or to a subsidiary of the parent company which is not an investment company) in the event the IET expires, is repealed or the rate thereof is reduced to zero and such tax is not replaced by another comparable tax.

GE has caused its wholly-owned subsidiary in The Netherlands to begin a major expansion of its plastics manufacturing facilities. From the outset of the project, which has now been underway for more than a year, it has been anticipated that the funding would be obtained through borrowings abroad by Applicant. Two methods of financing are under consideration:

(i) Applicant would offer and sell to the public in Switzerland Swiss Franc denominated bearer coupon bonds in the aggregate principal amount of 60 million Swiss francs, the equivalent of approximately $20 million, through Swiss banks acting as underwriters. The bonds would be straight debt obligations, would be listed on one or more stock exchanges in Switzerland and would be fully guaranteed by GE both as to payment of principal and interest; or

(ii) Applicant would privately place its unsecured promissory notes payable in a foreign currency equivalent in aggregate principal amount to approximately $20 million. Payment of interest and principal on these notes would similarly be guaranteed by GE. The purchasers thereof would not be United States citizens or nationals, entities organized or incorporated under the laws of the United States or any political sub-division thereof or persons resident, or normally resident in the United States, including resident aliens ("U.S. Persons"). Such persons would covenant not to transfer or assign any interest in the notes to U.S. Persons and the notes would be in registered form and could not be transferred without satisfactory proof to Applicant that the transferees were not U.S. Persons.

Applicant represents that, notwithstanding the expiration of the IET, it should be permitted to proceed with the above-described issuance of debt securities for, among others, the following reasons:

(1) A United States investor interest is unlikely since, in addition to the restrictions on purchase and transfer, the securities will probably bear substantially lower interest rates than are currently available on similar quality debt securities in the United States.

(2) Potential investors in the proposed debt securities will not be looking either to Applicant or Applicant's so-called "investment portfolio"; the securities will be fully guaranteed by GE and, indeed, in Applicant's opinion, could not be sold on any economically feasible terms without such guarantee. Moreover, Applicant states that an analysis of its investment portfolio shows that its investments are of a kind which would not cause potential investors in its debt securities to invest therein without a guarantee thereof by GE.

Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision or provisions of the Act and the rules and regulations thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 20, 1975, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C.

20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address set forth above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.75-189 Filed 1-3-75;8:45 am]

INDUSTRIES INTERNATIONAL, INC.

[File No. 500-1]

Suspension of Trading

DECEMBER 27, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Industries International, Inc., 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 December 28, 1974, through January 6, 1975.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.75-193 Filed 1-3-75;8:45 am]

NICOA CORP.

[File No. 500-1]

Suspension of Trading

DECEMBER 24, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Nicoa Corp. 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 December 25, 1974, through January 3, 1975.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.75-194 Filed 1-3-75;8:45 am]

WESTGATE CALIFORNIA CORP.

[File No. 500-1]

Suspension of Trading

DECEMBER 27, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock (class A and B), the cumulative preferred stock (5 percent and 6 percent), the 6 percent subordinated debentures due 1979 and the 6½ percent convertible subordinated debentures due 1987 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 Security Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from December 28, 1974, through January 6, 1975.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.75-195 Filed 1-3-75;8:45 am]

ZENITH DEVELOPMENT CORP.

[File No. 500-1]

Suspension of Trading

DECEMBER 27, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Zenith Development Corp. 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 December 28, 1974, through January 6, 1975.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.75-196 Filed 1-3-75;8:45 am]

TARIFF COMMISSION

[TEA-W-258]

JOSEPH WEISS & SONS, INC.

Petition for a Determination

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962 on behalf of the workers and the former workers of Joseph Weiss & Sons, Inc., Brooklyn, New York, the United States Tariff Commission, on December 30, 1974, instituted an investigation under section 301(c)(2) of the said Act to determine whether, as a result in major part of concessions granted under trade agreements, articles, like or directly competitive with manufactured granite (of the types provided for in item 513.74 of the Tariff Schedules of the United States) produced by the aforementioned firm, or an appropriate subdivision thereof, are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or subdivision.

The optional public hearing afforded by law has not been requested by petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed by January 16, 1975.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets NW., Washington, D.C. 20436, and at the New York City Office of the Tariff Commission located at 6 World Trade Center.

By order of the Commission.

Issued: DECEMBER 31, 1974.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.75-249 Filed 1-3-75;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

OBERLE-JORDRE COMPANY, INC.

Hearing on Application for Variance

Notice is hereby given pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655), Secretary of Labor's Order No. 12-71 (36 FR 8754), and § 1905.20 of Title 29, Code of Federal Regulations, that a hearing will be held on the application of the Oberle-Jordre Company, Inc. (hereinafter referred to as "applicant"), 612 Tri-State Building, Cincinnati, Ohio 45202, for a variance from the construction safety and health standard prescribed in 29 CFR 1926.552(a)(6), which prohibits the use of endless belt-type manlifts on construction.

The applicant seeks a variance from § 1926.552(a)(6), to permit the applicant and the class of employers it represents to use endless belt-type manlifts on their construction projects in the states of Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin and other states throughout the central United States. The applicant requested a hearing on its application.

A notice of the application for variance was published in the FEDERAL REGISTER on October 19, 1973 (39 FR 29113), which included a summary of the application and an invitation to interested persons to submit written data, views and arguments concerning the application by November 19, 1973. In response to this notice, comments opposing the application were received from: (1) the Department of Labor and Industrial Relations, State of Hawaii; (2) Nixon DeTarnowski, Certified Safety Professional; and (3) W. E. Phillips, Secretary of the ANSI A. 90.1 Standards Committee.

On September 5, 1974, a letter was sent to the applicant by Barry J. White, Associate Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C., which summarized the objections received to the application for a variance and which gave notice to the applicant that the Office of Regional Programs intended to oppose the application for a variance.

Interested persons, including affected employers and employees, may file a request to present views and evidence and to participate in the hearing no later than January 17, 1975. The requests to participate in the hearing must be filed with both:

James J. Concannon
Occupational Safety and Health Administration
U.S. Department of Labor
1726 M Street NW., Room 210
Washington, D.C. 20210

and

H. Stephen Gordon
Chief Administrative Law Judge
U.S. Department of Labor
Suite 720
Vanguard Building
1111 20th Street NW.
Washington, D.C. 20210

Such requests shall contain a statement of the position to be taken and a concise summary of the evidence to be adduced in support of that position.

The hearing granted herein will be convened on Wednesday, January 22, 1975 at 9:30 a.m., in Room 829, 600 Federal Place, Louisville, Kentucky at which time the applicant and any interested person who has filed a request to appear in accordance with the above requirements, may submit written or oral data, views, or arguments and call witnesses, subject to the regulations on hearings contained in 29 CFR 1905.20 et seq., the Occupational Safety and Health Act, the Administrative Procedure Act, pertinent provision of the Federal Rules of Civil Procedure, and rulings of the Administrative Law Judge.

The issues of fact and law shall include, although shall not necessarily be limited to, whether the applicant has demonstrated by a preponderance of evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used will provide places of employment which are as safe and healthful as those which would prevail if the standard were complied with.

I hereby designate as hearing examiner to conduct this hearing an Administrative Law Judge appointed by the Chief Administrative Law Judge of United States Department of Labor.

It shall be a condition of this grant of a request for a hearing that applicant shall give notice thereof to affected employees by the same means used to inform them of the application for a variance and shall certify to the Assistant Secretary by January 10, 1975 that such notice has been given.

Signed at Washington, D.C. this 30th day of December, 1974.

JOHN H. STENDER,
Assistant Secretary of Labor.

[FR Doc.75-282 Filed 1-3-75;8:45 am]

Office of the Secretary

THE FOURCO GLASS CO.

Determination on Petition of Workers for Eligibility To Apply for Adjustment Assistance

Under date of December 4, 1974, a petition requesting certification of eligibility to apply for adjustment assistance was filed with the Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs, by the United Glass and Ceramic Workers of North America, AFL-CIO, and by the Window Glass Cutters League of America, AFL-CIO, on behalf of workers and former workers of the Adamston Division, Clarksburg, West Virginia and Harding Division, Fort Smith, Arkansas of the Fourco Glass Co., Clarksburg, West Virginia. The request for certification was made under Proclamation 3967 (Adjustment of Duties on Certain Sheet Glass) of February 27, 1970. In that proclamation the President, among other things, acted to provide under section 302(a)(3) with respect to the sheet glass industry that its workers may request the Secretary of Labor for certifications of eligibility to apply for adjustment assistance under Chapter 3, Title III, of the Trade Expansion Act of 1962.

The Act, section 302(b)(2), provides that the Secretary of Labor shall certify as eligible to apply for adjustment assistance under Chapter 3 any group of workers in an industry with respect to which the President has acted under section 302(a)(3), upon a showing by such group of workers to the satisfaction of the Secretary of Labor that the increased imports (which the Tariff Commission has determined to result from concessions granted under trade agreements) have caused or threaten to cause unemployment or underemployment of a significant number or proportion of workers of such workers' firm or subdivision thereof. The same degree of causal connection is applicable here as under the tariff adjustment and other adjustment assistance provisions; that is, the increased imports have been the major factor.

The Director, Office of Foreign Economic Policy, upon receipt of the December 4, 1974, petition, instituted an investigation (Notice of Delegation of Authority and Notice of Investigation 34 FR 18342, 37 FR 2472, 39 FR 43675, 29 CFR 90.11). After that, the Director made a recommendation to me relating to the matter of certification. In the recommendation she noted that a significant number or proportion of the workers of the Fourco Glass Co. became unemployed or underemployed when the firm began to curtail production at the Adamston Division in July 1974 and at the Harding Division in October 1974. She further noted that imports of sheet glass of the types produced at the Adamston and Harding Divisions decreased substantially from prior levels during 1973 and the first nine months of 1974. The primary cause of production cutbacks and associated layoffs at the two divisions was the decline in domestic building construction. Residential housing starts in the United States declined significantly from 1972 to 1973, and fell sharply in the first nine months of 1974 compared to the first nine months of 1973. A major portion of the sheet glass produced at the Adamston and Harding Divisions is used in building construction. Another cause of the production and employment declines was the increased competition which the company faced from float glass in the window glass market. Float glass is a higher quality glass than sheet glass and can now be produced in window glass thicknesses at about the same cost as sheet glass. Domestic production of float glass increased substantially from 1971 to 1973.

After due consideration, I have concluded that increased imports of sheet glass were not the major factor causing the unemployment or underemployment of the workers at the Adamston and Harding Divisions of the Fourco Glass Co., Clarksburg, West Virginia. Accordingly, I make no certification of eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this 27th day of December 1974.

JOEL SEGALL,
Deputy Under Secretary, International Affairs.

[FR Doc.75-230 Filed 1-3-75;8:45 am]

RCA CORP.

Certification of Eligibility of Workers To Apply for Adjustment Assistance

Under date of November 15, 1974, the U.S. Tariff Commission made a report of its investigation (TEA-W-249) under section 301(c)(2) of the Trade Expansion Act of 1962 (76 Stat. 884) in response to a petition for determination of eligibility to apply for adjustment assistance filed by the Radio Communications Assemblers Union on behalf of workers and former workers of the Harrison, N.J. plant of the RCA Corp., New York, N.Y. In this report the Commission found that electronic receiving tubes and components thereof known as mounts produced by the Harrison, N.J. plant of the RCA Corp. are, as a result in major part of concessions granted under trade agreements, being imported into the United States in such increased quantities as to cause unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

Upon receipt of the Tariff Commission's affirmative finding, the Department, through the Director of the Office of Foreign Economic Policy, Bureau of International Labor Affairs, instituted an investigation.

Following this, the Director made a recommendation to me relating to the matter of certification (Notice of delegation of authority and notice of investigation, 34 FR 18342; 37 FR 2472; 39 FR 41319; 29 CFR Part 90). In the recommendation she noted that concession generated imports like or directly competitive with electronic receiving tubes and mounts produced by RCA's Harrison, N.J. plant have increased their share of the domestic market substantially. In 1969, in an effort to lower costs and compete more effectively with imported electronic receiving tubes, RCA began substituting mounts imported from its foreign plants for mounts previously produced at the Harrison plant. In an effort to reduce the excess capacity that was developing at its domestic plants as a result of increased import competition, in 1971 RCA terminated tube and mount production at its Cincinnati, Ohio plant and transferred many of that plant's operations to the Harrison plant. The transfers of production from Cincinnati enabled RCA to avoid serious unemployment at Harrison throughout 1971 and most of 1972. As RCA increased its imports of mounts for use on tubes produced at Harrison, however, employment at the plant declined sharply beginning in December 1972; significant layoffs occurred throughout the first half of 1973. Employment at Harrison recovered slightly in 1974 as RCA transferred production from the Woodbridge, N.J. plant, but is expected to continue its downward trend in 1975 after the transfer is completed. After due consideration, I make the following certification:

All hourly employees and those salaried employees engaged in employment related to the production of electronic receiving tubes and components thereof known as mounts at the Harrison, N.J. plant of RCA Corp., New York, N.Y., who became or will become unemployed or underemployed after December 3, 1972, are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

Signed at Washington, D.C. this 24th day of December 1974.

JOEL SEGALL,
Deputy Under Secretary,
International Affairs.

[FR Doc.75-231 Filed 1-3-75;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 665]

ASSIGNMENT OF HEARINGS

DECEMBER 31, 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 99581 Sub 3, Horace Simmons, Dba Vaca Valley Bus Lines and MC 139807, Napa Transit Co., now being assigned February 18, 1975 (4 days) at San Francisco, Ca., in a hearing room to be later designated.

MC 123048 Sub 310, Diamond Transportation System, Inc., now assigned January 16, 1975, at Salt Lake City, will be held in Room 314, Federal Annex Building, 135 South State St.

MC 83539 Sub 394, C & H Transportation Co., Inc., now assigned January 16, 1975, at Salt Lake City Utah, will be held in Room 314, Federal Annex Building, 135 South State St.

MC 95876 Sub 165, Anderson Trucking Service, Inc., now assigned January 16, 1975, at Salt Lake City, Utah, will be held in Room 314, Federal Annex Building, 135 South State St.

MC 125433 Sub 55, F-B Truck Line, now assigned January 16, 1975, at Salt Lake City, Utah, will be held in Room 314, Federal Annex Building, 135 South State St.

MC 113855 Sub 300, International Transport, Inc., now assigned January 16, 1975, at Salt Lake City, Utah, will be held in Room 314, Federal Annex Building, 135 South State St.

MC F 12194, F-B Truck Line Company—Pur- Inc., now assigned January 16, 1975, at Salt Lake City, Utah, will be held in Room 314, Federal Annex Building, 135 South State St.

MC F 12275, W. J. Digby, Inc., and Robert R. Digby—Investigation of Control—Riteway Transport, Inc., Padre Freight Lines, and Cibola Freight Lines, now assigned, January 20, 1975, at Phoenix, Arizona will be held in Room 235, 2nd Floor Tax Court, Federal Building & U.S. Post Office, 522 North Central Ave.

I&S-No. M-28000, Increased Fares, Between New York, N.Y., and New Jersey, now assigned January 13, 1975, at New York, N.Y., is postponed to February 12, 1975, at New York, N.Y., in a hearing room to be later designated.

MC F 12194, F-B Truck Line Company—Purchase—Dalzell Corporation and MC 125433 Sub 50, F-B Truck Line Company, now being assigned February 24, 1975 (1 week) at San Francisco, Ca., in a hearing room to be later designated.

MC 135898 Sub 2, William Mirrer, DBA Mirrer's Trucking Co., now assigned February 4, 1975, is postponed to March 25, 1975, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 391 Sub 5, Genova Express Lines, Inc., now assigned February 11, 1975, at Washington, D.C. is postponed to a date to be hereafter fixed.

MC 32882 Sub 67, Mitchell Bros. Truck Lines; MC 95876 Sub 140, Anderson Trucking Service, Inc.; MC 107456 Sub 20, Harry L. Young and Sons, Inc.; MC 108119 Sub 40, E. L. Murphy Trucking Co.; MC 113855 Sub 258, International Transport, Inc.; MC 123407 Sub 134, Sawyer Transport, Inc.; MC 123681 Sub 24, Widing Transportation, Inc.; MC 125433 Sub 36, F-B Truck Line Company and MC 127242 Sub 3, Houston Truck Line, Inc., now assigned January 20, 1975, at San Francisco, Calif., postponed to February 24, 1975, at the Hyatt Hotel, Union Square, 345 Stockton St., San Francisco, Calif. (2 weeks). The continued hearing now assigned February 3, 1975, at St. Paul, Minn., postponed to March 10, 1975 (1 week), at St. Paul, Minn., in a hearing room to be announced at the San Francisco session.

MC 25399 (Sub-No. 10), A-P-A Transport Corp., continued to February 3, 1975 (2 days), in Conference Room A, 11th Floor, 1421 Cherry St., Philadelphia, Pa.

MC F 12165, Long Transportation Company—Purchase—Medina-Cleveland Freight Line, Inc., MC 24379 Sub 39, Long Transportation Company, now assigned January 27, 1975, at Columbus, Ohio is postponed to a date to be hereafter fixed.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-285 Filed 1-3-75;8:45 am]

[Modification No. 1 to Revised Service Order No. 1171]

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD CO.

It appearing, that there is a massive movement of sugar beets originating at stations on the lines of The Chicago, Rock Island and Pacific Railroad Company (RI) in the state of Colorado; that the RI is unable to furnish sufficient hopper cars from its own fleet to transport these beets; and that it is essential that the RI be authorized to use hopper cars owned by other railroads to enable it to transport these beets promptly in order to prevent their loss through spoilage.

It is ordered, That, pursuant to the authority vested in me by section (b) of Revised Service Order No. 1171, the RI be, and it is hereby authorized to:

(1) Intercept empty and to use exclusively for the transportation of sugar beets totals of not more than twenty-five (25) hopper cars owned by each of the following railroads:

Illinois Central Gulf Railroad Company. Reporting marks: GMO, IC, ICG
St. Louis-San Francisco Railway Company. Reporting marks: SLSF
Southern Railway System. Reporting marks: CG, INT, NS, Sou

(2) Such cars shall be used exclusively by the RI for transporting sugar beets originating on its lines in Colorado and destined to sugar factories located on the RI or on its connections regardless of the provisions of Revised Service Order No. 1171 and of Mandatory Car Service Rules 1 and 2.

(3) When released empty on lines other than the RI, such cars shall be returned empty to the RI for subsequent loading with sugar beets.

Effective 12:01 a.m., October 3, 1974.

Expires 11:59 p.m., December 15, 1974.

Issued at Washington, D.C., October 3, 1974.

[SEAL] R. D. PFAHLER,
Director,
Bureau of Operations.

[FR Doc.75-283 Filed 1-3-75;8:45 am]

[Modification No. 1 to Fifth Revised Service Order No. 1043]

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD CO.

It appearing, that there is a massive movement of sugar beets originating at stations on the lines of the Chicago, Rock Island and Pacific Railroad Company (RI) in the state of Colorado; that the RI is unable to furnish sufficient hopper cars from its own fleet to transport these beets; and that it is essential that the RI be authorized to use hopper cars owned by other railroads to enable it to transport these beets promptly in order to prevent their loss through spoilage.

It is ordered, That, pursuant to the authority vested in me by section (b) of Fifth Revised Service Order No. 1043, the RI be, and it is hereby, authorized to:

(1) Intercept empty and to use exclusively for the transportation of sugar beets a total of twenty-five (25) hopper cars owned by each of the following railroads;

The Baltimore and Ohio Railroad Company. Reporting marks: B&O.
Bessemer and Lake Erie Railroad Company. Reporting marks: BLE.
The Chesapeake and Ohio Railway Company. Reporting marks: C&O.
Louisville and Nashville Railroad Company. Reporting marks: L&N, NC or Mon.
Penn Central Transportation Company, Robert W. Blanchette, Richard C. Bond, and John H. McArthur, Trustees. Reporting marks: PRR, PC, NYC, NH, B&A, BWC, P&E, or TOC.
The Pittsburgh and Lake Erie Railroad Company. Reporting marks: P&LE.

(2) Such cars, in addition to fifty-two similar cars owned by the Norfolk and Western Railway Company and furnished voluntarily by that company, shall be used exclusively by the RI for transporting sugar beets originating on its lines in Colorado and destined to sugar factories located on the RI or on its connections regardless of the provisions of Fifth Revised Service Order No. 1043 and of mandatory Car Service Rules 1 and 2.

(3) When released empty on lines other than the RI, such cars shall be returned empty to the RI for subsequent loading with sugar beets.

Effective 12:01 a.m. October 3, 1974.

Expires 11:59 p.m. December 15, 1974.

Issued at Washington, D.C., October 3, 1974.

[SEAL] R. D. PFAHLER,
Director,
Bureau of Operations.

[FR Doc.75-284 Filed 1-3-75;8:45 am]

[Notice No. 170]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

DECEMBER 30, 1974.

The following are notices of filing of application, except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application, for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67, (49 CFR 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the Federal Register publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 29555 (Sub-No. 79TA), filed December 18, 1974. Applicant: BRIGGS TRANSPORTATION CO., 2360 West County Road C, St. Paul, Minn. 55113. Applicant's representative: Winston W. Hurd (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, livestock, Class A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment (except those requiring temperature control) and those injurious or contaminating to other lading), serving the plantsite of Squibb Distribution Center in Rolling Meadows, Ill. as an off-route point in connection with applicant's authorized regular route operations, for 180 days. Supporting shipper: E. R. Squibb & Sons, 5 Georges Road, New Brunswick, N.J. 08903. Send protests to: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 414 Federal Building & U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minn. 55401.

NOTE.—Applicant states that with authority held in Docket MC 29555, he will interline with other carriers at all points in our system where interlining is possible.

No. MC 29555 (Sub-No. 80TA), filed December 19, 1974. Applicant: BRIGGS TRANSPORTATION CO., 2360 West County Road C, St. Paul, Minn. 55113. Applicant's representative: Winston W. Hurd (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, livestock, Class A & B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment (except those requiring temperature control) and those injurious or contaminating to other lading), serving the plantsite of Schultz Bros. Co. at Lake Zurich, Ill. as an off-route point in connection with applicant's authorized regular route operations, for 180 days. Supporting shipper: Schultz Bros. Co., 800 N. Church Street, Lake Zurich, Ill. 60047. Send protests to: Raymond T. Jones, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 414 Federal Bldg. & U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minn. 55401.

NOTE.—With authority held in Docket MC 29555, applicant will interline with other carriers at all points in our system where interlining is possible.

No. MC 31600 (Sub-No. 672TA), filed December 16, 1974. Applicant: P. B. MUTRIE MOTOR TRANSPORTATION, INC., Calvary Street, Waltham, Mass. 02154. Applicant's representative: Richard T. Belle (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sugar*, dry, in bulk, in tank vehicles, from the plantsite of Amstar Corporation, Philadelphia, Pa., to the ports of entry located on the International Boundary lines between the United States and Canada at or near Niagara Falls and Buffalo, N.Y., for 90 days. Restriction: The above authority is restricted to traffc having immediate subsequent movement in foreign commerce. Supporting shipper: Lifesaver Ltd., Canajoharie, N.Y. 13317. Send protests to: Darrell W. Hammons, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 150 Causeway St., 5th Floor, Boston, Mass. 02114.

No. MC 61440 (Sub-No. 146TA), filed December 20, 1974. Applicant: LEE WAY MOTOR FREIGHT, INC., 3000 W. Reno, Oklahoma City, Okla. 73108. Applicant's representative: Richard H. Champlin, P.O. Box 82488, Oklahoma City, Okla. 73108. 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 plantsite of the Firestone Tire and Rubber Company at or near Nashville, Tenn., as an off-route point in connection with applicant's authorized regular route authority, for 180 days.

NOTE.—Applicant states that with authority in MC 61440 it will tack at Nashville, Tenn.

Supporting shipper: The Firestone Tire and Rubber Co., Lee Cisneros, Director, Corporate Transp., 1200 Firestone Parkway, Akron, Ohio 44317. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old P.O. Bldg., 215 NW Third, Oklahoma City, Okla. 73102.

No. MC 73750 (Sub-No. 4TA), filed December 18, 1974. Applicant: WALSH PIANO & FURNITURE MOVERS, INC., 6129 North Milwaukee River Parkway, Milwaukee, Wis. 53209. Applicant's representative: Richard C. Alexander, 710 North Plankinton Avenue, Milwaukee, Wis. 53203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Musical instruments, and chairs, equipment and supplies* used by a symphony orchestra, from Milwaukee, Wis., to Normal, Quincy, and Carbondale, Ill.; Bowling Green, Ky.; Chattanooga, Tenn.; Atlanta, Ga.; Macon, Ga.; Greenville, S.C.; Sewanee, Tenn.; Starkville, Miss.; Oxford, Miss.; Helena, Ark., and return to Milwaukee, Wis., for 180 days. Supporting shipper: Milwaukee Symphony Orchestra, 929 North Water Street, Milwaukee, Wis. 53202 (Richard C. Thomas). Send protests to: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 105375 (Sub-No. 55TA), filed December 18, 1974. Applicant: DAHLEN TRANSPORT OF IOWA, INC., 1680 Fourth Avenue, Newport, Minn. 55055. Applicant's representative: Joseph A. Eschenbacher, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid animal feed and liquid animal feed supplements*, in bulk, in tank vehicles, from Clarence, Iowa, to points in Illinois, Minnesota, Nebraska, North Dakota, South Dakota, Wisconsin, and Iowa, for 180 days. Supporting shipper: Land O'Lakes, Inc., 2827-8th Avenue South, Fort Dodge, Iowa 50501. Send protests to: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Burea of Operations, Room 414 Federal Building & U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minn. 55401.

No. MC 107496 (Sub-No. 978TA), filed December 16, 1974. Applicant: RUAN TRANSPORT CORPORATION, Third and Keosauqua Way, Des Monies, Iowa 50309. Applicant's representative: E. Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vinyl acetate*, in bulk, in tank vehicles, from Smithfield, Ky., to Clinton, Iowa, for 180 days. Supporting shipper: Herbert W. Allen, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 107515 (Sub-No. 970TA), filed December 16, 1974. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, Ga. 30050. Applicant's representative: Alan E. Serby, Suite 375, 3379 Peachtree Road NE., P.O. Box 18584, Atlanta, Ga. 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural chemicals*, other than in bulk, in vehicles equipped with mechanical refrigeration, from the plantsite of Monsanto at Arlington, Tenn., to points in Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, and Washington, for 180 days. Supporting shipper: Monsanto Company, 800 North Lindbergh Blvd., St. Louis, Mo. 63166. Send protests to: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1252 West Peachtree St., N.W., Room 546, Atlanta, Ga. 30309.

No. MC 111729 (Sub-No. 486TA), filed December 16, 1974. Applicant: PUROLATOR COURIER CORP., 2 Nevada Drive, Lake Success, N.Y. 11040. Applicant's representative: John M. Delany (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Radiopharmaceuticals, radioactive drugs, and medical isotopes*, between Arlington Heights, Ill., on the one hand, and, on the other points in Georgia and Tennessee; (2) *Replacement parts for business machines and computers*, between Atlanta, Ga., on the one hand, and, on the other, Allentown, Pottsville, Reading and Wilkes-Barre, Pa., restricted to traffic having a prior or subsequent movement by air; and (3) *Business papers, records, and audit and accounting media of all kinds*, between Atlanta, Ga., on the one hand, and, on the other, Allentown, Pottsville, Reading and Wilkes-Barre, Pa., restricted to traffic having a prior or subsequent movement by air, for 180 days. Supporting shippers: (1) Amersham/Scarle Corporation, 2636 S. Clearbrook Drive, Arlington Heights, Ill. 60005 and (2) National Cash Register, 456 Union Avenue, Allentown, Pa. 18103. Send protests to: Anthony D. Giaimo, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 112593 (Sub-No. 18TA), filed December 18, 1974. Applicant: SIDNEY W. JOHNSON, doing business as SOUTHWESTERN FILM SERVICE, 6767 Guadalupe Trail, NW., Albuquerque, N. Mex. 87107. Applicant's representative: Thomas J. Burke, Jr., 1600 Lincoln Center, 1660 Lincoln Street, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Newspaper and magazines*, between El Paso, Tex. and Albuquerque, N. Mex., for 180 days. Supporting shipper: Beck News Agency, 6815 Washington, NE, Albuquerque, N. Mex. 87109. Send protests to: John H. Kirkemo, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1106 Federal Office Building, 517 Gold Avenue, SW, Albuquerque, N. Mex. 87101.

No. MC 114457 (Sub-No. 215TA) filed December 18, 1974. Applicant: DART TRANSIT COMPANY, 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: *Urethane products*, from St. Paul, Minn., to points in Wisconsin, Michigan, Illinois, Nebraska, Missouri, Iowa, Kansas, South Dakota, and North Dakota, restricted to traffic originating at the named origin and destined to the named destination points, for 180 days. Supporting shippers: General Foam of Minnesota, 1800 Como Avenue, St. Paul, Minn. 55108 and Clark Foam Products Corp, 3612 W. 38th Street, Chicago, Ill. 60632. Send protests to: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 414 Federal Building & U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minn. 55401.

No. MC 114939 (Sub-No. 44TA), filed December 19, 1974. Applicant: BULK CARRIERS LIMITED, Box 10, Cooksville Post Office, Mississauga, Ontario, Canada L5A 2W7. Applicant's representative: Robert D. Schuler, 100 West Long Lake Road, Suite 102, Bloomfield Hills, Mich. 48013. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trisodium phosphate*, dry, in bulk, in dump vehicles, from Joliet, Ill., to ports of entry between the United States and Canada on the St. Clair and Detroit Rivers, restricted to traffic destined to Hamilton, Ontario, Canada, for 180 days. Supporting shipper: Erco Industries Limited, 2 Gibbs Road, Islington, Ontario, Canada M9B IRI. Send protests to: George M. Parker, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 612 Federal Building, 111 West Huron Street, Buffalo, N.Y. 14202.

No. MC 116119 (Sub-No. 27TA), filed December 20, 1974. Applicant: JOHN F. HARRIS, doing business as HOGAN'S TRANSFER & STORAGE COMPANY, 1122 South Davis Avenue, Elkins, W. Va. 26241. Applicant's representative: Edward J. Kiley, Suite 501, 1730 M Street NW., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, in bulk, in dump or hopper-type vehicles, from points in Schuylkill and Northumberland Counties, Pa., to Parsons, W. Va., for 180 days. Supporting shipper: The Kingsford Company, P.O. Box 1033, Louisville, Ky. 40201, Att.: Levern N. Forseth, Traffic Manager. Send protests to: H. R. White, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 3108 Federal Office Building, 500 Quarrier Street, Charleston, W. Va. 25301.

No. MC 119340 (Sub-No. 7TA), filed December 16, 1974.

Applicant: CENTRAL COAST TRUCK SERVICE, INC., P.O. Box AD, Watsonville, Calif. 95076. Applicant's representative: Michael P. Groom, 500 The Swenson Building, 777 N. First Street, San Jose, Calif. 95112. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Ice cream*, for the account of Safeway Stores, Incorporated, in vehicles

equipped with mechanical refrigeration, from points in Maricopa, Mojave, Yavapai and Yuma Counties, Ariz., to points in Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura Counties, Calif., for 180 days. Supporting shipper: Safeway Stores, Incorporated, 210 West Seventh Street, Los Angeles, Calif. 90014. Send protests to: District Supervisor Claud W. Reeves, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94102.

No. MC 124175 (Sub-No. 5TA), filed December 18, 1974. Applicant: JOHN PETERSON, doing business as PLAZA TRUCKING CO., 60 North Street, East Paterson, N.J. 07407. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Athletic goods and camping equipment*, from LaGuardia, John F. Kennedy International Airports, New York, Newark International Airport, N.J., piers in New York Harbor, N.Y., to Tolland, Conn., under contract with Impecco, Ltd., for 180 days. Supporting shipper: Impecco, Ltd., 310 Cedar Lane, Teaneck, N. J. 07666. Send protests to: District Supervisor Joel Morrows, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Newark, N.J. 07102.

No. MC 124328 (Sub-No. 69TA), filed December 19, 1974. Applicant: Brink's, Inc., 234 E. 24th Street, Chicago, Ill. 60616. Applicant's representative: Chandler L. van Orman, 704 Southern Building, 15th & H Streets NW., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Gold, silver, and precious metals*, between Providence, R.I., on the one hand, and, on the other, New York, N.Y. and points in Essex and Middlesex Counties, N.J., for 180 days. Supporting shipper: Rhode Island Hospital Trust National Bank, One Hospital Trust Plaza, Providence, R.I. Send protests to: District Supervisor Richard K. Shullaw, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Room 1086, Chicago, Ill. 60604.

No. MC 124328 (Sub-No. 70TA), filed December 19, 1974. Applicant: Brink's, Inc., 234 E. 24th Street, Chicago, Ill. 60616. Applicant's representative: Chandler L. van Orman, 704 Southern Building, 15th & H Streets NW., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Gold, silver and precious metals*, between Providence, R.I., and points in Essex and Middlesex Counties, N.J., for 180 days. Supporting shippers: Pease & Curren Inc., 75 Pennsylvania Avenue, Warwick, R.I. 02888 and Gannon and Scott, 530 Wellington Avenue, Cranston, R.I. Send protests to: District Supervisor Richard K. Shullaw, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, Ill. 60604.

No. MC 124652 (Sub-No. 10TA), filed December 17, 1974. Applicant: DUNCAN TRANSPORTATION CO., P.O. Box 1, Riverton, Va. 22651. Applicant's representative: Daniel B. Johnson, 1123 Munsey Building, 1329 E Street NW., Washington, D.C. 20004. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Masonry and mortar cement* (except in containers), from Riverton, Va., to points in Pennsylvania, West Virginia, Maryland, Delaware, New Jersey, North Carolina, and the District of Columbia; and (2) *Materials, equipment, supplies* used in the manufacture of masonry and mortar cement (except in containers), from points in Delaware, Maryland, New Jersey, North Carolina, West Virginia, Pennsylvania (except points in Northampton County), and the District of Columbia, to Riverton, Va., restricted to a service to be performed under a continuing contract with Riverton Corporation, Riverton, Va., for 180 days. Supporting shipper: Riverton Cooperation, Riverton, Va. 22651. Send protests to: W. C. Hersman, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 12th & Constitution Avenue NW., Room 317, Washington, D.C. 20423.

No. MC 124679 (Sub-No. 61TA), filed December 20, 1974. Applicant: C. R. England & Sons, Inc., 975 West 2100 South, Salt Lake City, Utah 84119. Applicant's representative: Daniel B. Johnson, 1123 Munsey Building, 1329 E Street NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Photographic materials, supplies and equipment*, in vehicles equipped with mechanical refrigeration, between the plantsite and warehouse facilities at Agfa-Gevaert, Incorporated at Teterboro, N.J., on the one hand, and, on the other, Denver, Colo.; Salt Lake City, Utah; and Glendale and Brisbane, Calif., for 180 days. Supporting shipper: Agfa-Gevaert, Inc., 275 North Street, Teterboro, N.J. 07608 (Adolf Vogt, Materials Manager). Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State Street, Salt Lake City, Utah 84138.

No. MC 126539 (Sub-No. 21TA), filed December 18, 1974. Applicant: KATUIN BROS. INC., 102 Terminal Street, Dubuque, Iowa 52001. Applicant's representative: Carl E. Munson, 469 Fischer Building, Dubuque, Iowa 52001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid animal feed and liquid animal feed supplements*, from at or near Clarence, Iowa, to points in Illinois, Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin, for 180 days. Supporting shipper: Land O'Lakes, Inc., 2827-8th Avenue South, Fort Dodge, Iowa 50501. Send protests to: Herbert W. Allen, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 129480 (Sub-No. 15TA), filed December 18, 1974. Applicant: TRI-LINE EXPRESSWAYS, LTD., 550-71 Avenue SE., Calgary, Alberta, Canada T2H OS6. Applicant's representative: Edward T. Lyons, Suite 1600 Lincoln Center, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum board*, from the plantsite and storage facilities of Big Horn Gypsum Products Company at or near Cody, Wyo., to the International Boundary line between the United States and Canada in the state of Montana, for 180 days. Supporting shippers: William I. Freidman Distributors, Ltd., 1012 Beverley Blvd., Calgary, Alberta, Canada and P. W. L. Importers, Ltd., 701-47th Street East, Box 1865, Saskatoon, Saskatchewan, Canada. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 222, U.S. Post Office Building, Billings, Mont. 59101.

No. MC 129862 (Sub-No. 9TA), filed December 18, 1974. Applicant: RAJOR, INC., P.O. Box 756, Franklin, Tenn. 37064. Applicant's representative: William J. Monheim, P.O. Box 1756, Whittier, Calif. 90609. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tables and stands* for electronic instruments and components, from Cucamonga, Calif., to Jefferson City, Tenn., for 180 days. Supporting Shipper: The Magnavox Company, 1700 Magnavox Way, Fort Wayne, Ind. 46804. Send Protests to: Joe J. Tate, District Supervisor, Interstate Commerce Commission, Bureau of Operations, A-422 U.S. Court House, Nashville, Tenn. 37203.

No. MC 133146 (Sub-No. 11TA), filed December 11, 1974. Applicant: INTERNATIONAL TRANSPORTATION SERVICE, INC., 3300 Northeast Expressway, Suite 1-M, Atlanta, Ga. 30341. Applicant's representative: Richard D. Cooper (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wine*, other than in bulk, from Atlanta, Ga., to points in Arkansas, Oklahoma, Kansas, Nebraska, and Iowa, for 180 days. Supporting shipper: Monarch Wine Co. of Georgia, 451 Sawtell Avenue, Atlanta, Ga. 30315. Send protests to: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1252 West Peachtree St., N.W., Room 546, Atlanta, Ga. 30309.

No. MC 135082 (Sub-No. 15TA), filed December 18, 1974. Applicant: BURSCH TRUCKING, INC., doing business as ROADRUNNER TRUCKING, INC., 415 Rankin Road NE., Albuquerque, N. Mex. 87107. Applicant's representative: Don Jones (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular

routes, transporting: *Fire brick, furnace or kiln lining products, ingot mould hop tops, and fire clay* requiring special equipment for loading and unloading and *commodities* incidental to the installation of same when not exceeding 10 percent of total shipping weight, from Canon City, Colo., to points in Arizona, New Mexico, and Texas, for 180 days. Supporting shippers: Colorado Refractories Corporation, P.O. Box 1001, Canon City, Colo. 81212 and Builders-Materials, Inc., 2717 Commercial NE., Albuquerque, N. Mex. 87107. Send protests to: John H. Kirkemo, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1106 Federal Office Building, 517 Gold Avenue SW., Albuquerque, N. Mex. 87101.

No. MC 138104 (Sub-No. 19TA), filed December 19, 1974. Applicant: MOORE TRANSPORTATION CO., INC., 3509 N. Grove, Fort Worth, Tex. 76106. Applicant's representative: Bernard H. English, 6270 Firth Road, Fort Worth, Tex. 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hides*, (1) from Clovis, N. Mex., to Houston, Laredo, and Fort Worth, Tex. and (2) from Albuquerque and Clovis, N. Mex., to San Antonio and Houston, Tex., for 180 days. Supporting shipper: Southwestern Trading Co., P.O. Box 12307, Houston, Tex. 77017 and Chilewich Corporation, 3700 N. Grove, P.O. Box 4431, Fort Worth, Tex. 76106. Send protests to: H. C. Morrison, Sr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Rm. 9A27 Federal Building, 819 Taylor St., Fort Worth, Tex. 76102.

No. MC 139658 (Sub-No. 3TA), filed December 19, 1974. Applicant: HARRY POOLE, INC., 2322 Kingsington Road, Macon, Ga. 31902. Applicant's representative: William Addams, Suite 212, 5299 Roswell Road NE., Atlanta, Ga. 30342. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crushed agricultural limestone*, in bulk, in dump vehicles, from points in Jefferson County, Tenn., to points in Georgia and South Carolina, for 180 days. Supporting shippers: There are approximately 9 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1252 W. Peachtree St. NW., Room 546, Atlanta, Ga. 30309.

No. MC 139760 (Sub-No. 3TA), filed December 18, 1974. Applicant: WILLIAM ULBRICH TRUCKING CO., INC., 128 Vreeland Avenue, Leonia, N.J. 07605. Applicant's representative: William Ulbrich (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metal*, from North Bergen, N.J., to Sparrows Point, Md., under continuing contracts with Vulcan Materials Company, for 180 days. Supporting shipper: Vulcan Materials Company, Manager Transportation Services—Metals & Mis., P.O. Box 7497, Birmingham, Ala. 35223. Send protests to: District Supervisor Joel Morrows, Interstate Commerce Commission, Bureau of Operations, 9 Clinton St., Newark, N.J. 07102.

No. MC 139800 (Sub-No. 2TA), filed December 19, 1974. Application: LARRY W. CZERNIAK, 9000 W. 74th Avenue, Arvada, Colo. 80005. Applicant's representative: John P. Thompson, 450 Capitol Life Center, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over regular and irregular routes, transporting: Irregular routes: *Camera film* (except movie film moving to or from movie theaters), *film slides, photographs, prints, negatives and photographic supplies*, between points in Denver, Adams, Arapahoe, Boulder, and Jefferson Counties, Colo. Regular routes: *Camera film* (except movie film moving to or from movie theaters), *film slides, photographs, prints, negatives and photographic supplies*, (1) between Pueblo, Colo. and Cheyenne, Wyo., serving all intermediate points and serving the off-route points of Windsor and Johnstown, Colo.: From Pueblo, Colo. over Interstate Highway 25 and U.S. Highway 85–87 to Denver, Colo., thence over Interstate Highway 25 to Cheyenne, Wyo., and return over the same routes; using U.S. Highway 34 and Colorado Highways 14 and 66 for operating convenience only; (2) between Pubelo, Colo. and Cheyenne, Wyo., serving all intermediate points: From Pubelo, Colo., over Interstate Highway 25 and U.S. Highway 85–87 to Denver, Colo.; thence over U.S. Highway 85 to Cheyenne, Wyo., and return over the same routes; using U.S. Highway 34 and Colorado Highways 14 and 66 for operating convenience only; and (3) between Denver, Colo. and Laramie, Wyo., serving all intermediate points on U.S. Highway 287 and the off-route point of Estes Park, Colo.: From Denver, Colo., over U.S. Highway 287 to Laramie, Wyo., and return over the same route; using Interstate Highways 80 and 25, U.S. Highway 34 and Colorado Highway 66 for operating convenience only, for 180 days. Restrictions: The entire operation described in this application shall be restricted against the transportation of packages or articles weighing more than 20 pounds in the aggregate from any one consignor to any one consignee during any one day. Supporting shippers: There are aproximately 8 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor Herbert C. Ruoff, Interstate Commerce Commission, Bureau of Operations, 2022 Federal Building, Denver, Colo. 80202.

No. MC 140059 (Sub-No. 2TA), filed December 18, 1974. Applicant: NEVADA DISTRIBUTING CO., INC., P.O. Box 1238, Ely, Nev. 89801. Applicant's representative: John R. Anderson, 1100 Boston Building, Salt Lake City, Utah 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Beer*, from Golden, Colo., to Elko, Winnemucca, and Ely, Nev., for 180 days. Supporting shipper: Elko Bottling Co., P.O. Box 711, Elko, Nev. 89801 and Winneva Distributing Company, Inc., 630 Melarkey Street, Winnemucca, Nev. 89445. Send protests to: District Supervisor Robert G. Harrison, Interstate Commerce Commission, Bureau of Operations, 203 Federal Building, 705 North Plaza Street, Carson City, Nev. 89701.

No. MC 140122 (Sub-No. 3TA), filed December 18, 1974. Applicant: SNOWBALL, LTD., P.O. Box 13528, St. Louis, Mo. 63138. Applicant's representative: Jacob P. Billig, 1126 Sixteenth Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metals*, ferrous and nonferrous, and *crushed auto bodies*, for recycling purposes, (1) (a) From points in Arizona, Colorado, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, and Wyoming, to Spokane, Kent, Takoma, and Seattle, Wash.; Eugene and Portland, Oreg.; Bakersfield, Vernon, Riverside, Oakland, National City, Stockton, Los Angeles, Etiwanda, Long Beach, Fontana, and Terminal Island, Calif.; Las Vegas, Nev.; and Salt Lake City, Utah; (b) From points in Idaho and Utah, to Bakersfield, Vernon, Riverside, Oakland, National City, Stockton, Los Angeles, Etiwanda, Long Beach, Fontana, and Terminal Island, Calif.; Las Vegas, Nev.; and Salt Lake City, Utah; (c) from points in California, to Las Vegas, Nev.; (d) From points in Oregon, to Spokane, Kent, Takoma, and Seattle, Wash.; Bakersfield, Vernon, Riverside, Oakland, National City, Stockton, Los Angeles, Etiwanda, Long Beach, Fontana, and Terminal Island, Calif.; and Las Vegas, Nev.; and (e) from points in Washington, to Bakersfield, Vernon, Riverside, Oakland, National City, Stockton, Los Angeles, Etiwanda, Long Beach, Fontana, and Terminal Island, Calif.; and Las Vegas, Nev.

(2) From points in Arkansas, Iowa, Louisiana, Missouri, North Dakota, and South Dakota, to Peoria, Waukegan, Chicago, Alton, East St. Louis, Blue Island, McCook, and South Beloit, Ill.; Kansas City, Kans.; Fond du Lac, Portage, Racine, Madison, and Milwaukee, Wis.; St. Paul, Minneapolis, and Anoka, Minn.; South Bend, Fort Wayne, and Michigan City, Ind.; Columbus, Defiance, Toledo, Canton, Brook Park, West Carrollton, and Cincinnati, Ohio; St. Louis, Mo. Commercial Zone and Indianapolis, Ind. Commercial Zone; (3) From points

NOTE.—Applicant states it will tack and interline with any other carrier with authority held in MC 140059 (Sub-No. 1TA).

in Colorado, Kansas, Nebraska, and Wyoming, to Peoria, Waukegan, Chicago, Alton, East St. Louis, McCook, and Blue Island, Ill.; Fond du Lac, Portage, Racine, and Milwaukee, Wis.; Minneapolis and Anoka, Minn.; South Bend, Fort Wayne, and Michigan City, Ind.; Columbus, Defiance, Toledo, Canton, Brook Park, West Carrollton, and Cincinnati, Ohio; St. Louis, Mo. Commercial Zone; and Indianapolis, Ind. Commercial Zone; and (4) From Denver, Colo., to South Beloit, Ill., and Kansas City, Kans., for 180 days. Supporting shippers: Century Metal Recyclers, Inc., P.O. Box 6701, Denver, Colo. 80206; Metal Recycling Co., 666 Sherman Street, Denver, Colo.; Aircraft Tool Supply Co., 666 Sherman Street, Denver, Colo.; Century Enterprises, P.O. Box 6701, Denver, Colo. 80206; and Milford S. Pepper Enterprises, P.O. Box 6701, Denver, Colo. 80206. Send protests to: District Supervisor J. P. Werthmann, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 North 12th Street, St. Louis, Mo. 63101.

No. MC 140457 (Sub-No. 1TA), filed December 19, 1974. Applicant: W.H.P.T. CO., INC., Route 8, Box 644, Roanoke, Va. 24014. Applicant's representative: Michael S. Ferguson, 214 Shenandoah Building, Roanoke, Va. 24011. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Ammonium sulfate*, from Hopewell and Chesapeake, Va., to Winston-Salem, N.C.; and (2) *Limestone rock*, from Roanoke, Va., to Winston-Salem, N.C., for 180 days. Supporting shipper: Weaver Fertilizer Company, Inc., Winston-Salem, N.C. Send protests to: Danny R. Beeler, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 215 Campbell Avenue SW., Roanoke, Va. 24011.

No. MC 140472 (Sub-No. 1TA), filed December 16, 1974. Applicant: ASSOCIATED MOVING & STORAGE COMPANY, INC., 1101 Edwards Avenue, Harahan, La. 70123. Applicant's representative: Julius G. Neumeyer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods and personal effects*, in containers, having a prior or subsequent move beyond the points applied for, restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic, between points in Ascension, Jefferson, LaFourche, Orleans, Plaquemine, St. Bernard, St. Charles, St. James, St. John, St. Tammany, Tangipahoa, Terrebonne, and Washington Parishes, La., for 180 days. Supporting shipper: Department of Defense, Regulatory Law Office, Office of The Judge Advocate General, Washington, D.C. 20310. Send protests to: Ray C. Armstrong, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, T-9038 U.S. Postal Service Bldg., 701 Loyola Avenue New Orleans, La. 70113.

MOTOR CARRIERS OF PASSENGERS

No. MC 139604 (Sub-No. 4TA), filed December 19, 1974. Applicant: CHERRY HILL TRANSIT, 109 Brick Road, Marlton, N.J. 08053. Applicant's representative: Raymond A. Thistle, Jr., Four Penn Center Plaza (Suite 1012), Philadelphia, Pa. 19103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in the same vehicle, between Philadelphia, Pa. and points in Delaware County, Pa., on the one hand, and, on the other, Lakehurst Naval Air Station, Lakehurst, N.J., for 180 days. Supporting shipper: Lakehurst Commuter Transportation Corp., One East Penn Square, Market and Juniper Streets, Philadelphia, Pa. 19107. Send protests to: Richard M. Regan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 428 E. State Street, Room #204, Trenton, N.J. 08608.

By The Commission.

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

[FR Doc.75-288 Filed 1-3-75;8:45 am]

[Notice No. 210]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

JANUARY 6, 1975.

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 January 27, 1975. 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-75507. By order entered December 17, 1974 the Motor Carrier Board approved the transfer to Indianapolis Sight Seeing, Inc., doing business as Gray Line Sight Seeing of Indianapolis, Indianapolis, Ind., of License No. MC-12541, issued January 5, 1953, to Ross and Babcock Travel Bureau, Inc., Indianapolis, Ind., authorizing operations as a broker at Indianapolis, Ind., in connection with transportation by motor vehicle in interstate or foreign commerce, of passengers and their baggage, in round-trip tours, beginning and ending at points in Marion County, Ind., and extending to points in the United States. Harry J. Harman, 8130 South Meridian St., Indianapolis, Ind. 46217, attorney for applicants.

No. MC-FC-75520. By order of December 18, 1974, the Motor Carrier Board approved the transfer to Ace Limousine Service, Inc., Brick Town, N.J., of the operating rights in Certificates Nos. MC-135738 (Sub-No. 1) and MC-135738 (Sub-No. 2) issued May 18, 1973, and September 4, 1974, to Donald DeGraff, doing business as Ace Limousine Service, Brick Town, N.J., authorizing the transportation of passengers and their baggage, in non-scheduled door-to-door service, limited to the transportation of not more than 11 passengers, not including the driver, in special operations, between points in Ocean County (except Lakehurst and the Lakehurst United States Naval Air Station) and Monmouth County, N.J., on the one hand, and, on the other, LaGuardia Airport and John F. Kennedy International Airport, New York, N.Y., and Philadelphia International Airport, Philadelphia, Pa. Charles J. Williams, 47 Lincoln Park, Newark, N.J. 07102, Attorney for applicants.

No. MC-FC-75563. By order of December 18, 1974 the Commission approved the transfer to Dennis Cordes, Sr., Stockholm, Wis., of the operating rights in Certificate No. MC-35856 issued July 2, 1973 to Howard Anderson, Plum City, Wisc., authorizing the transportation of various commodities from and to specified points and areas in Wisconsin and Minnesota. F. H. Kroeger, 2288 University Ave., St. Paul, Minn., 55114 Applicants representative.

No. MC-FC-75587. By order of December 17, 1974 the Motor Carrier Board approved the transfer to Vestring Feed, Inc., Burns, Kansas, of the operating rights in Certificate No. MC-104012 issued October 31, 1967 to Richard L. Wyss, Sr., Florence, Kansas, authorizing the transportation of various commodities from, to and between specified points and areas in Kansas and Missouri. Gene F. Anderson, 116 East 5th St., Augusta, Kansas 67010 Attorney for applicants.

No. MC-FC-75588. By order of December 23, 1974, the Motor Carrier Board approved the transfer to Kelco Foods Transportation, Inc., Stromsburg, Nebr., of the operating rights in Permit No. MC-124327 (Sub-No. 4) issued September 7, 1973, to Coastal Contract Carrier Corp., Selmer, Tenn., authorizing the transportation of meats, meat products, and meat by-products (except commodities in bulk, in tank vehicles), from points in Illinois, Iowa, Kentucky, and Tennessee to points in California under continuing contract with Kelco Foods, Inc., of Deerfield, Ill. John E. Jandera, 641 Harrison Street, Topeka, Kans. 66603 Attorney for applicants.

No. MC-FC-75589. By order of December 17, 1974 the Motor Carrier Board approved the transfer to Dakota Film &

Express, Inc., Grand Forks, N.D., of Certificate of Registration No. MC-98501 (Sub-No. 1) issued December 17, 1963 to Don V. Lindgren, doing business as Dakota Film Delivery Service, Grand Forks, N.D., evidencing a right to engage in transportation in interstate commerce as described in Certificate of Public Convenience and Necessity No. 698 dated April 1, 1960 issued by the North Dakota Public Service Commission. E. J. Hanson, Box 1177, Grand Forks, N.D., 58201 Attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-289 Filed 1-3-75;8:45 am]

[Ex Parte MC-94]

MOTOR CARRIER RATES FOR THE CARRIAGE OF LTL SHIPMENTS OF MAIL[1]

DECEMBER 24, 1974.

Notice is hereby given that on December 10, 1974, the U.S. Postal Service filed a petition, pursuant to the provisions of 39 U.S.C. 5209, asking the Commission to approve and prescribe proposed rates for application to the voluntary carriage of mail by authorized general commodity motor common carriers in LTL shipments.

Any person interested in the matter which is the subject of the petition and who wishes to participate actively in any further proceedings herein shall notify this Commission, by filing with the Office of Proceedings, Room 5342, 12th Street and Constitution Avenue, NW., Washington, D.C., 20423, on or before January 30, 1975, an original and one copy of a statement of his intention to participate. Thereafter, the nature of further proceedings herein, if any, will be designated. The petition and statements of intent to participate, if any, will be available for public inspection at the offices of the Interstate Commerce Commission during the regular business hours.

A copy of this notice will be served upon the petitioner and all carriers in the Carrier Service List appended to the petition, and notice of the filing of the petition will be given to the general public by depositing a copy of this notice in the Office of the Secretary of the Commission at Washington, D.C., and by delivering a copy hereof to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-287 Filed 1-3-75;8:45 am]

[1] Schedule of rates and charges filed as part of the original document.

[Service Order No. 1179[1]]

THE TEXAS AND PACIFIC RAILWAY CO. ORDERED TO OPERATE TRAINS OF THE NATIONAL RAILROAD PASSENGER CORP. (AMTRAK)

At a Session of the Interstate Commerce Commission, Division 3, acting as an Appellate Division, held at its office in Washington, D.C., on the 22nd day of November 1974.

Upon consideration of the record in the above-entitled proceeding, including the petition of Amtrak for reconsideration or deferral of the effective date of the order of the Commission, Division 3, acting as an Appellate Division, dated August 1, 1974, which order modified the order of the Commission, Division 3, dated March 21, 1974, and the telegraphic reply of the Texas and Pacific Railway, thereto; and of the order of the Commission, Commissioner Tuggle, dated September 6, 1974; and

It appearing, that by Service Order No. 1179, the Commission, by Division 3, on March 21, 1974, ordered the Texas and Pacific Railway Company to operate trains of the National Railroad Passenger Corporation and to provide employees, tracks, and other facilities as required between a connection with the Missouri Pacific Railroad Company at Texarkana, Ark., and a connection with the Atchison, Topeka & Santa Fe Railway Company at Fort Worth, Tex., and that this order was pursuant to the Commission's authority under section 402 of the Railroad Passenger Service Act, as amended, 45 U.S.C. 562;

It further appearing, that upon reconsideration of its order, Division 3, acting as an Appellate Division, on August 1, 1974, (1) revoked Service Order No. 1179, subject to the condition that in the event Amtrak refiled its application under section 402(a) of RPSA, the service order would remain in effect; and (2) set for modified procedure matters relating to just and reasonable compensation for the operation of the subject trains and indemnification against casualty risk;

It further appearing, that by order of the Commission, Commissioner Tuggle, dated September 6, 1974, (1) the provisions of the order dated August 1, 1974, which required the refiling of an application under section 402(a) were stayed, and (2) the remaining provisions of that order were continued in effect;

It further appearing, that in accordance with the provisions of the order dated August 1, 1974, the parties have filed statements concerning matters of compensation and indemnification against casualty risk for the services performed by the T&P for Amtrak in the operation of the trains subject to Service Order No. 1179;

It further appearing, that, in the instant petition, Amtrak primarily maintains that (1) the Commission should not revoke the subject service order, (2) the Commission should not presently decide matters relating to compensation and indemnification, and (3) the service order should be continued in effect and extended beyond the expiration date initially imposed;

It further appearing, that, the parties involved in this proceeding have been unable to formulate a mutually acceptable agreement covering the terms and conditions of the operation of trains over the subject trackage of T&P; that substantive contractual differences relating to an interpretation of the agreement between MoPac and Amtrak exist, which differences bear directly on the inability of the T&P and Amtrak to reach an accord in this matter; and that, the parties involved herein have submitted their dispute for judicial determination;

It further appearing, that, in support of its petition, Amtrak has submitted a decision by the United States Court of Appeals for the Eighth Circuit, Docket No. 74-1203, "National Railroad Passenger Corporation v. Missouri Pacific Railroad Company and the Texas and Pacific Railway Company," which determined that the underlying dispute between the parties, i.e., the applicability of the MoPac-Amtrak agreement, should be submitted to arbitration before the National Arbitration Panel; that by order dated August 16, 1974, the district court, from which the appeal was taken in this matter, directed the Missouri Pacific Railway to submit to arbitration the agreement relating to MoPac's obligation to supply certain services to Amtrak which services are also the subject of Service Order No. 1179; and that, the Commission's action in its order dated August 1, 1974, was taken before entry of the above-referred to court order and without notice of the judicial determination by the Court of Appeals in the said docket;

It further appearing, that the National Arbitration Panel is presently considering this contractual dispute and that its determination is relevant to the issue of whether or not Amtrak should file an application pursuant to section 402(a) of RPSA; that, in order to provide for a more orderly resolution of this dispute the Commission should revoke its order

[1] Henceforth this proceeding shall also be entitled Finance Docket No. 27783, Amtrak and Texas and Pacific Railway Co., Establishment of Just Compensation and Indemnification for Operations and Use of Tracks and Facilities.

of August 1, 1974, only insofar as it requires Amtrak presently to file an application pursuant to section 402(a);

It further appearing, that the subject service order is set to expire on November 30, 1974; that the expiration of this service order would result in the cancellation of Amtrak passenger trains operating between St. Louis, Mo., and Laredo, Tex.; that this result would be an extreme disservice to the public who travel or will travel on these trains and would interfere substantially with the present and future usefulness of these trains in the performance of adequate and continuous service to the public; and that due to the exigencies of this situation, the service order should be amended to extend the expiration date of this order for a period of six months;

It further appearing, that, the T&P has not yet been compensated or indemnified against casualty risk for the provision of any of the services ordered by the Commission; that Amtrak in its petition has expressed its willingness to compensate T&P for its operations pursuant to the terms and conditions of the existing Basic Agreement between Amtrak and MoPac dated April 16, 1974, and to be governed by the provisions of the same agreement relating to indemnification against casualty risk; that the parties have submitted their statements relating to these matters; and that, the Commission has yet to make a final determination of these matters; and

It further appearing, that, as an interim measure, the Commission should require Amtrak to compensate and indemnify T&P for its services already performed in accordance with this service order and for those services to be performed for the duration of the service order; that the foregoing should not be taken to be a determination of the issues and facts as submitted by the parties in their statements for consideration under modified procedure; and that, a final determination will be made as to the matters of compensation and indemnification against casualty risk for the provision of the required services by T&P to Amtrak:

It is ordered, That the petition for reconsideration of the National Railroad Passenger Corporation be, and it is hereby, granted to the extent request is made for the revocation of those provisions of the order dated August 1, 1974, which revoked Service Order No. 1179, subject to the condition that Amtrak refile its application pursuant to section 402(a) of the Rail Passenger Service Act, as amended, and those provisions of said order which required the posting of notice of termination of the subject trains, as set forth in the first two ordering paragraphs of the above-referred to order; that the petition for reconsideration insofar as it seeks a limited continuance of Service Order No. 1179, be, and it is hereby, granted; and that Service Order No. 1179, be, and it is hereby, amended to provide for expiration of the Service Order at 11:59 p.m., May 31, 1975, unless otherwise further modified, changed, or suspended by further order of this Commission;

It is further ordered, That the National Railroad Passenger Corporation shall compensate the Texas and Pacific Railway Company for the services it has performed for said corporation pursuant to the terms of Service Order No. 1179, from its date of entry, March 21, 1974; that this compensation shall be in conformity with the provisions, terms, conditions, and procedures set forth in the Basic Agreement between Amtrak and the Missouri Pacific Railroad Company, signed April 16, 1971; that the National Railroad Passenger Corporation shall continue to compensate the Texas and Pacific Railway Company in accordance with the above-referred to Agreement for the duration of this service order or until otherwise directed by order of this Commission for services performed by the Texas and Pacific Railway Company pursuant to the subject service order; *provided, however*, That this compensation shall be considered only as an interim payment for the provision of such services and that compensation paid by the National Railroad Passenger Corporation in accordance with the terms specified herein shall not be considered as a final determination by this Commission on the merits or otherwise of those statements filed by the parties hereto with respect to matters of just and reasonable compensation and indemnification against casualty risk, as directed by the order dated August 1, 1974;

It is further ordered, That, the National Railroad Passenger Corporation shall hereafter indemnify the Texas and Pacific Railway Company against any casualty risk to which it may be exposed in accordance with the provisions, terms, conditions, and procedures set forth in the above-referred to Basic Agreement; *provided, however*, That the application of the Basic Agreement shall not be considered as a final determination on the merits or otherwise of the pleadings filed by the parties relative to the terms, conditions, etc., for indemnification by the corporation for the railroad for its services performed to date and to be performed pursuant to this service order;

It is further ordered, That this proceeding shall otherwise remain open for consideration of the level of compensation to be fixed for the services and facilities provided to the National Railroad Passenger Corporation by the Texas and Pacific Railway Company and the necessary indemnification against casualty risk by the corporation for the railroad; and that such determination will be retroactive to March 21, 1974, with appropriate set-off for the compensation presently ordered herein;

It is further ordered, That, except to the extent granted herein, the petition for reconsideration or deferral be, and it is hereby, denied; and

It is further ordered, That, this order shall be effective on the date it is served.

By the Commission, Division 3, acting as an Appellate Division.

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

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-286 Filed 1-3-75;8:45 am]

federal register

MONDAY, JANUARY 6, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 3

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

NATIONAL HEALTH SERVICE CORPS

Critical Health Manpower Shortage Areas

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 23]

NATIONAL HEALTH SERVICE CORPS

Critical Manpower Shortage Areas

Notice is hereby given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to delete Part 23 of Title 42, Code of Federal Regulations and to substitute in lieu thereof a new Part 23. The primary purpose of the new proposed Part 23 is to implement section 2 of the Emergency Health Personnel Act Amendments of 1972 (Pub. L. 92-585), which amended section 329 of the Public Health Act, authorizing the establishment of the National Health Service Corps.

The major changes made by this proposed regulation are as follows: (1) the Secretary, without regard to an application for assignment of NHSC personnel, will designate those areas which have a critical health manpower shortage and publish periodically in the FEDERAL REGISTER a list of such designated areas, and the criteria utilized in making such designation; (2) provision is made for 90 days written notice published in the FEDERAL REGISTER, before the Secretary may withdraw his designation of an area as one having a critical health manpower shortage; (3) three options are set forth for the reimbursement of the National Health Service Corps by applicants whereby the Corps can recover its reasonable costs of providing services; (4) the charge to any person for services from assigned personnel shall be in accordance with a schedule of charges determined in consultation with the local medical, or dental, or other appropriate health society; and (5) the Secretary may approve an application without the certification of need by the State and district medical, dental or other appropriate health societies when he finds that such certification has been arbitrarily and capriciously withheld.

Written comments concerning the proposed regulations are invited from interested persons. Inquiries may be addressed, and data, views and arguments relating to this notice may be presented in writing, in triplicate, to the Director, Bureau of Community Health Services, Health Services Administration, Room 7-05 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852.

All comments received in response to this notice will be available for public inspection and copying at the above referred to address weekdays (Federal holidays excepted) during regular business hours. All relevant material received on or before February 5, 1975 will be considered.

It is therefore proposed to delete Part 23 and substitute in lieu thereof a new Part 23 as follows:

Dated: October 29, 1974.

THEODORE COOPER,
Acting Assistant Secretary for Health.

Approved: December 23, 1974.

CASPAR W. WEINBERGER,
Secretary.

Sec.
23.1 Applicability.
23.2 Definitions.
23.3 Eligibility.
23.4 Designation.
23.5 Information and Assistance.
23.6 Application for Assignment.
23.7 Assignment of Personnel.
23.8 Costs and charges for services.
23.9 Supervision of assigned personnel and termination of assignment.
23.10 Agreements with applicants.
23.11 Use of facilities by assigned personnel.

AUTHORITY: Sec. 215, 58 Stat. 690, as amended (42 U.S.C. 216); sec. 329, 84 Stat. 1868 as amended (42 U.S.C. 254b).

§ 23.1 Applicability.

The regulations in this subpart are applicable to the assignment of personnel of the National Health Service Corps to areas with critical health manpower shortages, as provided by section 329 of the Public Health Service Act (42 U.S.C. 254b).

§ 23.2 Definitions.

As used in this part:

(a) "Act" means the Public Health Service Act.

(b) "State" means any of the several states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(c) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of that Department to whom the authority involved has been delegated.

(d) "Assigned personnel" means health or health related personnel of the Regular and Reserve Corps of the Service and such civil service personnel as the Secretary designates, including, but not limited to, physicians, dentists, psychologists, nurses, paramedical personnel, medical services administrators or planners, and medical and psychiatric technicians, who are assigned, in accordance with section 329 of the Act and the regulations in this part, to an area to provide needed health care or services.

(e) "Nonprofit" private health entity means a private health entity no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(f) "Population" means the population based on the latest figures available from the U.S. Census Bureau or such other source that the Secretary finds acceptable, applicable to the area to be served.

(g) "Area" means a defined geographical or service region acceptable to the Secretary from which persons are provided services under this part, irrespective of political or geographic boundaries.

§ 23.3 Eligibility.

Application for assignment of Corps personnel to an area designated by the Secretary under § 23.4 may be made by the health agency or any other public or nonprofit private health entity in such area.

§ 23.4 Designation.

(a) In accordance with section 329(b)(1)(A) of the Act, the Secretary shall designate those areas which he determines have critical health manpower shortages. In making such determination the Secretary shall take into consideration, among other pertinent factors:

(1) The latest reliable health resources statistics available to him, such as numbers of primary care physicians, dentists, and other health manpower personnel; the range of primary care and other health services available; and the types of health facilities in the area.

(2) Health status indicators, such as infant and maternal mortality rates, accident rates, morbidity rates, disability rates, life expectancy rates, and others.

(3) Inaccessibility of health care services in the community, and the ability to obtain services when required on a timely and effective basis, taking into account transportation difficulty, travel times, utilization rates, ability of health resources to meet increased demands, and other socio-economic, demographic, and environmental factors of community life which significantly impair access. The Secretary shall publish periodically in the FEDERAL REGISTER a list of such designated areas together with the specific criteria used in determining such areas.

(b) Any State health agency or local public health agency or other public or nonprofit private health entity in an area which has not been designated by the Secretary pursuant to paragraph (a) of this section may request such designation. If upon review of the application and all other relevant facts it is determined that the area meets the criteria utilized under paragraph (a) of this section, the Secretary shall add the area to the list of areas designated.

(c) Upon determining that there has been a substantial change in circumstances upon which a designation was based, the Secretary may, 90 days after publication of a notice in the FEDERAL REGISTER, withdraw his designation of an area as one having a critical health manpower shortage.

§ 23.5 Information and Assistance.

The Secretary shall conduct information programs in the areas designated to inform public and nonprofit private health entities serving the designated areas of the technical and consultative services available from the Corps and to assist people in those areas who are seeking assignment of Corps personnel to their areas.

§ 23.6 Application for Assignment.

(a) An application for the assignment of Corps personnel under section 329 of the Act may be submitted to the Secre-

tary by an eligible applicant in such form and manner and at such time as the Secretary may require.

(b) The application shall include, among other things, the certification to the Secretary of

(1) the local government of such area, and

(2) the State and district medical, dental or other appropriate health societies (as the case may be) that such assignment is needed for the area, *provided, however*, That where such certification has been withheld, a full explanation of the absence of such certification shall be submitted.

(c) The application shall also include, unless established to the satisfaction of the Secretary that such recommendations were not reasonably obtainable, the recommendations of (1) the appropriate State health planning agency established pursuant to section 314(a) of the Act; (2) the appropriate Regional Medical Program established pursuant to Title IX of the Act; (3) where there has been such an agency established, the appropriate areawide health planning agency established pursuant to section 314(b) of the Act; (4) the State medical, dental, and other health associations and (5) from other medical personnel of the area to be served.

(d) The application shall also include evidence satisfactory to the Secretary that the general public has been informed, through the published news media or other means of communication appropriate to local circumstances, of the actions of all certifying and recommending agencies, and has been afforded adequate opportunity to comment on such application. All such comments received shall be appended to the application.

(e) Such applications shall be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant any obligations imposed by law, the statute, these regulations, or any additional conditions of assignment imposed pursuant thereto.

§ 23.7 Assignment of Personnel.

The Secretary may upon proper application, assign Corps personnel to such designated areas where he finds such assignment will best serve the purposes of section 329 of the Act and the regulations of this part, taking into account:

(a) The need of the area for the health services to be provided without regard to the area's ability to pay;

(b) The willingness of the area and the appropriate governmental agencies therein to assist and cooperate with the Public Health Service in providing effective health services to residents of the area;

(c) The recommendations of any agency or organization which may be responsible for the development, under section 314(a) or (b) of the Act, of a comprehensive plan covering all or any part of the area involved;

(d) Recommendations from the State medical, dental, and other health associations and from other medical personnel of the area considered for assistance. *Provided*, That with respect to any proposed assignment, where the Secretary has from all the facts available to him, found that certification required by section 329(b)(2)(A)(ii) of the Act was clearly arbitrarily and capriciously withheld by the State or district medical, dental or other appropriate health society, the Secretary may, after consultation with such society or societies, assign Corps personnel to the designated area. A certification may be considered to be arbitrarily and capriciously withheld when a State or district society:

(1) fails to acknowledge a request for certification within 30 days, or make a decision regarding certification within 90 days; or

(2) provides either no justification for its refusal to certify need or the data submitted in support of its justification clearly is not adequate in light of the factors considered by the Secretary in designating areas.

§ 23.8 Costs and charges of services.

(a) The National Health Service Corps shall be reimbursed, subject to the approval of the Secretary, in accordance with one of the following mechanisms designed to recover the reasonable costs of providing services. Each agreement concluded with an applicant under § 23.10 shall identify the method of reimbursement selected from the following:

(1) The National Health Service Corps will be reimbursed a percentage of the total receipts collected (after certain preferential costs in the agreement concluded under § 23.10 agreed to are paid) which is equal to the percentage of the National Health Service Corps' contribution toward the cost of operation as determined under the agreement concluded with the applicant under § 23.10.

(2) The National Health Service Corps will be reimbursed its actual reasonable cost per annum, a fixed amount regardless of receipts collected; or

(3) The National Health Service Corps will provide the total cost of operation and will collect all receipts.

(b) Except as otherwise provided in paragraph (d) of this section, any person receiving services from assigned personnel shall be charged at a rate designed to recover reasonable costs, to be distributed according to one of the methods of reimbursement specified above. Such charges shall (except as provided in paragraph (c) of this section) be in accordance with a schedule of charges determined in consultation with the local medical, or dental, or other appropriate health society, and specified in the agreement concluded with the applicant under § 23.10; *provided, however*, That where assigned personnel are providing services within the framework of an established health services delivery system, the charges made shall be consistent with the charges made by such system.

(c) In lieu of being charged on a fee-for-services basis pursuant to paragraph (b) of this section, persons eligible to receive services from assigned personnel may be charged on a prepaid capitation basis or other reimbursement mechanism.

(d) No charge or a reduced charge shall be made for services provided by assigned personnel to any person from a family which has an annual income below the higher of (1) the State figures for the "medically needy" as determined in accordance with the Aid to Families with Dependent Children figures calculated by the Assistance Payments Administration, or (2) the Social Security Administration poverty index as set forth in the latest Social Security Bulletin, Annual Statistical Supplement, *provided, however*, That pursuant to paragraph (e) of this section, charges shall be made for services to such persons to the extent that payment will be made by a third party which is authorized or under legal obligation to pay such charges.

(e) If a Federal agency, an agency of a State or local government, or other third party would be responsible for all or part of the cost of the care or service provided under section 329 of the Act if such care or service had not been provided pursuant to section 329 of the Act, the Secretary shall collect from such agency or third-party the portion of such cost for which it would be so responsible.

(f) Any funds received by the Secretary pursuant to this section shall be deposited in the Treasury as miscellaneous receipts.

§ 23.9 Supervision of assigned personnel and termination of assignment.

Personnel assigned in accordance with the provisions of section 329 of the Act and the regulations in this part shall at all times remain under the direct supervision and control of the Secretary. Observance of institutional rules and regulations by assigned personnel are mere incidents of the performance of their Federal functions and do not alter their direct professional and administrative responsibility to the Secretary. The Secretary may terminate or modify any such assignment if he determines that such assignment is not being performed in accordance with section 329 of the Act, the regulations in this part, or any agreement entered into under § 23.10.

§ 23.10 Agreements with applicants.

The Secretary will, upon determining to assign personnel to an area, and consistent with section 329 of the Act and these regulations, enter into agreements with applicants setting forth such additional terms and conditions as he deems necessary to assure the furtherance of the purposes of section 329 of the Act,

the regulations in this part, and interests of the public health, or the effective utilization of assigned personnel, including but not limited to

(a) Number and type of personnel assigned;

(b) Duration of assignment;

(c) Fees and methods for charging for services of assigned personnel including the choice of option for reimbursing the Federal Government for its reasonable costs under section 23.8;

(d) Types of facilities or other assistance to be provided by applicant.

§ 23.11 Use of facilities by assigned personnel.

The Secretary, to the extent feasible may make such arrangements as he determines necessary to enable assigned personnel to utilize the health facilities of the area to be served. If there are no health facilities in or serving such area, the Secretary may arrange to have such care and services provided in the nearest health facilities of the Public Health Service or the Secretary may lease or otherwise provide facilities in such area for the provision of care and services. In providing such care and services, the Secretary may (a) make such arrangements as he determines are necessary for the use of equipment and suplies of the Service and for the lease or acquisition of other equipment and supplies and (b) secure the temporary services of nurses and allied health professionals.

[FR Doc. 75-29 Filed 1-3-75; 8:45 am]

federal register

MONDAY, JANUARY 6, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 3

PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

■

PRIVACY RIGHTS OF PARENTS AND STUDENTS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[45 CFR Part 99]

PRIVACY RIGHTS OF PARENTS AND STUDENTS

Proposed Establishment of Part

Pursuant to the authority contained in section 438 of the General Education Provisions Act (Title IV of Pub. L. 90-247, as amended), added by section 513, Pub. L. 93-380 (enacted August 21, 1974), and amended by Senate Joint Resolution 40 (Sen. J. Res. 40), (1974) notice is hereby given that the Secretary proposes to add a new Part 99 to Title 45 of the Code of Federal Regulations to read as set forth below.

Section 438 of the General Education Provisions Act, as amended, which is effective as of November 19, 1974, sets out requirements designed to protect the privacy of parents and students. Specifically, the statute governs (1) access to records maintained by certain educational institutions and agencies, and (2) the release of such records. In brief, the statute provides: that such institutions must provide parents of students access to official records directly related to the students and an opportunity for a hearing to challenge such records on the grounds that they are inaccurate, misleading or otherwise inappropriate; that institutions must obtain the written consent of parents before releasing personally identifiable data about students from records to other than a specified list of exceptions; that parents and students must be notified of these rights; that these rights transfer to students at certain points; and that an office and review board must be established in HEW to investigate and adjudicate violations and complaints of this section. The office has been designated by the Secretary and may be contacted at the following address:

Mr. Thomas S. McFee
Room 5660
Department of Health, Education, and Welfare
330 Independence Avenue, SW.
Washington, D.C. 20201
Telephone (202) 245-7488

(The statute further provides, under subsection (c), that the Secretary shall promulgate regulations to protect the privacy of students and their families in connection with certain Federal data-gathering activities. The proposed rules set forth below relate to all of section 438 except subsection (c), which will be the subject of further regulations to be issued at a future date.)

For the convenience of readers, section 438, (except subsection (c)) as amended reads as follows:

Sec. 438. (a) (1) (A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be recurred [sic] as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4) (A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution, or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of institutional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1), the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, which are created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or para-professional acting in his professional or para-professional capacity, or assisting in that capacity, and which are created, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment; provided, however, that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5) (A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b) (1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency who have been determined by such agency or institution to have legitimate educational interests;

(B) officials of other schools or school systems in which the student seeks or, intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 408(c) of this Act), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection; and

(D) in connection with a student's applications for, or receipt of, financial aid;

(E) State and local officials or authorities to which such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of the Internal Revenue Code of 1954; and

(I) subject to regulations of the Secretary in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

(2) No funds shall be made available under any applicable program to any education agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an eduction agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4) (A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such eduactional agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

Although the amendments to section 438 have resolved a number of issues originally raised about the statute, some new issues have been raised. In large part, the new statutory language has been repeated in these proposed rules. It may be necessary to further develop the rules in several areas as a result of the recent changes.

In order to facilitate comments, explanations of many of the substantive sections of the proposed rules are set out below. "Comment" sections following substantive sections were used as a format in lieu of a lengthy preamble for ease of reading and to highlight the substance of the proposed rules. The "comment" sections include several citations to the legislative history accompanying the amendments to section 438 (Cong. Rec. S. 21484–91 (daily ed., December 13, 1974) and H. Rept. No. 93–1619 (1974), at Cong. Rec. H. 12157–60 (daily ed., December 17, 1974)).

Reviewers should also note that where statutory language is repeated in the proposed rules, it is so indicated by use of brackets. The brackets will be deleted when the final regulations are published. With respect to the bracketed material, comments should be directed to the need (or lack of a need) for regulations, rather than to its substance.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed regulations to the School Records Task Force; c/o Room 5660, Department of Health, Education, and Welfare; 330 Independence Avenue, S.W.; Washington, D.C. 20201.

Comments received in response to this notice will be available for public inspection at the above office on weekdays during regular business hours. All relevant material received on or before March 7, 1975, will be considered.

Dated:

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

PART 99—PRIVACY RIGHTS OF PARENTS AND STUDENTS

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AUTHORITY: Sec. 438, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g) unless otherwise noted.

Subpart A—General

§ 99.1 Applicability of part.

(a) This part applies to all educational institutions to which funds are made available under any Federal [program for which the U.S. Commissioner of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.]

(20 U.S.C. 1230, 1232g)

(b) This part does not apply to an educational institution solely because students attending that institution receive benefits under one or more of the Federal programs referenced in paragraph (a) of this section, if no funds under those programs are made available to the institution itself.

(20 U.S.C. 1232g)

COMMENT

This section specifies the educational institutions which are subject to the requirements of this Part. Section 438 of the General Education Provisions Act, as amended (GEPA), sets out requirements for educational agencies and institutions receiving funds under "applicable program." Section 400 of GEPA defines "applicable program" to include programs administered by the Assistant Secretary for Education (ASE), the Commissioner of Education, and the Director of the National Institute of Education (NIE) "except where otherwise specified." Section 421 appears to be such a specified exception, since it limits coverage of Part C of GEPA to programs administered by the Commissioner:

> The provisions of this part shall apply to any program for which the Commissioner has administrative responsibility, as specified by law or by delegation of authority pursuant to law.

Section 438 was added to Part C of GEPA by Pub. L. 93-380 and therefore the requirements imposed by this section relate only to those institutions receiving funds from programs administered by the Commissioner.

As explained in the "Joint Statement in Explanation of Buckley/Pell Amendments" which accompanied the recent amendments to section 438:

> * * * by explicitly limiting the definition to those institutions participating in applicable programs, the amendment makes it clear that the Family Educational Rights and Privacy Act applies only to Office of Education programs and those programs delegated to the Commissioner of Education for administration. * * * (t)here has (sic) been some questions as to whether the Amendment's provisions should be applied to other HEW education-related programs such as Headstart or the educational research programs of the National Institute of Education. As rewritten, the limited nature of the Act's coverage should be clear. (Emphasis supplied)

(Cong. Rec. S.21488 (daily ed., December 13, 1974))

These requirements apply to all educational institutions which receive funds under programs administered by the Commissioner, but not, for example, to private schools which do not receive funds but whose students receive services under these programs through public educational institutions.

If a public educational institution maintained records on a private school student, the parents of that student would have the rights set out below regarding such records to the extent that such private school student could be said to be in attendance at the public institution.

A partial list of programs for which the Commissioner has administrative responsibility are set forth in the FEDERAL REGISTER of June 28, 1973, at 38 FR 17032, as amended. This list does not include programs added since April 13, 1970 (Pub. L. 91-230). (For some additional programs, see Pub. L. 92-318 (the Education Amendments of 1972) and Pub. L. 93-380 (the Education Amendments of 1974).)

§ 99.2 Purpose.

The purpose of this part is to set forth requirements governing the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(20 U.S.C. 1232g)

§ 99.3 Definitions.

As used in this Part:

"Act" means the General Education Provisions Act, Title IV of Pub. L. 90-247, as amended.

(20 U.S.C. 1232g)

"Commissioner" means the U.S. Commissioner of Education.

(20 U.S.C. 1232g)

"Directory information" means a [student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.]

(20 U.S.C. 1232g(a)(5)(A))

"Educational institution" or "educational agency or institution" means [any public or private agency or institution which is the recipient of funds under any] Federal program referenced in § 99.1(a).

(20 U.S.C. 1232g(d))

"Eligible student" means a student who [has attained eighteen years of age, or is attending an institution of postsecondary education].

(20 U.S.C. 1232 (a)(3))

"Education records" (a) mean [those records, files, documents, and other materials which] (1) [contain information directly related to a student; and] (2) [are maintained by an educational agency or institution, or by a person acting for such agency or institution.]

(b) The term does not include: (1) [records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;]

(2) [if the personnel of a law enforcement unit do not have access to education records under] § 99.30, [the records and documents of such law enforcement unit which] (i) [are kept apart from records described in] (a), (ii) [are maintained solely for law enforcement purposes, and] (III) [are not made available to persons other than law enforcement officials of the same jurisdiction.]

(3) [in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or]

(4) [records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, which are created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or para-professional capacity, or assisting in that capacity, and which are created, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment; provided, however, that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.]

(20 U.S.C. 1232g(a)(4)(A), (B))

"Institution of postsecondary education" means an institution which provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under State law.

(20 U.S.C. 1232g(d))

"Office and review board": The terms "Office" and "Review Board" mean the office and the review board described in § 99.60.

(20 U.S.C. 1232g)

"Panel" means a Hearing Panel, as described in § 99.67(a).

(20 U.S.C. 1232g(g))

"Parent" means a natural parent, an adoptive parent, or the legal guardian of a student.

(20 U.S.C. 1232g)

"Party" means an individual, agency or organization.

(20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable" means that the data or information includes (a) the name of a student, the student's parent, or other family member, (b) the address of the student, (c) a personal identifier, such as the student's social security number or student number, (d) a list of personal characteristics which would make it possible to identify the student with reasonable certainty, or (e) other information which would make it possible to identify the student with reasonable certainty.

(20 U.S.C. 1232g)

"Record" means information or data recorded in any medium, including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.

(20 U.S.C. 1232g)

"Secretary" means the Secretary of the U. S. Department of Health, Education, and Welfare.

(20 U.S.C. 1232g)

"Student" (a) means any person who is attending or has attended an educational institution and [with respect to whom] that [institution maintains education records or personally identifiable information]. (b) The term [does not include a person who has not been in attendance at such] [institution.]

(20 U.S.C. 1232g(a) (1), (2), and (6))

COMMENT

Most of the definitions repeat statutory language. The definition of "educational institution" repeats the statutory language in section 438(a)(3). Questions regarding educational institutions vis-a-vis their component units are addressed in later substantive sections: for example, the extent to which an institution (if it is a local school system or a university system) would face fund termination for violations of this part by a unit of that institution; and the question whether the various units may release records to each other without obtaining parental consent. See §§ 99.30(a) and (b), and 99.66.

The definition of "education records" repeats the statutory language in section 438(a)(4).

With respect to this definition, the Conference report on Sen. J. Res. 40 states:

> It is the intention of the conferees that the Department of Health, Education, and Welfare interpret the term "treatment" narrowly to limit the exemption for such records to those similar to those enumerated. It is not intended to apply to remedial educational records made or maintained by education professionals or paraprofessionals.

(H. Rept. No. 93-1619 (1974)), at Cong. Rec. H. 12157, 12160 (daily ed. December 17, 1974))

The definition of "personally identifiable" is based on language in the Conference Report (House Rep. 93-1211, p. 188 (1974)) on H.R. 69 (which became P.L. 93-380) that the phrase includes any information "which can easily be traced to students." Students can be personally identified in more ways than a name or number.

The term "record" is defined broadly to include all information and data maintained on a student in any medium.

This definition of "student" is based on sections 438(a) (1), (2), and (6). Subsections (a) (1) and (2) make it clear that former students are included in the term "student", as used in Section 438. Subsection (a)(6) makes it clear that applicants for admission are not granted rights under this legislation. However, once an "applicant" becomes a "student" by enrolling in and attending the institution, any admissions file which is an "education record" would become available.

§ 99.4 Student rights.

(a) For the purposes of this part, [whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.]

(20 U.S.C. 1232g(d))

(b) Section 438 of the Act shall not be read to preclude educational institutions from affording to students rights similar to those afforded to parents of students under that section.

(20 U.S.C. 1232g)

COMMENT

This section sets out the requirements of section 438(d), which transfers the rights accorded to parents under section 438 to the students themselves, referred to in these regulations as "eligible students". See the definition in § 99.3. Section 438(d) does not speak to the question of whether students may have rights comparable to those in section 438 concurrently with their parents before they reach age 18 or the postsecondary level of education. Such rights of students may be provided by State or local law or by institutional practice. "Student rights" are not limited by the legislation. This interpretation avoids some problems: students not having access to their own records, especially where they may be in an adversary relationship to their parents; teachers not being able to discuss the student's records with the student without parental consent; institutions not being able to release report cards to students without parental consent; students under 18 not being able to request their transcripts be sent to colleges or employers without parental consent; and so forth.

It is clear from the use of the word "only" in the statutory language, however, that once students reach age 18, or the postsecondary level prior to age 18, their parents no longer have any of the rights set out herein, except as provided in § 99.30(h).

§ 99.5 Notification by educational institutions.

(a) Each educational institution to which this part applies and which maintains records on students, shall inform [parents] and eligible students [of the rights accorded them] by this part.

(20 U.S.C. 1232g(e))

(b) In meeting the requirement set forth in paragraph (a) of this section, the educational institution shall provide notice to parents and eligible students, at least annually, of the following:

(1) the types of education records and information contained therein which are directly related to students and maintained by the institution;

(2) the name and position of the official responsible for the maintenance of each type of record, the persons who have access to those records, and the purposes for which they have access;

(3) the policies of the institution for reviewing and expunging those records;

(4) the procedures established by the institution under § 99.13;

(5) the procedures [including those set forth in subpart C of this part] for challenging the content of education records;

(6) the cost if any which will be charged to the parent or eligible student for reproducing copies of records under § 99.13(c);

(7) [the categories of information which] the institution [has designated as] directory information under § 99.40.

(8) the other rights and requirements set forth in this part.

(c) The notice provided to a parent or eligible student under this section shall be in the language of the parent or eligible student.

(20 U.S.C. 1232g (a)(5)(B) and (e))

COMMENT

This section is based upon the requirement in section 438(e) that institutions "inform the parents * * * of the rights accorded them by this section (438)" and the requirement for notice in section 438 (a)(5)(B).

The requirement in paragraph (b) that notice must be provided at least annually is intended to make the notice requirement meaningful and to ensure that parents and students are likely to actually receive notice. It does not prescribe what means may be reasonable because what might be reasonable for a one-room schoolhouse would not be reasonable for a university.

Paragraph (b)(1) requires that parents be informed about what types of records relating to students are maintained by the institution so that they can determine what records they might want to review.

Paragraph (b)(2) is necessary so that the parents will know who controls the records and release of information from the records and what parties may obtain information without their consent.

Paragraph (b)(3) is necessary so the parents will know exactly how and when to request a hearing and what procedures must be used.

Paragraph (b)(5) is necessary so that the parents will know how much it will

cost to make copies of any part of a record, and who must bear the cost in a given situation.

Paragraph (b)(6) is necessary to ensure that institutions inform parents of any other rights set out herein, such as access rights and when rights transfer to student.

Paragraph (b)(7) is intended to implement the notice requirement of section 438(a)(5)(B).

§ 99.6 Waivers.

(a) Educational institutions shall not require parents or eligible students to waive their rights under this part.

(Cong. Rec. S. 21489 (daily ed., December 13, 1974))

(b) [A student or a person applying for admission may waive his] or her [right of access to confidential statements described in] § 99.12(c) [except that such waiver shall apply to recommendations only if] (1) [the student is, upon request, notified of the names of all persons making confidential recommendations and] (2) [in the case of recommendations described in] § 99.12(c) [such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.]

(20 U.S.C. 1232g(a)(1) (B) and (C))

COMMENT

Since an educational institution is precluded from "effectively" preventing the exercise of access rights in section 438(a)(1), an institution could not require students to waive such rights. However, section 438(a)(1) (B) and (C) allows students to waive their rights under certain conditions.

Subpart B—Access to Records

§ 99.11 Access.

Educational agencies or institutions shall provide parents of students (or eligible students) [who are or have been in attendance at a school of such agency or at such institution, as the case may be] access to [the education records of] the students, except as set out in § 99.12.

(20 U.S.C. 1232g(a)(1)(A))

COMMENT

The language "shall provide parents of students (or eligible students) access" is used in place of the statutory language "policy of denying, or which effectively prevents * * * the right to inspect and review" and "shall establish appropriate procedures for the granting of a request * * * for access." The former states succinctly what is required for the educational institution and is intended to foreclose any interpretation that might be advanced that an educational institution would not be violating the law if it did not have a "policy" of denying access, even though it "effectively prevented" access on an ad hoc basis or in other limited circumstances.

§ 99.12 Limitations on access.

Educational institutions are not required to [make available to students in institutions of postsecondary education the following materials:]

(a) [Financial records of the parents of the student or any information contained therein;]

(b) [Confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;]

(c) [If the student has signed a waiver of the student's right of access under this subsection in accordance with] § 99.6(b), confidential recommendations—]

(1) [respecting admission to any educational agency or institution,]

(2) [respecting an application for employment and]

(3) [respecting the receipt of an honor or honorary recognition].

(20 U.S.C. 1232g(a)(1)(B))

COMMENTS

This section sets out the limitations on access in section 438(a)(1)(B).

§ 99.13 Access rights.

The right of access specified in § 99.11 shall include:

(a) The right to be provided a list of the types of education records which are maintained by the institution and are directly related to students;

(b) [The right to inspect and review] the content of those records;

(c) The right to obtain copies of those records, which may be at the expense of the parent or the eligible student (but not to exceed the actual cost to the educational institution of reproducing such copies);

(d) The right to a response from the institution to reasonable requests for explanations and interpretations of those records;

(e) The right to an opportunity for a hearing to challenge the content of those records under subpart C of this part; and

(f) [If any material or document in the education record of a student includes information on more than one student,] the right [to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material.]

(20 U.S.C. 1232g(a)(1)(A))

COMMENTS

Section 438(a)(1)(A) establishes a right "to inspect and review" and provides that procedures must be established for allowing access. This section attempts to make a "right of access" meaningful. Authority for making such judgments may be found in section 438(f) which states that the Secretary shall take "appropriate actions" to enforce provisions of the section. "Appropriate actions" may be interpreted to include the issuance of regulations which further the statutory intent.

Paragraph (a) is necessary because access could not be meaningful if parents or eligible students were not informed of what types of records the institution might have on a student.

Paragraph (b) sets out statutory requirements.

Paragraph (c) is necessary because a right to obtain copies is an essential part of a right of access. It should be noted that a counterargument may be made against including a right to copy: such a right might subject parents or students to undesirable pressures from third parties to turn over their entire records (for third parties to make admission, employment, credit rating, or other decisions) and that such a right should not be included in a right of access.

Paragraph (d) is necessary so that parents or eligible students may have an opportunity to have any part of the record explained to them.

Paragraph (e) sets out the section 438(a)(2) requirement which is set out more fully in subpart C;

Paragraph (f) sets out statutory language of section 438(a)(1)(A)). The Buckley/Pell statement contains the following elaboration:

In general, it is intended that the parent would be shown the actual documents contained in the child's education records. However, under certain circumstances this might not be possible—where, for instance, it is impossible to separate information about one student from that about others. If a student's name is one in a long list of names, it would violate the others' right to privacy to have the entire list shown to that student's parents. In such a situation, the responsibility of the educational agency or institution is to make the information concerning the student known to the parent without actually having to show him the document.

(Cong. Rec. S. 21488 (daily ed., December 13, 1974)

§ 99.14 Destruction of records.

Educational institutions are not precluded under this part from destroying any records, if not otherwise precluded by law, except that access shall be granted under § 99.11 prior to the destruction of education records where the parent or eligible student has requested such access.

(20 U.S.C. 1232g(a))

COMMENT

The statute does not by its terms preclude the destruction of records.

In a floor discussion of the amendment to section 438, the following colloquy took place between Senators McIntyre and Pell:

Mr. McINTYRE. * * * I would appreciate the Senator's telling me whether my understandings on these three points are correct.

The act is not designed to require the retention of records or to require that institutions continue to retain and use records that have been used in the past. In fact, it could be said that the act's purposes are best achieved when fewer records are kept and used.

Mr. PELL. * * * the points he has raised are correct.

(Cong. Rec. S.21484, (daily ed., December 13, 1974))

It seems reasonable to assume that it would be appropriate for institutions to review their record-keeping policies and remove and destroy inappropriate or useless data which should not be maintained. However, it would not be consistent with the underlying purposes of the legislation for institutions to destroy information after parents have requested access to it without allowing the parents an opportunity to review the information.

§ 99.15 Procedures for granting access.

Each educational institution [shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children] or by eligible students for access to their own education records [within a reasonable period of time, but in no case] shall access be withheld [more than forty-five days after the request has been made.]

(20 U.S.C. 1232g(a)(1)(A))

COMMENT

This section is drawn from section 438(a)(1)((A)) of this Act.

Subpart C—Challenges to the Content of Records

§ 99.20 Right to a hearing.

Each educational agency and institution shall provide parents [of students], and eligible students, [who are or have been in attendance at a school of such agency or at such institution] [an opportunity for a hearing by such agency or institution] [to challenge the content of such students' education records in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents] and eligible students [respecting the content of such records.]

(20 U.S.C. 1232g(a)(2))

COMMENT

This section is drawn from section 438(a)(2) of the Act.

The Buckley/Pell Statement provides the following elaboration as to what types of hearings and challenges are contemplated by section 438(a)(2):

The amendment is intended to require educational agencies and institutions to conform to fair information record-keeping practices. It is not intended to overturn established standards and procedures for the challenge of substantive decisions made by the institution. It is intended, however, to open the bases on which decisions are made to more scrutiny by the students, or their parents about whom decisions are being made, and to give them the opportunity to challenge and to correct—or at least enter an explanatory statement—inaccurate, misleading, or inappropriate information about them which may be in their files and which may contribute, or have contributed to an important decision made about them by the institution.

The law intends that parents have a full and fair opportunity to present evidence to show that their children's records contain inaccurate, misleading or otherwise inappropriate information. The hearing should be held and the institution's decision rendered within a reasonable period after the parent's request. There has been much concern that the right to a hearing will permit a parent or student to contest the grade given the student's performance in a course. That is not intended. It is intended only that there be procedures to challenge the accuracy of institutional records which record the grade which was actually given. Thus, the parents or student could seek to correct an improperly recorded grade, but could not through the hearing required pursuant to this law contest whether the teacher should have assigned a higher grade because the parents or student believe that the student was entitled to the higher grade.

On the other hand, if a child has been labeled mentally or otherwise retarded and put aside in a special class or school, parents would be able to review the materials in the record which led to this institutional decision, and perhaps seek professional assistance, to see whether these materials contain inaccurate information or erroneous evaluations about their child.

(Cong. Rec. S.21488 (daily ed., December 13, 1974).)

§ 99.21 Informal proceedings.

Educational institutions may attempt to settle a dispute with the parent of a student or the eligible student regarding the content of the student's education records through informal meetings and discussions with the parent or eligible student.

(20 U.S.C. 1232g(a)(2))

COMMENT

Section 438(a)(2), which requires "an opportunity for a hearing" does not preclude attempts to settle disputes by informal means. Formal hearing procedures may only be necessary when such informal means are not satisfactory to the parent (or eligible student,) or the educational institution.

§ 99.22 Formal proceedings.

Upon the request of either party (the educational institution or the parent (or eligible student)), the hearing required by § 99.20 shall be conducted under the procedures adopted and published by the institution under § 99.5(b)(5). Such procedures shall include at least the following elements:

(a) The hearing shall be conducted and decided within a reasonable period of time following the request for the hearing;

(b) The hearing shall be conducted, and the decision rendered, by an institutional official or other party who does not have a direct interest in the outcome of the hearing;

(c) The parents or eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under § 99.20; and

(d) The decision shall be rendered in writing within a reasonable period of time after the conclusion of the hearing.

(20 U.S.C. 1232g(a)(2))

COMMENT

This section specifies certain due process procedures which are felt to be needed for a full and fair hearing.

The Buckley/Pell Statement provides the following guidance:

The law is not specific concerning the format, procedure, or mechanism for the conduct of such a hearing at the local level. It is the intent of the sponsors of these amendments that again a rule of reason would be followed by those participants involved. Since the hearing is to be conducted at the local level, a detailed specification of procedures cannot be drawn that could possibly apply to each of the thousands of school districts and colleges across the nation. Each has a slightly different organizational structure and pattern of procedure. Obviously, the hearing mechanism must be adapted in each instance to conform to these individual differences. In some cases, a school district might wish to offer the parent a hearing at the district level; in other instances, disputes about the content of records might be better handled at the local school level. It is not the intent of the Amendment to burden schools with onerous hearing procedures.

(Cong. Rec. S. 21488 (daily ed., December 13, 1974).)

Subpart D—Release of Personally Identifiable Records

§ 99.30 Consent.

Educational institutions shall not permit access to or [the release of education records or personally identifiable information contained therein other than directory information] [of students without the written consent of their parents] (or the written consent of an eligible student, to any party other than the following:

(a) [Other school officials, including teachers within the educational institution or local educational agency who have been determined by such agency or institution to have legitimate educational interests;]

(b) [Officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;]

(c) Subject to the conditions set forth in § 99.37, [authorized representatives of (1) the Comptroller General of the United States, (2) the Secretary,] (3) the Commissioner, the Director of the National Institute of Education, or the Assistant Secretary for Education (20 U.S.C. 1221e-3(c)), or (4) [State educational authorities;]

(d) [In connection with a student's application for, or receipt of, financial aid;]

(e) [State and local officials or authorities to which such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;] [Nothing in] [this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder;]

(f) [Organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;]

(g) [Accrediting organizations in order to carry out their accrediting functions;]

(h) [Parents of a dependent student of such parents, as defined in section 152 of the Internal Revenue Code of 1954;] or

(i) [In compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or supoenas in advance of the compliance therewith by the educational institution.]

(20 U.S.C. 1232g(b) (1), (2))

COMMENT

This section sets out the general consent requirement (and exceptions thereto) for releasing data from student records. (See section 438(b) (1) and (2) (the latter for the limitation on access as well as release) and the exceptions set out in sections 438(b)(1) (A)-(H) and 438(b)(2)(B).)

Paragraph (a) sets out the statutory language of (b)(1)(A). It should be noted that the term "transfer" in paragraph (b) refers to the transfer of the student's record, and not the transfer of the student.

Paragraph (c) includes a list of those officials who come within the definition of "administrative heads of education agencies" under section 408(c) of GEPA, rather than referencing a definition elsewhere in GEPA (for ease of comprehension).

Paragraphs (d)-(h) set out 438(b)(1)(D)-(H). Subparagraphs (E)-(H) were added in the amendment to section 438.

Paragraph (i) sets out 438(b)(2)(B) as being a fifth exception to the 438 (b)(1) requirement for parental consent.

It should be noted that the requirements in section 438(b) relate only to release of recorded data or information from recorded data that is personally identifiable. There are no restrictions on oral communications not based on information from education records, nor does section 438 forbid release of data that is not personally identifiable to a student or his or her family (for example, release of statistical information).

§ 99.31 Content of consent.

Where the consent of a parent or eligible student is required under this part for the release of education records, it shall be in writing, be signed and dated by the person giving such consent, and shall include (a) a specification of the [records to be released,] (b) [the reasons for such release], and (c) the names of the parties [to whom] such records will be released.

(20 U.S.C. 1232g(b)(1), (2)(A))

COMMENT

This section is based on section 438(b)(1) and (b)(2) of this Act.

§ 99.32 Copy to be provided to parents or eligible students.

Where the consent of a parent or eligible student is required under this part for the release of education records, [a copy of the records to be released] shall be provided on request to (a) [the student's parents] (or the eligible student) and (b) [the student] who is not an eligible student, [if desired by the parents].

(20 U.S.C. 1232g(b)(2)(A)

COMMENT

This section sets out one of the requirements of section 438(b)(2)(A) and interprets the phrase "if desired by the parents" as modifying both "parents" and "the student" so that copies need not be automatically sent out whether or not desired by the parents. This seems justifiable because the parents or eligible students may be seeking the release of data for their own purposes and may not want a copy of anything released (for example, they would not necessarily want a duplicate copy of a transcript each and every time they want it sent to a college). Further, it would be wasteful to require institutions to provide copies for the parents if they do not want copies. In any cast, the regulation provides parents and eligible students with the right to obtain copies on request.

§ 99.33 Authority of parent to give consent.

(a) Except as otherwise provided in this section, any parent of a student may give a written parental consent required under this part.

(b) Where parents are separated or divorced, a written parental consent required under this part may be obtained from either parent, subject to any agreement between such parents or court order governing the rights of such parents.

(c) In the case of a student whose legal guardian is an institution, a party independent of the institution shall be appointed pursuant to State and local law to give a written parental consent required under this part.

(20 U.S.C. 1232g(b)(1), (2))

COMMENT

This section attempts to make clear what is meant by "parental" consent.

Paragraph (a) provides that consent is required of only one parent.

Paragraph (b) is proposed to deal with situations where court orders or separation agreements affect the rights of the parents to exercise control over decisions affecting the child.

Paragraph (c) is designed to avoid situations where institutions may have interests adverse to those of the child and should not control decisions about what information may be released about the child (for example, if the institution is approached by a researcher who will provide grant funds to the institution for a study of the children, the institution may not make a decision which adequately protects the children's privacy rights). The child/student should be represented by a third party who has no conflicting interests.

There may still be problems under this provision if the third party guardian is not duly appointed.

§ 99.35 Release of information for health or safety emergencies.

(a) Educational institutions may release information from education records to [appropriate persons] [in connection with an emergency] [if the knowledge of such information is necessary to protect the health or safety of a student or other persons.]

(b) The factors which should be taken into account in determining whether records may be released under this section include the following:

(1) The seriousness of the threat to the health or safety of the student or other persons;

(2) The need for such records to meet the emergency;

(3) Whether the persons to whom such records are released are in a position to deal with the emergency; and

(4) The extent to which time is of the essence in dealing with the emergency.

(c) Paragraph (a) of this section will be strictly construed.

(20 U.S.C. 1232g(b)(1)(I))

COMMENT

This section is required by section 438(b)(1)(I). The Buckley/Pell Statement provides the following elaboration:

> . . . under certain emergency situations it may become necessary for an educational agency or institution to release personal information to protect the health or safety of the student or other students. In the case of the outbreak of an epidemic, it is unrealistic to expect an educational official to seek consent from every parent before a health warning can be issued. On the other hand, a blanket exception for "health or safety" could lead to unnecessary dissemination of personal information. Therefore, in order to assure that there are adequate safeguards on this exception, the amendments provided that the Secretary shall promulgate regulations to implement this subsection. It is expected that he will strictly limit the applicability of this exception.
> (Cong. Rec. S.21849 (daily ed., December 13, 1974))

It was determined that providing any list of examples would inevitably not be inclusive. In determining whether a bona fide emergency exists, institutional officials should be aware that the exception is to be construed narrowly. The criteria provided in paragraph (b) are intended as factors which would normally be used as a matter of common sense.

§ 99.36 Release to other school officials.

For the purposes of the exception set forth in § 99.30(a), release of records

among the component units of an educational institution (such as the various colleges which may comprise a university) will be considered to be a release to other school officials of that institution.

(20 U.S.C. 1232g(b)(1)(A))

§ 99.37 Release to Federal and State officials.

(a) Nothing in this part [shall preclude authorized representatives of] the officials listed in § 99.30(c) [from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs].

(20 U.S.C. 1232g(b)(3))

(b) As used in this section, the term "authorized representatives" may include contractors.

(c) Except (1) where the consent of a parent or eligible student has been obtained pursuant to §§ 99.31–99.33 (subject to the provisions of section 440 of the General Education Provisions Act), or (2) [when collection of personally identifiable information is specifically authorized by Federal law, any data collected by] the officials listed in § 99.30 (c) [shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.]

COMMENT

This section sets out the requirements of section 438(b)(3).

Section 438(b)(3) provides that institutions may not deny the officials listed in § 99.30(c) access to records for certain purposes, but may limit what data they may take away from such records.

It was considered whether this section should include a provision stating what limits are or are not placed on data-collection by the Office for Civil Rights (OCR). However, it has been determined that section 438 does not restrict OCR's ability to obtain personally identifiable data in connection with the enforcement of civil rights requirements.

§ 99.38 Record of access.

(a) [Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all] parties [other than those specified in] § 99.30(a) [which have requested or obtained access to a student's education records maintained by such educational agency or institution and which will indicate specifically the legitimate interest that each such] party [has in obtaining this information.]

(b) [Such record of access shall be available only to parents] or eligible students, [to the school official and his] or her [assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of] § 99.30 (a) and (c) [as a means of auditing the operation of the system.]

(20 U.S.C. 1232g(b)(4)(A))

COMMENT

This section sets out the requirements of section 438(b)(4)(A).

§ 99.39 Transfer of information by third parties.

(a) Educational institutions shall not release [personal information] on a student except [on the condition that] the party to which the information is being [transferred] [will not permit any other party to have access to such information without the written consent of the parents] or of the eligible student.

(b) Educational institutions shall include, with any information released to a party under paragraph (a) of this section, a written statement which informs such party of the requirement set forth in paragraph (a) of this section.

(20 U.S.C. 1232g(b)(4)(B))

COMMENT

This section sets out the requirement contained in section 438(b)(4)(B) and requires institutions to provide a written statement to those to whom data is released that they cannot subsequently release the data, in personally identifiable form, to any other party without obtaining consent of a parent or of an eligible student.

§ 99.40 Directory information.

[Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.]

(20 U.S.C. 1232g(a)(5)(B))

COMMENT

This section is required by section 438 (a)(5)(B).

Subpart E—Enforcement

§ 99.60 Office and review board.

The Secretary is required to establish or designate an office and review board under section 438(g) of the Act. The office will investigate, process, and review violations, and complaints which may be filed concerning alleged violations of the provisions of section 438 of the Act and regulations in this part. The review board will adjudicate cases referred to it by the office.

(20 U.S.C. 1232g(g))

§ 99.61 Assurances required—general.

Every application, proposal, and plan submitted to the Commissioner by an educational institution (for a grant, contract, loan, or any other type of funding under the programs referenced in § 99.1(a)) shall, as a condition to its approval and the extension of any Federal funding pursuant to the application, (a) contain or be accompanied by an assurance that the educational institution making such application is in compliance and will continue to comply with the provisions of section 438 of the Act and the regulations in this part, or (b) make specific reference to such an assurance previously filed with the Secretary by that institution.

(20 U.S.C. 1232g(f))

COMMENT

While there is no explicit requirement for such an assurance in section 438, section 438(f) states the Secretary shall take appropriate action to enforce the provisions of section 438. Further, the statutory language "no funds shall be made available" would seem to authorize the Secretary to require some sort of assurance as a condition of funding to enable the Commissioner to know whether he is making funds available to a recipient who is in a position to comply with the requirement. Because some agencies or institutions may not be able to come into compliance immediately, because of conflicting State laws, section 99.63 makes allowances for such circumstances. This approach is authorized by 438(f), which states that termination may not occur until the Secretary has determined that compliance cannot be obtained by voluntary means.

§ 99.62 Assurances required—subgrants and subcontracts.

Any educational institution which receives funds under a Federal program referenced in § 99.1(a) shall, as a condition to making any of such funds available to another educational institution (whether by subgrant, contract, subcontract, or otherwise), require such second institution to submit to it an assurance that the other institution is in compliance and will continue to comply with the provisions of section 438 of the Act and the regulations in this part.

(20 U.S.C. 1232g(f))

§ 99.63 Assurances—conflict with State or local law.

(a) In the event that an educational institution cannot provide the assurance required in §§ 99.61 or 99.62 because a State or local law conflicts with the provisions of section 438 of the Act or the regulations in this part, the institution shall so state in each of its applications, proposals, and plans submitted to obtain Federal funds which are subject to this part, given the text and legal citation of the conflicting law.

(b) (1) The Secretary may waive the requirements in §§ 99.61 and 99.62 for a limited period of time under the circumstances set forth in paragraph (a) of this section.

(2) The waiver will be granted only for such period as may be reasonably necessary for the pertinent State or local legislative body (and/or executive) to

have an opportunity to alter the conflicting State or local law to bring it into conformity with section 438 of the Act and this part.

(c) During the period of a waiver under paragraph (b) of this section, the educational institution to which such waiver applies will not be penalized with regard to the availability of Federal funds.

(20 U.S.C. 1232g(f))

§ 99.64 Reports and records.

Each educational institution shall (a) make such reports, in such form and containing such information, as the Office or the Review Board may require to carry out its functions under this part, and (b) keep such records and afford such access thereto as the Office or the Review Board may find necessary to assure the correctness of such reports and compliance with the provisions of section 438 of the Act and this part.

(20 U.S.C. 1232g (f), (g))

§ 99.65 Complaint procedure.

(a) Complaints regarding violations of section 438 of the Act or of the regulations in this part shall be submitted to the Office in writing.

(b) A complaint must be received by the Office not later than 180 days from the date of the alleged violation unless the time for submission is extended by the Office.

(c)(1) The Office will notify each complainant and the educational institution against which the violation has been alleged, in writing, that the complaint has been received.

(2) The notification to the institution under paragraph (c)(1) of this section shall include the substance of the alleged violation and such institution shall be given an opportunity to submit a written response.

(d) (1) The Office will investigate all timely complaints received to determine whether there has been a failure to comply with the provisions of section 438 of the Act or the regulations in this part, and may permit further written or oral submissions by both parties.

(2) Following its investigation, the Office will provide written notification of its findings, and the basis for such findings, to the complainant and the institution involved.

(3) If the Office finds that there has been a failure to comply, it will include in its notification under paragraph (d)(2) of this section, the specific steps which must be taken by the educational institution to bring such institution into compliance. The notification shall also set forth a reasonable period of time, given all of the circumstances of the case, for the institution to voluntarily comply.

(e) If the educational institution does not come into compliance within the period of time set under paragraph (d)(3) of this section, the matter will be referred to the Review Board for a hearing under §§ 99.66–99.69, inclusive.

§ 99.66 Termination of funding.

If the Secretary, after reasonable notice and opportunity for a hearing by the Review Board, (1) finds that an educational institution has failed to comply with the provisions of section 438 of the Act, or of the regulations in this part, and (2) determines that compliance cannot be secured by voluntary means, he shall issue a decision, in writing, that no funds under any of the Federal programs referenced in § 99.1(a) shall be made available to that educational institution (or, at the Secretary's discretion, to the unit of the educational institution affected by the failure to comply) until there is no longer any such failure to comply.

(20 U.S.C. 1232g(f))

§ 99.67 Hearing procedures.

(a) *Panels.* The Chairman of the Review Board shall designate Hearing Panels to conduct one or more hearings under § 99.66. Each such Panel shall consist of not less than three members of the Review Board. The Review Board may, at its discretion, sit for any hearing or class of hearings. The Chairman of the Review Board shall designate himself or any other member of a Panel to serve as Chairman.

(b) *Procedural rules.* (1) With respect to hearings involving, in the opinion of the Panel, no dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each party to the proceeding an opportunity for presenting his case at the option of the Panel (i) in whole or in part in writing or (ii) in an informal conference before the Panel which shall afford each party: (*a*) Sufficient notice of the issues to be considered (where such notice has not previously been afforded); and (*b*) an opportunity to be represented by counsel.

(2) With respect to hearings involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall afford each party an opportunity, which shall include, in addition to provisions required by subparagraph (1)(ii) of this paragraph, provisions designed to assure to each party the following:

(i) An opportunity for a record of the proceedings;

(ii) An opportunity to present witnesses on the party's behalf; and

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.

(20 U.S.C. 1232g(g))

COMMENT

This section and the sections which follow are drawn, with some modification, from the procedures established by the Secretary for the Grant Appeals Board, 45 CFR Part 16.

§ 99.68 Hearing before Panel or a Hearing Officer.

A hearing pursuant to § 99.67(b)(2) shall be conducted, as determined by the Panel Chairman, either before the Panel or a hearing officer. The hearing officer may be (a) one of the members of the Panel or (b) a nonmember who is appointed as a hearing examiner under 5 U.S.C. 3105.

(20 U.S.C. 1232g(g))

§ 99.69 Initial decision; final decision.

(a) The Panel shall prepare an initial written decision, which shall include findings of fact and conclusions based thereon. When a hearing is conducted before a hearing officer alone, the hearing officer shall separately find and state the facts and conclusions which shall be incorporated in the initial decision prepared by the Panel.

(b) Copies of the initial decision shall be mailed promptly by the Panel to each party (or to the party's counsel), and to the Secretary with a notice affording such party an opportunity to submit written comments thereon to the Secretary within a specified reasonable time.

(c) The initial decision of the Panel transmitted to the Secretary shall become the final decision of the Secretary, unless, within 25 days after the expiration of the time for receipt of written comments, the Secretary advises the Review Board in writing of his determination to review such decision.

(d) In any case in which the Secretary modifies or reverses the initial decision of the Panel, he shall accompany such action by written statement of the grounds for such modification or reversal, which shall promptly be filed with the Review Board.

(e) Review of any initial decision by the Secretary shall be based upon such decision, the written record, if any, of the Panel's proceedings, and written comments or oral arguments by the parties, or by their counsel, to the proceedings.

(f) No decision under this section shall become final until it is served upon the educational institution involved or its attorney.

(20 U.S.C. 1232g(f))

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