# federal register

TUESDAY, MAY 20, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 98

Pages 21927–22119

PART I


## HIGHLIGHTS OF THIS ISSUE

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



(Continued inside)



May 20, 1975—Pages 21927–22119

# reminders

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

**Rules Going Into Effect Today**

DOT/FAA—Airworthiness directives; Lockheed ..... 16298; 4–11–75

**ATTENTION: Questions, corrections, or requests for information regarding the contents of this issue only may be made by dialing 202–523–5284. For information on obtaining extra copies, please call 202–523–5240. To obtain advance information from recorded highlights of selected documents to appear in the next issue, dial 202–523–5022.**

federal register

Area Code 202 Phone 523–5240

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $5.00 per month or $45 per year, payable in advance. The charge for individual copies is 75 cents for each issue, or 75 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

# contents

# list of cfr parts affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1974, and specifies how they are affected.

### 3 CFR

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:

Memorandum of May 9, 1975 ..... 21927

### 5 CFR

213 (4 documents) ..... 21929

### 7 CFR

908 ..... 21929, 21930

PROPOSED RULES:

915 ..... 21980

### 9 CFR

PROPOSED RULES:

303 ..... 21982
381 ..... 21982

### 10 CFR

213 ..... 21930

### 12 CFR

208 ..... 21931

### 14 CFR

71 ..... 21931

PROPOSED RULES:

1 ..... 22110
23 ..... 22110
25 ..... 22110
27 ..... 22110
29 ..... 22110
43 ..... 22110
75 ..... 21986
91 ..... 22110
135 ..... 22110

### 15 CFR

370 ..... 21931
371 ..... 21931
373 ..... 21931
374 ..... 21931
376 ..... 21931

### 15 CFR—Continued

385 ..... 21932
386 ..... 21932
390 ..... 21932

### 16 CFR

13 ..... 21932

### 18 CFR

PROPOSED RULES:

2 ..... 22006
154 ..... 22006
157 ..... 22006

### 19 CFR

162 ..... 21932

### 20 CFR

PROPOSED RULES:

416 ..... 21986

### 21 CFR

11 ..... 21932
121 ..... 21934

### 23 CFR

750 ..... 21934

### 24 CFR

215 ..... 21935

### 26 CFR

PROPOSED RULES:

31 ..... 21965
301 ..... 21965

### 27 CFR

PROPOSED RULES:

178 ..... 21961
181 ..... 21961

### 28 CFR

20 ..... 22114
50 ..... 22119

### 29 CFR

1908 ..... 21935

### 40 CFR

419 ..... 21939

PROPOSED RULES:

2 ..... 21987
60 ..... 21987
61 ..... 21987
79 ..... 21987
125 ..... 21987
167 ..... 21987
180 ..... 21987

### 41 CFR

114-47 ..... 21954

### 45 CFR

100a ..... 21954
183 ..... 21957
184 ..... 21954

### 46 CFR

30 ..... 21958
151 ..... 21958

### 47 CFR

1 ..... 21958

PROPOSED RULES:

1 ..... 22092
73 (3 documents) ..... 22002-22005

### 49 CFR

1033 ..... 21959
1121 ..... 21959
1249 ..... 21959

### 50 CFR

PROPOSED RULES:

17 (2 documents) ..... 21974, 21977
20 ..... 21980
227 ..... 21982

# CUMULATIVE LIST OF PARTS AFFECTED—MAY

**The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during May.**

## 3 CFR

PROCLAMATIONS:

3279 (Amended by Proc. 4370) ..... 19421
4370 ..... 19421
4371 ..... 19419
4372 ..... 20255
4373 ..... 20257
4374 ..... 20791

EXECUTIVE ORDERS:

7522 (See PLO 5497) ..... 18997
11803 (Amended by EO 11857) ..... 20261
11814 (Amended by EO 11855) ..... 19423
11837 (See EO 11857) ..... 20261
11842 (See EO 11857) ..... 20261
11855 ..... 19423
11856 ..... 20259
11857 ..... 20261
11858 ..... 20263
11859 ..... 20265

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS

Memorandum of April 24, 1975 (2 documents) ..... 20605, 20607
Memorandum of April 25, 1975 ..... 20609
Memorandum of May 9, 1975 ..... 21927

## 4 CFR

400 ..... 19429
411 ..... 19425

PROPOSED RULES:

412 ..... 19486

## 5 CFR

9 ..... 20259
213 ..... 19429, 19799, 21927

PROPOSED RULES:

2411 ..... 21488
2413 ..... 21488

## 7 CFR

52 ..... 19429
55 ..... 20055
56 ..... 20055
59 ..... 20057, 20941
68 ..... 21467
70 ..... 20060
102 ..... 19011
225 ..... 20611
301 ..... 19430, 21023, 21693
354 ..... 19633, 19828
621 ..... 20941
622 ..... 20941
730 ..... 20060
900 ..... 20267
905 ..... 20061, 21467
907 ..... 19009, 20062, 21023
908 ..... 19010, 19438, 20063, 20611, 21023, 21468, 21929, 21930
909 ..... 20611
910 ..... 19200, 20267, 21469
916 ..... 20063, 21693
917 ..... 19633, 20064, 21694
918 ..... 19828

## 7 CFR—Continued

944 ..... 20065, 21468
1001 ..... 19829
1002 ..... 19829
1004 ..... 19829
1007 ..... 21469
1011 ..... 19634, 21469
1015 ..... 19829
1036 ..... 19829
1040 ..... 19829
1427 ..... 21469
1488 ..... 19439
1813 ..... 21696
1822 ..... 21024
1842 ..... 21700

PROPOSED RULES:

52 ..... 19830
271 ..... 20284
726 ..... 20095
911 ..... 19479, 21033
915 ..... 21033, 21980
917 ..... 21483
930 ..... 21483
944 ..... 21735
953 ..... 19479
1011 ..... 20095
1030 ..... 21033
1033 ..... 20095
1090 ..... 20095
1101 ..... 20095
1121 ..... 20004
1126 ..... 20004
1127 ..... 20004
1128 ..... 20004
1129 ..... 20004
1130 ..... 20004
1139 ..... 21034
1408 ..... 19830
1823 ..... 20284

## 8 CFR

211 ..... 21700
242 ..... 20816

## 9 CFR

73 ..... 20612
91 ..... 20941
97 ..... 20065
112 ..... 20066, 20941
113 ..... 20066, 20941

PROPOSED RULES:

92 ..... 19480
303 ..... 21982
381 ..... 21982

## 10 CFR

0 ..... 20268
211 ..... 20941
213 ..... 19799, 21930
50 ..... 19439
303 ..... 20465
305 ..... 20486
307 ..... 20489

RULINGS:

1975–4 ..... 19635
1975–5 ..... 19800

## 10 CFR—Continued

PROPOSED RULES:

2 ..... 20110
21 ..... 20110
31 ..... 20110
35 ..... 20110
40 ..... 20110
205 ..... 20956
211 ..... 19660
212 ..... 19219, 19659, 20654

## 12 CFR

7 ..... 21700
9 ..... 20612
207 ..... 19636
208 ..... 21931
220 ..... 19636
221 ..... 19636
226 ..... 21470
523 ..... 19193, 21025
541 ..... 20944
544 ..... 20944
545 ..... 20942, 20944, 21025
552 ..... 20945
563 ..... 21025
563b ..... 19801

PROPOSED RULES:

202 ..... 20827
226 ..... 19489
228 ..... 19495

## 13 CFR

121 ..... 20951
306 ..... 19443

PROPOSED RULES:

121 ..... 20110
122 ..... 19021
123 ..... 19022

## 14 CFR

37 ..... 19636
39 ..... 19193, 19194, 19443, 19808, 20068, 20268, 20816, 20817, 20951, 21026, 21471, 21704
71 ..... 18977, 18978, 19444, 19809, 20068, 20069, 20269, 20612, 20952, 21472, 21931
73 ..... 18978
97 ..... 18978, 20069, 21026
121 ..... 19638
135 ..... 21704
223 ..... 18979
287 ..... 19639
288 ..... 19639, 20612
389 ..... 19809, 20613

PROPOSED RULES:

Ch. I ..... 20289
1 ..... 21866, 22110
23 ..... 21866, 22110
25 ..... 21485, 22110
27 ..... 21866, 22110
29 ..... 21866, 22110
33 ..... 21866
35 ..... 21866
39 ..... 20289
43 ..... 22110

46 CFR

30 ..... 21958
151 ..... 21958
294 ..... 20086
310 ..... 19643

PROPOSED RULES:

32 ..... 19651
50 ..... 19651
52 ..... 19651
53 ..... 19651
54 ..... 19651
56 ..... 19651
58 ..... 19651
63 ..... 19651
547 ..... 20957

47 CFR

1 ..... 19198, 20924, 21958
2 ..... 20822, 20924
15 ..... 21030
73 ..... 19199, 19644, 21030, 21732
81 ..... 20924
83 ..... 19644–19646, 21031, 21474
87 ..... 19649, 20924, 21732

47 CFR—Continued

89 ..... 20822, 20924, 21733
91 ..... 20925
93 ..... 20927
94 ..... 20928

PROPOSED RULES:

1 ..... 22092
73 ..... 19218, 20107, 20651, 21741, 21742, 22002–22005
76 ..... 20108, 20653
81 ..... 19838
83 ..... 19838

49 CFR

1 ..... 20088
7 ..... 20276
192 ..... 20279
553 ..... 21031–21032
571 ..... 20823, 21474
573 ..... 21031–21032
574 ..... 21031–21032
576 ..... 21031–21032
577 ..... 21031–21032
1033 ..... 19200, 19477, 19478, 19827, 21959

49 CFR—Continued

1121 ..... 21959
1249 ..... 21959

PROPOSED RULES:

Ch. II ..... 19209
177 ..... 21485
552 ..... 21486
571 ..... 19210, 19485, 20641
577 ..... 19651
1307 ..... 19020

50 CFR

28 ..... 20283–21032
32 ..... 19827
33 ..... 19009, 20822
240 ..... 21474

PROPOSED RULES:

17 ..... 21974, 21977
20 ..... 20090, 21980
32 ..... 19651
91 ..... 19013
227 ..... 21982

## FEDERAL REGISTER PAGES AND DATES—MAY

| *Pages* | *Date* |
|---|---|
| 18977–19192 | May 1 |
| 19193–19417 | 2 |
| 19419–19631 | 5 |
| 19633–19798 | 6 |
| 19799–20052 | 7 |
| 20053–20253 | 8 |
| 20255–20604 | 9 |
| 20605–20790 | 12 |
| 20791–20940 | 13 |
| 20941–21021 | 14 |
| 21023–21464 | 15 |
| 21465–21692 | 16 |
| 21693–21926 | 19 |
| 21927–22119 | 20 |

# presidential documents

## Title 3—The President

Memorandum of May 9, 1975

### Designation of Certain Officials of the Nuclear Regulatory Commission To Classify National Security Information

Memorandum for the Commissioners and the Executive Director for Operations of the Nuclear Regulatory Commission

THE WHITE HOUSE,
*Washington, May 9, 1975.*

Pursuant to the provisions of paragraph (A), section 2 of Executive Order 11652, I hereby designate the following officials to originally classify national security information or material as "Top Secret":

(a) Each of the five Commissioners on the Nuclear Regulatory Commission.

(b) The Executive Director for Operations of the Nuclear Regulatory Commission.

This designation shall be published in the FEDERAL REGISTER.

Gerald R. Ford

[FR Doc.75-13306 Filed 5-16-75;2:46 pm]

# rules and regulations



## Title 5—Administrative Personnel

## CHAPTER I—CIVIL SERVICE COMMISSION

## PART 213—EXCEPTED SERVICE

### Federal Energy Administration

Section 213.3388 is amended to show that one position of Staff Assistant, Congressional Affairs, Office of Congressional Affairs, is no longer excepted under Schedule C. This section is further amended to show that one position of Special Assistant to the Director, Office of Congressional Affairs, is excepted under Schedule C.

Effective on May 20, 1975, § 213.3388(d) (2) is amended and (d) (4) is added as set out below:

**§ 213.3388 Federal Energy Administration.**

* * * * *

(d) *Office of Congressional Affairs.* * * *

(2) Three Staff Assistants, Congressional Affairs. * * *

* * * * *

(4) One Special Assistant to the Director.

* * * * *

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

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

[FR Doc.75-13153 Filed 5-19-75;8:45 am]

## PART 213—EXCEPTED SERVICE

### General Services Administration

Section 213.3137 is amended to show that one position of Receptionist-Guide, Region 9, Public Buildings Service, is no longer excepted under Schedule A.

**§ 213.3137 [Amended]**

Effective on May 20, 1975, § 213.3137 (b) is revoked.

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

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

[FR Doc.75-13154 Filed 5-19-75;8:45 am]

## PART 213—EXCEPTED SERVICE

### Department of Justice

Section 213.3310 is amended to show that three positions of Confidential Assistant to the Director, Office of Justice Policy and Planning are excepted under Schedule C.

Effective on May 20, 1975, § 213.3310 (x) (1) is amended as set out below:

**§ 213.3310 Department of Justice.**

* * * * *

(x) *Office of Justice Policy and Planning.* * * *

(1) Four Confidential Assistants to the Director.

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

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

[FR Doc.75-13155 Filed 5-19-75;8:45 am]

## PART 213—EXCEPTED SERVICE

### National Labor Relations Board

Section 213.3341 is amended to show that one position of Executive Assistant to the Chairman is excepted under Schedule C.

Effective on May 20, 1975, § 213.3341 (f) is added as set out below:

**§ 213.3341 National Labor Relations Board.**

* * * * *

(f) One Executive Assistant to the Chairman.

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

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

[FR Doc.75-13156 Filed 5-19-75;8:45 am]

## Title 7—Agriculture

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

[Valencia Orange Regulation 497, Amendment 1]

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

### Limitation of Handling

This regulation increases the quantity of California-Arizona Valencia oranges that may be shipped to fresh market during the weekly regulation period May 9–15, 1975.[1] The quantity that may be shipped is increased due to improved market conditions for California-Arizona Valencia oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 908.

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

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Valencia Orange Regulation 497 (40 FR 20063). The marketing picture now indicates that there is a greater demand for Valencia oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Valencia oranges to fill the current demand thereby making a greater quantity of Valencia oranges available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of Valencia oranges grown in Arizona and designated part of California.

[1] This document was received by the Office of the Federal Register at 11:45 a.m., May 15, 1975.

(b) *Order, as amended.* The provisions in paragraph (b) (1) (i) and (iii) of § 908.797 (Valencia Orange Regulation 497 (40 FR 20063) are hereby amended to read as follows:

(i) District 1: 254,000 cartons;

(iii) District 3: 282,000 cartons.

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

Dated: May 14, 1975.

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

[FR Doc.75-13182 Filed 5-19-75;8:45 am]

---

[Valencia Orange Regulation 491, Amendment 1]

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

### Minimum Size Regulation

This amendment extends through January 15, 1976, the current minimum diameter requirement of 2.20 inches for shipments of Valencia oranges grown in District 2 of the California-Arizona production area. Shipments of such Valencia oranges are currently regulated by size through May 22, 1975, pursuant to Orange Regulation 491. The specified minimum size requirement is consistent with the size composition and available supply of the crop of Valencia oranges grown in District 2.

Notice was published in the FEDERAL REGISTER on April 23, 1975 (40 FR 17848), that consideration was being given to a continuation of the size regulation for Valencia oranges grown in District 2, pursuant to the applicable provisions of the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposed amendment was recommended by the Valencia Orange Administrative Committee, established under said amended marketing agreement and order as the agency to administer the terms and provisions thereof. The notice provided that all written data, views, or arguments in connection with the proposed amendment be submitted by May 9, 1975. None were received.

The minimum size requirement specified herein reflects the Department's appraisal of the crop and current and prospective marketing conditions. The 1974–75 season crop of Valencia oranges is currently estimated at 61,500 carlots. The demand in regulated market channels will require about 35 percent of this volume, and the remaining 65 percent will be available for utilization in export, processing and other outlets. Fresh shipments of Valencia oranges from District 2 are now in progress. The volume and size composition of the crop of Valencia oranges grown in District 2 are such that ample supplies of the more desirable sizes are available to satisfy the demand in regulated channels. Equivalent fresh on-tree returns for California-Arizona Valencia oranges averaged $0.88 per carton for the season through April 1975 or 37 percent of the equivalent parity price. The regulation herein specified is necessary to permit shipment of ample supplies of fruit of the more desirable sizes in the interest of both growers and consumers. The action is necessary to maintain orderly marketing conditions, provide consumer satisfaction and guard against the shipment of undesirable sizes of Valencia oranges which tend to weaken the market for such fruit. The regulation therefore is consistent with the objective of the act of promoting orderly marketing and protecting the interest of consumers.

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

It is hereby further found that good cause exists for making this amendment effective at the time hereinafter set forth and for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice of proposed rulemaking concerning this amendment was published in the FEDERAL REGISTER on April 23, 1975 (40 FR 17848), and no objection to it was received; (2) the regulatory provisions are the same as those contained in said notice; (3) the recommendation and supporting information for regulation of Valencia oranges were submitted to the Department after an open meeting of the committee on March 18, 1975, which was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; (4) information concerning such provisions and effective time has been disseminated among handlers of such oranges; and (5) compliance with the regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

*Order.* In § 908.791 (Valencia Orange Regulation 491; 40 FR 16211) the provisions of paragraph (a) are amended to read as follows:

**§ 908.791 Valencia Orange Regulation 491.**

(a) During the period May 23, 1975, through January 15, 1976, no handler shall handle any Valencia oranges grown in District 2 which are of a size smaller than 2.20 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided*, That not to exceed 5 percent, by count, of the Valencia oranges contained in any type of container may measure smaller than 2.20 inches in diameter.

* * * * *

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

Dated, May 15, 1975, to become effective May 23, 1975.

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

[FR Doc.75-13183 Filed 5-19-75;8:45 am]

---

## Title 10—Energy

## CHAPTER II—FEDERAL ENERGY ADMINISTRATION

## PART 213—OIL IMPORT REGULATIONS

### Allocations for the Period Beginning May 1, 1975

On April 24, 1975, the Federal Energy Administration (FEA) issued regulations for the purpose of updating its allocation procedures under the Mandatory Oil Import Program for the period beginning May 1, 1975 (40 FR 18766, April 30, 1975). Through an oversight, however, FEA updated the formula in § 213.15(d) dealing with allocations of residual fuel oil in District I, but omitted to update the introductory language. In order to remove any potential confusion with respect to the effect of that section, FEA hereby amends § 213.15(d) to be consistent with the allocation procedures applicable during the period May 1, 1975 through April 30, 1976.

(Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 FR 23185; Trade Expansion Act of 1962, Pub. L. 87-794, as amended; Proclamation No. 3279, 24 FR 1781, as amended by Proclamation No. 4210, 38 FR 9645, Proclamation No. 4227, 38 FR 16195, Proclamation No. 4317, 38 FR 35103, Proclamation No. 4341, 40 FR 3956, Proclamation No. 4355, 40 FR 10437, and Proclamation No. 4370.)

In consideration of the foregoing, Part 213 of Chapter II, Title 10 of the Code of Federal Regulations is amended as set forth below, effective May 1, 1975.

Issued in Washington, D.C., May 15, 1975.

ROBERT E. MONTGOMERY, Jr.,
*General Counsel.*

Section 213.15 is amended by revising paragraph (d) to read as follows:

**§ 213.15 Allocations of residual fuel oil—District I.**

* * * * *

(d) For the allocation period May 1, 1975 through April 30, 1976, each eligible applicant under this section shall receive an allocation not subject to license fee but subject to supplemental fee of imports of residual fuel oil into District I to be used as fuel in District I computed according to the following formula:

$$\left[\begin{array}{l}\text{Applicant's average B/D allocation made pursuant to § 213.15 for the allocation period May 1, 1974 through April 30, 1975} \\ \hline \text{Average B/D allocations made pursuant to § 213.15 to all applicants for the allocation period May 1, 1974 to April 30, 1975.}\end{array}\right] \times 2{,}320{,}000 \text{ B/D}$$

* * * * *

[FR Doc.75-13187 Filed 5-15-75;12:00 pm]

## Title 12—Banks and Banking

### CHAPTER II—FEDERAL RESERVE SYSTEM

#### SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. H]

### PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

#### Loans by State Member Banks in Flood-Prone Areas

The Board of Governors of the Federal Reserve System is amending Part 208 by adding paragraph (e)(5) to § 208.8. This amendment incorporates into § 208.8(e), which prohibits real estate loans in nonparticipating communities on or after July 1, 1975, the one-year grace period provided in section 201(d) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 2001, *et seq.*) ("Act").

Section 201(d) of the Act provides that a member bank may not make, increase, extend or renew a loan secured by improved real estate or a mobile home located in a special flood hazard area, if the community is not participating in the national flood insurance program by July 1, 1975, or the expiration of one year from notification to the chief executive officer of a community by the Secretary of Housing and Urban Development that the community is one having special flood hazards, whichever is later. After the applicable date, all such loans will be prohibited unless the community is participating, and the borrower obtains flood insurance in the required amount.

The provisions of section 553 of Title V, United States Code, relating to notice, public participation and deferred effective date were not followed in connection with this amendment because this amendment merely clarifies Regulation H by implementing statutory provisions of the Federal Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et. seq.) without significant exercise of administrative discretion or interpretation.

Effective immediately, § 208.8 is amended by adding a new paragraph (e)(5) as follows:

§ 208.8 Banking practices.

* * * * *

(e) Loans by State member banks in identified flood hazard areas.

* * * * *

(5) On and after July 1, 1975, or after one year following the date of official notification to the chief executive officer of a community that the community is one containing special flood hazard areas, whichever is later, no State member bank shall make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in such a special flood hazard area so identified by the Secretary of Housing and Urban Development unless the community in which such area is situated is then participating in the national flood insurance program.

By order of the Board of Governors, May 12, 1975.

[SEAL] GRIFFITH L. GARWOOD,
*Assistant Secretary of the Board.*

[FR Doc.75-13203 Filed 5-19-75;8:45 am]

## Title 14—Aeronautics and Space

### CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 75-RM-8]

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

#### Transition Area; Designation

On March 7, 1975, a notice of proposed rulemaking was published in the FEDERAL REGISTER (40 FR 10692) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a transition area at Gwinner, No. Dak.

Interested persons were given 30 days in which to submit written comments, suggestions or objections. No objections have been received and the proposed amendment is hereby adopted without change.

*Effective date.* This amendment shall be effective 0901 G.m.t., August 14, 1975.

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

Issued in Aurora, Colorado, on May 20, 1975.

M. M. MARTIN,
*Director, Rocky Mountain Region.*

In Federal Aviation Regulation § 71.181 (40 FR 441) add the following transition area:

GWINNER, NO. DAK.

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Gwinner Municipal Airport (latitude 46°13'10" N, longitude 97°38'27" W); and that airspace extending upward from 1200 feet above the surface within a 12-mile radius of the Gwinner Municipal Airport, and within 9.5 miles west and 4.5 miles east of the 167°T bearing from the Gwinner NDB (latitude 46°13'24" N, longitude 97°38'35" W), extending from the 12-mile radius area to 18.5 miles south of the NDB.

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

[FR Doc.75-13149 Filed 5-19-75;8:45 am]

## Title 15—Commerce and Foreign Trade

### CHAPTER III—DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION, DEPARTMENT OF COMMERCE

### EXPORTS TO CAMBODIA AND SOUTH VIETNAM

#### Revision of Controls

Effective 12:01 a.m. e.d.t. May 16, 1975, Cambodia and South Vietnam are removed from Country Group V and are designated Group Z destinations. These two destinations are now subject to the general policies set forth in § 385.1(a) of the Export Administration Regulations.

Accordingly, the Export Administration Regulations are revised as follows:

### PART 370—EXPORT LICENSING GENERAL POLICY AND RELATED INFORMATION

1. By deleting "Communist-controlled areas of Vietnam" and by adding "North Vietnam", "South Vietnam", and "Cambodia" under the heading "Country Group Z" in Supplement No. 1 to Part 370;

### PART 371—GENERAL LICENSES

2. By altering §§ 371.9 and 371.10 as follows:

(a) Wherever the phrase "North Vietnam, North Korea, or Cuba" appears, insert in lieu thereof "North Korea, North Vietnam, South Vietnam, Cambodia, or Cuba",

(b) Wherever the phrase "North Vietnam and North Korea" or "North Vietnam or North Korea" appears, insert in lieu thereof "North Korea, North Vietnam, South Vietnam, or Cambodia",

(c) At the end of § 371.9(b)(1)(i), substitute a comma for the semicolon and add "except that in the case of vessels that have called at ports controlled by South Vietnam or Cambodia, this restriction is applicable only if the vessel has called at such ports after 12:01 a.m., e.d.t. May 16, 1975;",

(d) At the end of § 371.10(b)(1) add "except that in the case of aircraft that have called at any point under the control of South Vietnam or Cambodia, this restriction is applicable only if the aircraft has called at such points after 12:01 a.m., e.d.t. May 16, 1975,",

### PART 373—SPECIAL LICENSING PROCEDURES

### PART 374—REEXPORTS

3. By deleting "Cambodia" and "Vietnam, Republic of" from the lists of countries in § 373.3(a)(2) and § 374.3(d)(1)(i)(b),

### PART 376—SPECIAL COMMODITY POLICIES AND PROVISIONS

4. By amending § 376.9 as follows:

(a) Wherever the phrase "North Vietnam or North Korea" appears, insert in

lieu thereof "North Korea, North Vietnam, South Vietnam, or Cambodia",

(b) Wherever the phrase "North Vietnam, North Korea, or Cuba" appears, insert in lieu thereof "North Korea, North Vietnam, South Vietnam, Cambodia, or Cuba",

### PART 385—SPECIAL COUNTRY POLICY AND PROVISIONS

5. By revising the heading of § 385.1(a) to read "(a) North Korea, North Vietnam, South Vietnam, and Cambodia" and by deleting the portion of the first sentence of § 385.1(a) that follows the word "Korea" and inserting in lieu thereof a comma and the words "North Vietnam, South Vietnam, or Cambodia.",

6. By deleting § 385.4(d),

### PART 386—EXPORT CLEARANCE

7. By deleting the words "Communist controlled areas of Vietnam" in § 386.6 (d) (2) (i) (b) and § 386.6(d) (3), and inserting in lieu thereof "North Vietnam, South Vietnam, Cambodia," and

### PART 390—GENERAL ORDERS

8. By adding a new § 390.5 to read as follows:

**§ 390.5 General order revoking validated licenses for export to South Vietnam and Cambodia.**

Effective 12:01 a.m., e.d.t. May 16, 1975, all validated export licenses or authorizations that had not previously been revoked, authorizing export or reexport of any commodity or technical data to South Vietnam or Cambodia, are revoked.

(Sec. 4, 83 Stat. 842 (50 U.S.C. App. 2403); E.O. 11533, 35 FR 8799, 3 CFR, 1970 Comp., p. 134; E.O. 11683, 37 FR 17813, 3A CFR, 1972 Comp., p. 202.)

*Effective date of action:* 12:01 a.m., e.d.t. May 16, 1975.

LAWRENCE J. BRADY,
*Acting Director,*
*Office of Export Administration.*

[FR Doc.75-13264 Filed 5-15-75;4:56 pm]

## Title 16—Commercial Practices

### CHAPTER I—FEDERAL TRADE COMMISSION

[Docket C-1986]

### PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

**Bestline Products Corporation, et al.**

*Correction*

In accordance with Commission order of April 22, 1975, reopening the proceeding upon corporate respondents' motion for the purpose of modification of the order to cease and desist (FR Doc. 75-11591) appearing on page 19447 of the FEDERAL REGISTER issue for Monday, May 5, 1975, the following corrections in Part II of the order, in addition to those already effected, are made:

Page 19448, middle column, paragraph 2., line 9: omit "therein";

Page 19449, left-hand column, paragraph 13. (a), lines 1, 2, and 10, omit "orally and", "terms" and "such" respectively.

The Order reopening Proceedings and Correcting Order to Cease and Desist was issued April 22, 1975.[1]

CHARLES A. TOBIN,
*Secretary.*

[FR Doc.75-13204 Filed 5-19-75;8:45 am]

## Title 19—Customs Duties

### CHAPTER I—UNITED STATES CUSTOMS SERVICE

[T.D. 75-112]

### PART 162—INSPECTION, SEARCH, AND SEIZURE

**Examination of Importer and Others**

Customs Delegation Order No. 49 (T.D. 75-111) delegates authority to issue citations under section 509, Tariff Act of 1930, as amended (19 U.S.C. 1509), to regional directors of investigations, assistant regional directors of investigations, special agents in charge, resident agents, Customs attaches, and senior Customs representatives of the United States Customs Service. Such authority was previously delegated to district directors of Customs and regional commissioners of Customs by Customs Delegation Order No. 22 (T.D. 56470, 30 FR 11180), to the area directors of Customs for the Customs district of New York City, New York, by Customs Delegation Order No. 40 (T.D. 71-61, 36 FR 3830), and to special agents in charge and others by Customs Delegation Order No. 38 (T.D. 70-194, 35 FR 14223), which was superseded by Customs Delegation Order No. 49.

Section 162.2 of the Customs Regulations (19 CFR 162.2) presently requires that the citation under section 509, Tariff Act of 1930, as amended, be signed by the district director. The amendment set forth below, by substituting "appropriate Customs officer" for "district director", will have the effect of conforming the Customs Regulations with the Customs delegation orders currently in effect.

Accordingly, the first sentence of § 162.2 of the Customs Regulations (19 CFR 162.2) is amended to read as follows:

**§ 162.2 Examination of importer and others.**

The citation of a person to appear and testify pursuant to section 509, Tariff Act of 1930, as amended (19 U.S.C. 1509), authorizing such examination, shall be in writing and signed by the appropriate customs officer. * * *

(R.S. 251, as amended, secs. 509, 624, 46 Stat. 733, as amended, 759 (19 U.S.C. 66, 1509, 1624))

Because this amendment conforms the regulations with a Customs Delegation Order and relates to agency management, notice and public procedure thereon is found to be unnecessary, and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

*Effective date.* This amendment shall become effective May 20, 1975.

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

Approved: May 7, 1975.

DAVID R. MACDONALD,
*Assistant Secretary of the Treasury.*

[FR Doc.75-13177 Filed 5-19-75;8:45 am]

[1] Copy of the order filed with the correction document.

## Title 21—Food and Drugs

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

### PART 11—STANDARDS OF QUALITY FOR FOODS FOR WHICH THERE ARE NO STANDARDS OF IDENTITY

**Quality Standards for Bottled Water**

This order, ruling on the objections and requests for hearing on the final regulation that established a standard of quality for bottled water, confirms the regulation and establishes June 19, 1975 as the new effective date.

A notice of proposed rulemaking was published in the FEDERAL REGISTER of January 8, 1973 (38 FR 1019) to amend 21 CFR Part 11 by adding § 11.7 to Subpart B to establish quality standards for bottled water. Interested persons were invited to submit comments on the proposal within the provided 60-day comment period. A correction of § 11.7(b) (1) (ii) of the proposal was published in the FEDERAL REGISTER of January 23, 1973 (38 FR 2219). The time for filing comments was extended an additional 30 days by notice published in the FEDERAL REGISTER of March 30, 1973 (38 FR 8273). The Commissioner, after evaluating and responding to 33 comments filed in response to the original proposal, issued in the FEDERAL REGISTER of November 26, 1973 (38 FR 32558), a final regulation establishing quality standards for bottled water. A 30-day period was provided for filing objections and requests for hearing by any person adversely affected by the order. Five objections, including one request for hearing, were received from industry representatives and a trade association.

The final order for Subpart A of 21 CFR Part 11, which consists of general procedural rules issued under section 701 (a) of the Federal Food, Drug, and Cosmetic Act, was promulgated in the FEDERAL REGISTER of August 2, 1973 (38 FR 20726) and became effective on February 4, 1974. The validity of those regulations is not at issue.

Each of the objections filed on § 11.7 (21 CFR 11.7) has been reviewed; a summary of the objections and the Commissioner's conclusions are as follows:

1. One objection requested a definition of "analytical unit." No hearing was requested on this objection.

The Commissioner notes that the term "analytical unit" was defined in § 11.2 (21 CFR 11.2), which was promulgated pursuant to section 701(a) of the act in the FEDERAL REGISTER of August 2, 1973, and became effective on February 4, 1974. For clarification, an "analytical unit" is defined as the portion(s) of food (water) taken from a subsample (consumer unit) of a sample for analysis; § 11.2(c) is being amended accordingly. Thus the 5 portions of equal volume taken from each subsample of water constitute an "analytical unit."

2. One objection contended that the final order should specifically provide for labeling that distinguishes between spring water and water from other sources. The objection argued that the regulation, as written, would permit consumers to be misled by deceptive advertising or labeling practices, specifically, failure to prohibit the word "spring" in labeling for water that is not natural spring water. The objection referred to the agency's obligation under section 403 (a) of the act in regard to misleading labeling but agreed that the purity or wholesomeness of nonspring versus natural spring water was not at issue in this proceeding. A hearing was requested if the term "spring" in the labeling of bottled water was not regulated.

The Commissioner concludes, as he did in paragraph 22 of the preamble to the final order (38 FR 32558), that there is no need for a requirement that the source of the bottled drinking water be declared on the label. The source of bottled water is not an issue within the scope of a standard of quality, which is designed to regulate the microbiological, physical, chemical, and radioactive content of bottled water.

Under other provisions of the act, not involved in this regulation, all information on the label and in labeling must be truthful, factual, and in no way misleading. Section 403(a) of the act provides that a food shall be deemed to be misbranded if its labeling is false or misleading in any way. The statutory authority thus provides for regulatory action when false or misleading statements are made about the source or treatment of bottled water.

The Commissioner concludes that the objection does not raise an issue of fact, that it relates to a matter not reasonably encompassed within the involved regulation, and that it is irrelevant to the quality standard for bottled water. Accordingly, there is no basis for holding a hearing on this issue.

3. One objection stated that the order should require bottled water containing fluoride to be so labeled. The objection asserted that consumers who get their water from a public water supply are informed whether it is or is not fluoridated. The objection also argued that a parent or physician has to know whether or not bottled water contains fluoride to determine if a fluoride supplement is necessary for an infant or child receiving bottled water. A hearing was not requested on this objection.

The Commissioner notes that this objection is essentially the same as those comments received in response to the original proposal. The objection contained no data or information not considered by the Commissioner prior to promulgating the final order. The regulation defines bottled water as water that may contain fluoride and provides limits for it. The limit on fluoride in bottled water was taken directly from the drinking water standards set by the United States Public Health Service (now the responsibility of the Environmental Protection Agency) and, as is true for this entire quality standard, will be revised when necessary to be kept compatible with revisions of the drinking water standards.

As pointed out in paragraph 21 of the preamble to the final order (38 FR 32558), bottled water obtained from municipal water sources and some wells and springs may contain significant amounts of fluoride. The Commissioner concludes that it would be unreasonable to require bottled water to which fluoride has been added to be labeled differently from bottled water containing fluoride naturally present or from municipal water supplies to which fluoride has been added. If any distributor of bottled water wishes to promote his product as containing fluoride, a specific amount of fluoride, or no fluoride, he may properly do so if such claims are accurate and truthful.

4. One objection suggested that the statement of the permissible range for naturally present fluoride in paragraph 21 of the preamble to the final order (38 FR 32558) has a typographical error in the mg./liter figure for "added fluoride."

The Commissioner agrees. The statement "The range of fluoride levels permitted by the drinking water standards is 1.4 to 2.4 mg./liter for naturally present fluoride and 0.8 to 1.17 mg./liter for added fluoride," is hereby corrected to read "The range of fluoride levels permitted by the drinking water standards is 1.4 to 2.4 mg./liter for naturally present fluoride and 0.8 to 1.17 mg./liter for added fluoride."

5. One objection was received regarding the limit on iron established in the final regulation. The objection, which was essentially the same as those comments received in response to the proposed regulation (38 FR 1019), stressed the nutritional significance of iron in certain bottled water and argued that the limit on iron in bottled water should be raised. The objection argued that the limit on iron in the standard may require a reduction in iron content for some products, which would alter the product's taste and result in adverse consumer reaction. The objection suggested that safety should be the sole criterion for establishing limitations on the permissible iron concentrations. The objection also argued that bottled water does not pass through plumbing fixtures, as ordinary drinking water does, and therefore a limit on iron content to control rust deposition is of questionable logic. No hearing was requested on this objection.

The Commissioner advises that quality standards are promulgated to promote honesty and fair dealing in the consumers' interest, and he may properly establish limits on ingredients, regardless of the question of safety. Bottled water may come from such sources as tap water from municipal water supplies, springs, or wells. The Commissioner concludes that, regardless of the water source, the water will in most cases contact metal equipment surfaces thus contributing iron to the water.

As stated in paragraph 18 of the preamble to the final order (38 FR 32558), the Commissioner concludes that taste and rust deposition are quality attributes. The limit for iron established by the quality standard for bottled water is intended to control rust deposition and taste contributed by iron and should be the same as the limits established in the drinking water standard. The Commissioner also concludes that bottled water cannot be relied upon as a significant source of nutritional minerals because consumption varies, and it comes from a variety of sources in which the type and amount of minerals vary widely.

Bottled water that contains amounts of iron exceeding the limits established in this standard of quality may properly be sold if the label requirement established in § 11.7(f)(2)(ii) (21 CFR 11.7 (f)(2)(ii)) is met. However, if nutritional claims are made for a product containing quantities of iron in excess of this standard, the product will be subject to the labeling requirements for dietary supplements or to requirements for nutrition labeling.

6. One objection requested that stabilized chlorine dioxide at 50 parts per million be included in the list of chemical substances permitted by § 11.7(d)(1) (21 CFR 11.7(d)(1)) to be included in bottled water. A hearing was not requested on this objection.

The Commissioner advises that the bottled water standard establishes quantitative limits for certain chemical substances commonly found in bottled water, through addition or otherwise. The standard is not intended to encompass all chemicals that may be found in bottled water, nor is it intended to specify the method by which these substances are added to water. However, substances that are food additives within the meaning of section 201(s) of the Federal Food, Drug, and Cosmetic Act shall be used in bottled water only in accordance with section 409 of the act and regulations promulgated thereunder (21 CFR Part 121).

A GRAS affirmation petition has been submitted to the Food and Drug Administration, notice of which was published in the FEDERAL REGISTER of Mar. 23, 1973 (38 FR 7578), pursuant to § 121.-40 (21 CFR 121.40) for use of stabilized chlorine dioxide in potable water. This petition is currently under review, and

the final decision will be published in the FEDERAL REGISTER.

7. One objection requested clarification of § 11.7(b)(1) (21 CFR 11.7(b)(1)), stating that it was not clear "how it is possible to determine a most probable number of coliforms by the multiple-tube fermentation technique by a single 5 ml. portion." No hearing was requested on this objection.

Confusion on this point has developed because an error was made in paragraph 16 of the preamble to the final order (38 FR 32558), in response to a comment. The Commissioner advises that the response in paragraph 16 should read as follows: The coliform criteria in the proposal and in § 11.7(b)(1) of the final regulation are essentially the same as those of the drinking water standard. These criteria are based upon the laboratory testing of a representative sample of water from a lot. A sample is composed of 10 subsamples. For the multiple tube fermentation method, from each subsample of water, five portions of equal volume are removed for analysis. The five portions constitute one analytical unit. Not more than one analytical unit may have a MPN (most probable number) of 2.2 or more coliform organisms/100 ml., and none of the analytical units may have an MPN of 9.2 or more coliform organisms/100 ml. Thus this coliform requirement is based upon the results from each analytical unit and not upon the average value of the 10 analytical units.

The Commissioner concludes that the only request for a hearing involved an issue that is irrelevant to establishing a quality standard for bottled water; consequently, there is no basis for granting a hearing; and that the other submitted objections do not justify a change in the regulation.

Therefore, pursuant to the Federal Food, Drug, and Cosmetic Act (secs. 401, 403(h), 701, 52 Stat. 1046–1047, 1055–1056, as amended, 70 Stat. 919, 72 Stat. 948 (21 U.S.C. 341, 343(h), 371)) and under authority delegated to the Commissioner (21 CFR 2.120), notice is given that (1) the regulation amending § 11.7 as published in the FEDERAL REGISTER of November 26, 1973 (38 FR 32558) is confirmed and the effective date is amended to be June 19, 1975, and (2) effective May 20, 1975, § 11.2 is amended by changing the words "a portion" to read "the portion(s)".

Dated: May 14, 1975.

SAM D. FINE,
*Associate Commissioner for Compliance.*

[FR Doc.75-13170 Filed 5-19-75;8:45 am]

## PART 121—FOOD ADDITIVES

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

ADHESIVES

The Commissioner of Food and Drugs is amending the food additive regulations in § 121.2520 *Adhesives* (21 CFR 121.2520) to provide for safe use of a preservative in food-packaging materials, effective May 20, 1975.

The Commissioner, having evaluated the data in a petition (FAP 4B2979) filed by Drew Chemical Corp., subsidiary of United States Filter Corp., P.O. Box 248, Parsippany, NJ 07054, and other relevant material, concludes that the food additive regulations should be amended, as set forth below, to provide for safe use of tributyltin chloride complex of ethylene oxide condensate of dehydroabietylamine as a preservative in adhesives for food-packaging materials. The preservative effect is to inhibit microbial growth.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.2520(c)(5) is amended by alphabetically inserting an item in the list of substances, to read as follows:

§ 121.2520 **Adhesives.**

* * * * * * *

(c) * * *

(5) * * *

COMPONENTS OF ADHESIVES

| *Substances* | *Limitations* |
|---|---|
| * * * | * * * |
| Tributyltin chloride complex of ethylene oxide condensate of dehydroabietylamine. | For use as preservative only. |
| * * * | * * * |

Any person who will be adversely affected by the foregoing order may at any time on or before June 19, 1975 file with the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Six copies of all documents shall be filed. Received objections may be seen in the above office during working hours, Monday through Friday.

*Effective date.* This order shall become effective May 20, 1975.

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

Dated: May 13, 1975.

SAM D. FINE,
*Associate Commissioner for Compliance.*

[FR Doc.75-13171 Filed 5-19-75;8:45 am]

## Title 23—Highways

## CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

### SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

## PART 750—HIGHWAY BEAUTIFICATION

### Outdoor Advertising

Subpart B, Part 750, Subchapter H, Chapte I, Title 23, Code of Federal Regulations, is amended to reflect changes made to section 131, Title 23, United States Code, by the Federal-Aid Highway Amendments of 1974, Pub. L. 93–643, section 109, January 4, 1975, 88 Stat. 2284 (hereafter referred to as the 1974 Amendments). These changes are:

(1) The 1974 Amendments amended 23 U.S.C. 131(c)(1) by striking the word "other" in referring to directional and official signs. The change made here is only a "housekeeping" measure, designed to keep the language of the National Standards in conformity with the language of 23 U.S.C. 131. No additional outdoor advertising devices will be permitted as a result of this change, nor should existing State standards or procedures governing directional and official signs be altered or broadened. It is the view of the Federal Highway Administration that the striking of the word "other" made no substantial changes in the law. With the foregoing caveat in mind, Subpart B must be amended to reflect this change as follows:

(a) The title of Subpart B is amended by striking the word "Other" and will read: "Subpart B—National Standards for Directional and Official Signs."

§§ 750.151, 750.153, 750.155 [Amended]

(b) Sections 750.151(a)(2), 750.153(m), and 750.155, 23 CFR, is amended by striking the word "Other" between the words "Directional and" and the words "Official Signs" in the first sentence.

(2) In addition a change similar to those referred to in paragraph (1) above, § 750.152, 23 CFR, must be amended to reflect an expansion in the area subject to control. Thus, existing § 750.152 is revised to read as follows:

§ 750.152 **Application.**

The following standards apply to directional and official signs and notices located within six hundred and sixty (660) feet of the right-of-way of the Interstate and Federal-aid primary systems and to those located beyond six hundred and sixty (660) feet of the right-of-way of such systems, outside of urban areas, visible from the main traveled way of such systems and erected with the purpose of their message being read from such main traveled way. These standards do not apply to directional and official signs erected on the highway right-of-way.

(3) A new definition is added to § 750.153, 23 CFR, as follows:

§ 750.153 **Definitions.**

* * * * *

(t) **Urban area** means an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized areas in each such State, or an urban place as designated by the Bureau of the Census having a population of five thousand or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census.

These changes become effective on the date of issuance.

Issued on: May 12, 1975.

NORBERT T. TIEMANN,
*Federal Highway Administrator.*

[FR Doc.75-13152 Filed 5-19-75;8:45 am]

---

## Title 24—Housing and Urban Development

## CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING PRODUCTION AND MORTGAGE CREDIT-FEDERAL HOUSING COMMISSIONER (FEDERAL HOUSING ADMINISTRATION), DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-75-333]

## PART 215—RENT SUPPLEMENT PAYMENTS

### Asset Limits for Tenant Eligibility; Interim Rule

The Department is amending Part 215 by changing the asset limits with respect to tenant eligibility for rent supplement benefits. In the case of the non-elderly, the new asset limit is equal to the dollar amount of the applicable income limit for the particular locality and in the case of the elderly, the new limit is three times the dollar amount of the applicable income limit.

This amendment is necessary because the old limits—$2,000 for the non-elderly and $5,000 for the elderly—have not been revised since the inception of the rent supplement program in 1966, notwithstanding the vast economic changes which have occurred since that time. In light of the pressing need for revised asset limits in some localities, the publication of this regulation for comment in advance of the effective date is deemed contrary to the public interest; instead, this amendment is being published as an interim rule effective upon publication.

However, the Department invites interested persons to submit data, views, and suggestions with respect to this rule and is providing 60 days in lieu of the usual 30 days in which to file comments. All relevant material received on or before July 21, 1975, will be considered by the Department before a final rule is adopted. Filings should refer to the above Docket number and should be filed with the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10245, 451 Seventh Street, SW, Washington, D.C. 20410. Copies of comments submitted will be available during business hours at the above address for examination by interested persons.

The Department has determined that an Environmental Impact Statement is not required with respect to this rule. The Finding of Inapplicability is available for inspection at the above address.

Section 215.20 of Title 24 is amended by revising paragraphs (a)(1), (2) and (3) to read as follows:

§ 215.20 **Qualified tenant.**

(a) * * *

(1) Have an annual income below the maximum amount established by the Secretary, which amount shall not be higher than can be established in the area where the property is located for occupancy in a low-rent public housing project assisted under the United States Housing Act of 1937. The limits are determined by the Secretary on the basis of recommended limits and supporting data and information received from the Public Housing Agency or the HUD field office serving the locality. The limits are available for inspection in the HUD field office. In computing a tenant's income for the purpose of this section, $300 shall be deducted for each minor person who is a member of the immediate family of the tenant and residing with the tenant and any earnings of such minor shall not be included in computing the tenant's income.

(2) In a case involving an elderly individual or a family whose head or spouse is elderly, have assets not exceeding three times the dollar amount of the applicable income limit for the locality as determined in accordance with the second sentence in paragraph (a)(1) of this section.

(3) In a case involving other than the elderly, have assets not exceeding the dollar amount of the applicable income limit for the locality as determined in accordance with the second sentence in paragraph (a)(1) of this section.

* * * * *

(Sec. 101(g), 79 Stat. 354 (12 U.S.C. 1701s))

*Effective date.* This amendment is effective May 20, 1975.

SANFORD A. WITKOWSKI,
*Acting Assistant Secretary for Housing Production and Mortgage Credit—Federal Housing Commissioner.*

[FR Doc.75-13262 Filed 5-19-75;8:45 am]

---

## Title 29—Labor

## CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

## PART 1908—CONTRACTS FOR ON-SITE CONSULTATION PROGRAMS

### Notice of Final Rulemaking

1. *Background.* On January 15, 1975, a notice of proposed rulemaking was published in the FEDERAL REGISTER (40 FR 2703) concerning regulations under sections 7(c)(1) and 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) (hereinafter called the Act) which set out policies and procedures through which on-site consultation services may be furnished to employers by State personnel, with partial Federal funding.

After consideration of the relevant material which has been submitted by interested persons, the proposal is hereby adopted with various changes.

2. *Public comments.* Numerous public comments were received pursuant to the proposal. Statements of support were received from the Associated Industries of Massachusetts, the Building Trades Employers Association of the City of New York, Richard J. Kos, Gooch Packing Company, Inc., the Painting and Decorating Contractors of America, the National Environmental System Contractors Association, the National Oil Jobbers Council, the Southern Industrial Distributors Association, Senator George McGovern, B. H. Electronics, the Concrete Reinforcing Steel Institute, the National Wholesale Druggists Association, the Nebraska Association of Commerce and Industry and others.

Many important issues were raised in other comments. These comments voiced objection to the use of a consultant's report in a subsequent compliance inspection, the lack of mandatory employee participation, and the limitation to States without approved plans. Questions were also raised concerning qualifications for consultants, number of consultants, action upon discovery of imminent danger, monitoring, and the system of priorities. These comments are discussed below.

3. *Discussion of changes.* Several substantive changes were made in the regulations as follows:

(a) In consideration of comments received from the Massachusetts Department of Labor and Industries, the New York State Department of Labor, the National Association of Wholesale Distributors, and others, the limitation on the number of consultants each State would be permitted has been revised. Under the final regulation, the number of consultants in each State will be determined by the State's individual needs as determined by the employer demand for consultative services and the recommendation of the Occupational Safety and Health Administration Assistant Regional Director.

(b) The Edison Electric Institute, the U.S. Small Business Administration, and the National Small Business Administration, all recommended that, in addition to using the size of an employer's establishment to determine priority for consulation visits, consideration should be given to the hazardous nature of the business. Therefore, in order to increase the protection to workers whose exposure would be greatest, §§ 1908.1 and 1908.5(c)(2) have been changed to provide for such consideration. Thus, the hazardous nature of an employer's activities has been included as an additional consideration in establishing priorities for consultation.

(c) The Health Research Group raised the objection that the proposed regulation provided that the consultant be required to seek elimination of hazards only in imminent danger situations and not of serious violations. We believe that the vast majority of conscientious employers seeking consultant's advice under these regulations, upon learning that conditions at their workplaces could reasonably be expected to cause death or serious physical harm to employees, will take the necessary action to eliminate such conditions. We have therefore modified the regulation to provide that the consultant be required to seek the elimination of any observed conditions that present hazards which could reasonably be expected to cause death or serious physical harm to employees, without regard to the characterization of the hazard in terms of imminent danger or serious violation, which is relevant primarily for determining the action to be taken in an enforcement context. This provision will afford practical guidance to the consultant as to whether the hazard is of sufficient seriousness to require him to seek its immediate elimination. If such elimination is not achieved, employees shall be informed and the matter will be referred to OSHA for a determination as to the appropriate enforcement procedure to be undertaken. Section 1908.5(c)(7) and other sections have been changed accordingly.

Under the final regulation, where the consultant observes conditions presenting hazards that could reasonably be expected to cause death or serious physical harm to employees, he shall immediately request the employer to eliminate the hazard at once, or, if this is not possible, to prohibit the presence of any employees in the danger area. A follow-up visit shall be made by the consultant where elimination of the hazard has not been effected immediately, unless the consultant is otherwise satisfied, on the basis of documentary or other evidence, that such elimination has taken place. If the employer fails to take the necessary action to eliminate the hazard, the consultant shall immediately inform the affected employees and advise the OSHA Assistant Regional Director, who will take appropriate enforcement action.

(d) Comments were received from Congressman William A. Steiger, the Chamber of Commerce of the United States and others regarding notice to employers of the imminent danger requirements under the proposal. Changes have been made in § 1908.4(c)(6) (renumbered § 1908.5(c)(6)) to require that consultants explain to employers before the walk through what actions they are required to take upon the discovery of conditions that present hazards which could reasonably be expected to cause death or serious physical harm.

In addition, § 1908.5(c)(6)(i) of the final regulation requires that the consultant advise each employer that, in the event of a subsequent compliance inspection, the compliance officer would not be legally bound by the advice of the consultant concerning specific hazards or the failure of the consultant to point out a specific hazard. This section also requires that the written report inform the employer of the above requirements and restrictions.

(e) Numerous comments were received concerning § 1908.4(c)(12) which provides for a written consultant's report and the use of the report in the event of a future compliance inspection. The Edison Electric Institute, National Pest Control Association, Tenneco, National Association of Manufacturers, New York State Department of Labor, the National Roofing Contractors Association and others expressed opinions that this section would seriously jeopardize the on-site consultation program since it could result in more severe penalties being imposed upon employers who made use of the consultation program. The final regulation has, therefore, been changed to afford the employer the option of furnishing the report to the compliance officer and provides that the failure to furnish the report would not create a presumption of bad faith. However, we have decided to retain the requirement for a written report since it would more clearly inform the employers of the consultant's findings, and will assist in the monitoring of the effectiveness of the consultation program.

(f) The Health Research Group, International Brotherhood of Teamsters, American Federation of State, County and Municipal Employees, the United Paperworkers International Union and others objected to § 1908.4(c)(9) of the proposal which provided that employees would not participate in the consultation, except upon the specific request of the employer.

The consultation program is designed to advise employers since they, and not employees, are the persons subject to possible legal sanctions under the Act. Employers specifically request consultative services, and are immediately benefitted by the identification of potential violations at their worksites. Even though employees also ultimately benefit from the consultant's advice, especially with respect to the elimination of hazards which could reasonably be expected to cause death or serious physical harm, the consultation program is primarily to assist the employer who is the person subject to the sanctions of the Act. Therefore, the final decision on employee participation must ultimately rest with the employer. However, since the employer may wish to build upon existing safety expertise and experience by involving joint labor management committees or employee groups in the consultation, § 1908.5(c)(6)(iii), provides that the consultant shall ask the employer prior to the walk through, whether such participation is desired. Thus, the final provision advises the employer that such participation is permitted, and even encouraged, whereas under the proposed regulation, the employer could easily assume that employee participation was not permitted.

4. *Discussion of provisions which were not changed and clarifications.* (a) Comments on consultants' qualifications were received from the Association of General Contractors of St. Louis, the National Association of Manufacturers, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, the New Mexico Environmental Improvement Agency, the American Society of Safety Engineers and others. Concern was expressed that consultants would not have adequate qualifications for the performance of their duties. The proposal and the final regulations define the qualification requirements in general terms and indicate that the Assistant Secretary will set out requirements in addition to those provided by the State. These requirements have been set forth in Occupational Safety and Health Administration Program Directive No. 75–1. These requirements include four years of experience in safety and health or a Bachelor of Science degree. The applicants will also be interviewed by the Assistant Regional Director of the Occupational Safety and Health Administration (OSHA–ARD) and must be qualified in his judgment to perform consultation services. We believe that these requirements are sufficient to insure that State consultants will be qualified to carry out their responsibilities under this program.

(b) Several comments, including those by the Central Illinois Light Company, National Association of Home Builders, E. L. LeBaron Foundry Company, the National Maritime Safety Association and others, suggested that this program should be extended to States with approved 18(b) plans. However, this extension would be unnecessary owing to the fact that States with approved plans are encouraged to and do provide for on-site consultation services under their approved plans. Guidelines for those State services are set out in Program Directive #72–27 and #74–13, and fifty percent Federal funding is provided for both programs. Thus, any State, whether the State has an approved plan or not, has an opportunity to participate in an on-site consultation program. Extension of this program to States with approved plans would therefore be redundant.

(c) The Health Research Group submitted extensive comments which, in part, challenged the authority for the entire program proposed under the regulation. This challenge was based upon the Health Research Group's assertion that the on-site consultation program was an illegal delegation of the Secretary of Labor's authority under the Act. It contends that, since the Secretary is delegating the Act's right of entry to State personnel, consultants will be "authorized representatives" of the Secretary and would therefore be

required to comply with other mandatory provisions of the Act, including citations for observed violations and employee participation.

The Assistant Secretary, however, is not in fact delegating any enforcement authority to a State. Entry by a consultant does not stem from the right of entry under the Act, but rather is by employer request and permission.

Further, under this program, the State is not given authority to do anything that it may not already do. Any State, should it so desire, could engage in a program whereunder State employees may advise employers in the State concerning provisions of this or any Act. This regulation merely provides Federal requirements for eligibility for Federal funding through reimbursement of expenses under section 7(c)(1) of the Act. This is consistent with the intent of the Congress, which was to provide consultation services primarily to small employers who could not ordinarily afford to hire private consultants.

(d) Several comments expressed confusion over the language of § 1908.4(c)(10) which required the separation of consultation and enforcement staffs. This provision was intended to deal with the situation in States which have 7(c)(1) enforcement agreements in addition to 7(c)(1) consultation agreements, and the paragraph (now § 1908.5(c)(10)) has been amended to so indicate.

(e) It became apparent from reviewing the public comments that the overall organization of the regulation was subject to some confusion. In the proposal, provisions which were actually directed to Federal activities were included within the section regarding consent of agreements. These provisions have therefore been deleted and placed in a new § 1908.4, with appropriate renumbering of the original sections.

(f) Although the term "constultation" is used throughout the regulation, the consultative service to be provided by State personnel is not necessarily the same type of service provided by insurance companies or private consulting firms. The purpose of the consultative service to be provided under the regulation is to advise employers on how to comply with OSHA standards, and rules and regulations.

(g) Because of the importance of the recognition of potential health hazards, § 1908.5(c)(6)(viii) has been revised to more clearly define the consultant's responsibilities. Under the final regulation, the consultant is required to ensure to the best of his ability that all possible health hazards are identified.

This program has already been subject to intense evaluation by the public and extensive comments have been received. In addition, the proposed regulations were discussed at a meeting of the National Advisory Committee on Occupational Safety and Health. In view of the fact that services are being provided for the assistance of the public, it is desirous that the program be implemented as soon as possible. Therefore, good cause is found and this regulation shall be effective immediately.

In accordance with the above, Chapter XVII of Title 29, Code of Federal Regulations is hereby amended by adding a new Part 1908 as follows:

Sec.
1908.1 Purpose and scope.
1908.2 Definitions.
1908.3 Eligibility.
1908.4 General provisions.
1908.5 Making of agreements.
1908.6 Actions upon requests for agreements.
1908.7 Termination of agreements.
1908.8 Exclusion.

AUTHORITY: Secs. 7(c)(1), 21(c), 84 Stat. 1598, 1612; (29 U.S.C. 656(c)(1), 670(c))

### § 1908.1 Purpose and scope.

This part contains procedures for the negotiation and award of contracts under section 7(c)(1) of the Occupational Safety and Health Act of 1970 (hereinafter called the Act (29 U.S.C. 651, et seq.) to States for the purpose of using State personnel to conduct on-site consultations under authority of sections 7(c)(1) and 21(c) of the Act, and the requirements for the content of such agreements. Under this part, States which do not have a plan approved under section 18(c) of the Act are eligible to participate in the program with 50 percent funding by the Federal government. The number of consultants who will provide consultative services under the terms of the 7(c)(1) contracts will be determined on the basis of the number of employer requests for consultation in each State. These consultants will provide on-site consultative services upon employer request only, and such services would be limited to the scope of that request; the smaller the business, the less specific the request will have to be. However, in carrying out the consultative visit as requested by the employer, the consultant will bring to the employer's attention any hazards observed. In providing these services, priority will be given to small businesses, to be determined on the basis of the number of employees of the employer, with further consideration given to the hazardous nature of the workplace. The consultant will provide information on how the employer may comply with the Act by pointing out specific hazards in the workplace and suggesting corrective measures. The consultant's visit will not result in an enforcement inspection except in cases where hazards which could reasonably be expected to cause death or serious physical harm are discovered and the employer fails to cooperate in their elimination. However, the consultant's report may be requested by the Compliance Safety and Health Officer and used to determine the employer's good faith or lack thereof in the event of a subsequent inspection. The employer, however, may refuse to provide the report, and such refusal shall not be regarded as bad faith. Any agreement made hereunder shall incorporate the requirements of this part.

### § 1908.2 Definitions.

As used in this part and in consultation agreements entered into pursuant to this part:

"Act" means the Williams-Steiger Occupational Safety and Health Act of 1970.

"ARD" means the Assistant Regional Director for Occupational Safety and Health of the Region in which the State concerned is located.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

"CHSO" means a compliance safety and health officer.

"OSHA" means the Occupational Safety and Health Administration.

"State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

### § 1908.3 Eligibility.

Each State without an occupational safety and health plan approved under section 18(c) of the Act is eligible to enter into an on-site consultation agreement with the Assistant Secretary under sections 7(c)(1) and 21(c) of the Act.

### § 1908.4 General provisions.

(a) *Qualifications of consultants.* State consultants serving under 7(c)(1) agreements must have adequate education and experience in occupational safety and health to satisfy the ARD, after interview, that they have the ability to perform satisfactorily pursuant to the agreement. All consultants under the agreement shall be qualified under State requirements for employment in occupational safety and health, and shall meet additional requirements as may be established by the Assistant Secretary. All consultants shall be selected in accordance with the provisions of Executive Order 11246 of September 24, 1965, as amended.

(b) *Training.* All consultants under the agreement shall receive consultative training which includes successful completion of the training course requirements for OSHA CSHO's. The consultants shall also receive such additional training as may be deemed necessary by the Assistant Secretary in order to efficiently perform their duties as consultants. Consultants shall receive appropriate State credentials upon successful completion of their training. Transportation and per diem for purposes of training shall be at Federal expense.

(c) *Number of consultants.* The number of consultants who will provide consultative services under the terms of a 7(c)(1) agreement will be determined on the basis of the number of employer requests for consultation in each State, and the recommendation of the ARD.

(d) *Effect upon enforcement activities.* (1) A consultative visit shall not generate any enforcement activity by OSHA, except as provided in § 1908.5(c)(7). The file of the consultant's visit shall not be forwarded to OSHA for use

in compliance activities, but may be used for the purpose of monitoring the effectiveness of the program by OSHA in accordance with § 1908.4(d)(5).

(2) Federal inspection and enforcement activity shall be conducted independently of any consultation activity by a State. However, a consultative visit in progress will delay an initial compliance inspection until after the visit is completed. OSHA accident investigations, responses to complaints, imminent danger investigations, or follow-up inspections shall not be delayed.

(3) In the event of a subsequent OSHA inspection of an employer who has had a consultation visit, the CSHO may request a copy of the consultant's written report to the employer. The report may be used to determine the employer's good faith or lack thereof for purposes of proposing penalties. The employer is not required, however, to furnish the report, and his refusal to do so shall not give rise to any inference of bad faith.

(4) In the event of a subsequent OSHA inspection, the opinions, suggestions, advice and interpretations of a consultant shall not be binding on a CSHO and will not affect the regular conduct of the inspection, or preclude the finding of alleged violations or the proposing of penalties. Further, the CSHO shall not be bound by the consultant's failure to identify specific hazards. However, the fact that an employer took advantage of consultative services and was in compliance with a consultant's advice shall be a major factor in the determination of an employer's good faith, but shall not operate as a defense to any enforcement action.

(5) A State's performance under the agreement shall be monitored by the ARD and changes may be directed pursuant to such evaluation and OSHA's consultation policy. In such monitoring, special attention shall be given to determine whether those hazards which could reasonably be expected to cause death or serious physical harm disclosed during a consultation visit remain unabated. This monitoring shall not include the utilization of OSHA enforcement personnel.

**§ 1908.5 Making of agreements.**

(a) *Who may make agreements.* The Assistant Secretary may make an agreement under section 7(c)(1) of the Act with any State agency designated for that purpose by the Governor.

(b) *Commencement of negotiations.* Negotiations for making an agreement may be commenced by the Governor of the State, or a State agency which is designated for this purpose under paragraph (a) of this section in such manner as the Assistant Secretary may prescribe. Instructions may be obtained through the ARD. The contents of the agreement shall be those described in paragraph (c) of this section.

(c) *Contents of the agreement.* Any agreement, including any modification thereof, shall be in writing and shall contain but not be limited to the following provisions:

(1) A statement that the State agency is authorized by the Governor to perform the obligations under the agreement and is authorized to receive and expend Federal funds and matching State funds.

(2) A statement of purpose that the State agency shall provide consultative services to employers, with priority to small business, to be determined by the number of employees of the employer, with further consideration given to the hazardous nature of the employer's activities. Consultants shall advise employers of their obligations and responsibilities under the Act and its implementing regulations.

(3) A statement that the State will adequately publicize the availability of consultative services for employers in the State, and inform employers of the procedures to be followed in requesting such services.

(4) A statement that consultants under the agreement shall be qualified under State requirements for employment in the occupational safety and health field, and shall meet the requirements as set out in § 1908.4(a) and any additional requirements as may be established by the Assistant Secretary.

(5) A statement that consultants under the agreement shall receive consultative training as set out in § 1908.4(b) and as may be deemed necessary by the Assistant Secretary in order to efficiently perform their duties as consultants.

(6) Provisions that consultative visits will be made only at the request of the employer, and that the consultation shall consist of an opening conference (introduction), a walk through the work place, and a closing conference with a subsequent written report (summary). During the visit the consultant shall:

(i) Advise the employer that, in the event of a subsequent OSHA inspection, the compliance officer will not be legally bound by the advice given by the consultant or the failure of the consultant to point out a specific hazard. The consultant shall also advise the employer that he may, but is not required to provide a copy of the written report to the inspecting compliance officer and if he chooses to make the report available to the CSHO it may be used to determine the employer's good faith or lack thereof. This information shall also be contained in the written report under paragraph (c)(6)(x) of this section.

(ii) Advise the employer as to the actions and the consultant's responsibility described in paragraph (c)(7) of this section.

(iii) Ask the employer whether, and under what circumstances, the consultant may confer with employees in the course of his visit.

(iv) Explain to the employer which OSHA standards and rules and regulations apply to his workplace;

(v) Explain the technical language and application of the standards when necessary;

(vi) Advise if and how the employer is not in compliance with OSHA standards and rules and regulations;

(vii) Where feasible and within his technical competence, suggest means by which identified hazards may be abated;

(viii) Ask the employer to identify all potential health hazards present in the workplace, and ensure, to the best of his ability, that all other possible health hazards have been identified to the employer. For those hazards on which additional information, or laboratory analyses is needed, the employer will be advised of available sources of information or further assistance to confirm the existence of such hazards;

(ix) Advise the employer of additional sources of assistance;

(x) Advise the employer that the visit to his workplace will be followed by a written report. The report shall contain the information in paragraph (c)(6)(i) of this section, and shall identify the specific hazards discovered and describe their nature, including a reference to the specific applicable OSHA standard, and where feasible, a suggested means of abatement.

(7) A statement that consultants, upon discovery of hazards which could reasonably be expected to cause death or serious physical harm, shall immediately request the employer to eliminate the hazards, or if this is not possible to prohibit the presence of any employee in the danger area. A follow-up visit shall be made by the consultant where elimination of the hazard has not been effected immediately unless the consultant is otherwise satisfied, on the basis of documentary or other evidence, that such elimination has taken place. If the employer fails to take the necessary action in eliminating those hazards, the consultant shall immediately inform the affected employees and advise the ARD of the situation.

(8) A provision for the protection of the confidentiality of trade secrets disclosed during the consultant's visit.

(9) A statement that employees or their representatives, or members of a joint labor-management safety committee, may participate in the consultation visit, with the express permission of the employer.

(10) A statement that the State will maintain a clear separation between paragraph 7(c)(1) of this section enforcement and paragraph 7(c)(1) of this section consultation staffs.

(11) A detailed budget of the State's proposed expenditures under this agreement.

(d) *Location of sample agreement.* A copy of a sample agreement under these provisions is available for inspection at the Office of Regional Programs, Room N-3112, 200 Constitution Ave., NW, Washington, D.C. 20210, and all Regional Offices of the Occupational Safety and Health Administration of the U.S. Department of Labor.

**§ 1908.6 Action upon requests for agreements.**

The State shall be notified within a reasonable time of any decision concerning its request for an agreement. If a request is denied, the State shall be

informed in writing of the reasons therefor. If an agreement is negotiated, the initial funding shall specify the period for which that agreement is contemplated. Additional funds may be added at a later time provided the activity is satisfactorily carried out and appropriations are available. The State may also be required to amend the agreement for continued support.

§ 1908.7 Termination of agreement.

(a) *Termination by the parties.* Either party may terminate this agreement upon 15 days written notice to the other party.

(b) *Termination upon plan approval.* In no event shall an agreement under this part continue in effect beyond 30 days after a State's occupational safety and health plan has been approved under section 18(c) of the Act.

§ 1908.8 Exclusion.

This agreement does not restrict in any manner the authority and responsibility of the Assistant Secretary under sections 8, 9, 10, 13, and 17 of the Act.

Signed at Washington, D.C. this 15th day of May 1975.

JOHN STENDER,
*Assistant Secretary of Labor.*

[FR Doc.75-13246 Filed 5-19-75;8:45 am]

---

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

[FRL 375-2]

## PART 419—PETROLEUM REFINING POINT SOURCE CATEGORY

### Effluent Limitations, Guidelines and Pretreatment Standards; Amendments

On May 9, 1974, effluent limitations, guidelines, and standards of performance and pretreatment standards for new sources were published applicable to the topping subcategory, cracking subcategory, petrochemical subcategory, lube subcategory, and integrated subcategory of the petroleum refining category of point sources. Public participation procedures for those regulations were described in the preamble thereto, and are further discussed below.

Petitions for review of the regulations were filed by the American Petroleum Institute and others on August 26, 1974.

After the regulations were published, comments were received criticizing certain aspects of the regulations. As a result of these comments, the Agency concluded that the ranges used in preparing the size and process factors were too broad. Accordingly, a notice was published in the FEDERAL REGISTER (Thursday, October 17, 1974, 39 FR 37069) of the Agency's intention to reduce the range sizes.

In response to the October 17 notice, a variety of detailed comments were received concerning all aspects of the regulations. The commenters sought major modifications of the regulations as promulgated.

The Environmental Protection Agency has carefully evaluated all comments which were received. The data base and methodology have been reexamined, and, in some cases, new data have been gathered and reviewed.

Most commenters favored the changes outlined in the modifications proposed on October 17th. However, many more substantial changes were sought by commenters. The Agency has concluded that promulgation of the proposed modifications is appropriate. However, the record does not warrant, except in two instances, the additional modifications sought. The bases for the Agency's conclusions are set forth in detail below, with responses to all major comments received.

### HISTORY OF THE REGULATIONS DEVELOPMENT

*Background.* With the enactment of the 1972 Amendments to the Federal Water Pollution Control Act (FWPCA), the Effluent Guidelines Division of the Environmental Protection Agency (EPA) assumed responsibility for the preparation of effluent guidelines and limitations under sections 301 and 304 of the Act.

The Petroleum Refining Industry in the United States and its territories is made up of 253 refineries. These refineries produce a wide range of petroleum and petrochemical products and intermediates from crude oil and natural gas liquids.

The size and type of hydrocarbon molecules and impurities contained in crude oils from around the world vary greatly, as do the products produced at each refinery. The configuration of a refinery is therefore a function of the type of feedstock used (crude oil and natural gas liquids) and the products which are to be produced. There are several hundred different processes used in this industry because of these variations in feedstocks and products. The general categories of processes used are: (1) Distillation, which separates hydrocarbon molecules by differences in their physical properties (boiling points); (2) cracking, which is the breaking down of high molecular weight hydrocarbons to lower weight hydrocarbons; (3) polymerization and alkylation, which rebuild the hydrocarbon molecules; (4) isomerization and reforming, which rearrange molecular structures; (5) solvent refining, which is the separation of different hydrocarbon molecules by differences in solubility in other compounds; (6) desalting and hydrotreating, which remove impurities occurring in the feedstock; (7) the removal of impurities from finished products by various treating and finishing operations; and (8) other processes.

Several years ago, the industry began classifying refineries into five categories: A, B, C, D, and E. Each category was defined as follows:

A—Refineries using distillation and any other processes except cracking.
B—Refineries using distillation, cracking, and any other process, but with no petrochemical or lube oil manufacturing.
C—Category B, with the addition of petrochemicals.
D—Category B, with the addition of lube oils.
E—Category B, with the addition of both petrochemicals and lube oils.

Petrochemicals as used by the industry meant any amount of production in a group of compounds historically defined as "petrochemicals". These compounds included some produced through processes normally associated with refineries, such as isomerization or distillation, and will be referred to as first generation petrochemicals. The second group of compounds considered petrochemicals were those produced through more complex chemical reactions. These compounds will be referred to as second generation petrochemicals.

The Agency was given the task of establishing effluent limitations for this diverse group of refineries. The first step needed was a breakdown of the industry into smaller groups of refineries, since the flow per unit of production within the industry was too diverse to be fit by a single set of limitations. Refineries were subcategorized based upon process configurations, i.e., the process used on the feedstock.

Once the industry was subcategorized, it was necessary to determine how the effluent limitations would be derived and what limitations would be established for each subcategory. Since refinery performance data (effluent concentrations) seemed to be independent of subcategory, EPA concluded that a single set of effluent concentrations could be achieved by all subcategories. It was then necessary to define a flow base and a method by which the amount of production at any given refinery could be taken into account. Since the industry produces many hundreds of products and those products produced are a function of process configuration and feedstock, it was decided to base the limits on the quantity of feedstock consumed. The flows were therefore based on a unit of flow per unit of feedstock consumed.

The resulting limits were therefore defined as a quantity of pollutant per unit of feedstock (mass allocation), derived by multiplying a predicted flow per unit of production times an achievable concentration.

A more detailed discussion is set forth below of how the subcategories, flows, achievable concentrations, and short-term limits were derived, beginning with the contractor's report and ending with EPA's reconsideration.

1. *Subcategorization.* The earliest subcategorization of the Petroleum Refining Industry for pollution control purposes was made by the Office of Permit Programs in the preparation of their Effluent Guidance for the issuance of discharge permits under the 1899 Refuse Act. This initial subcategorization, which was made prior to the enactment of the FWPCA, followed a classification of the industry made by the industry itself, as discussed above.

Roy F. Weston, Inc., which had previously assisted EPA in preparing Effluent

Guidance for the Petroleum Refining Industry, was retained to prepare a Draft Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Petroleum Refining Point Source Category. After an additional six-month study of the industry, Weston submitted a draft report in June, 1973, which proposed a somewhat different subcategorization approach than had been used previously. These modifications in subcategorization were in recognition of the wide range of industry complexities found within the original five subcategories and constituted division of the B subcategory (into B–1 and B–2) based on the amount of cracking, and the combining of the D and E subcategories.

Many comments on the draft report subcategorization argued that splitting B into B–1 and B–2 was a step in the right direction, but it was inappropriate to combine D and E. It was also argued that a further breakdown of the industry was warranted because of the wide range of sizes and complexities within each subcategory.

In response to these early comments, EPA, in its proposed regulation published December 14, 1973, 38 FR 34542, modified Weston's subcategorization by redefining the term petrochemicals, once again separating the D and E subcategories, and establishing a new specialty lube subcategory. The 18 specialty lube refineries in the U.S. were not covered by the proposed regulation, because of the lack of data available at the time.

As in the case of the draft report, many comments on the proposed regulation argued that the proposed subcategorization did not adequately consider the wide range of plants within each subcategory. Representatives of the American Petroleum Institute Environmental Committee (including both API personnel and employees of several member companies) met with EPA on several occasions in January, February, and March, 1974. At these meetings API presented a new subcategorization technique which had been developed by one of its subcommittees. Additional meetings were held with API through April for further discussion of the API proposed subcategorization technique and of EPA's response to their proposal.

API proposed a method of predicting raw waste loads for each refinery based on a regression analysis (best fit) performed on the data for various waste parameters drawn from the 1972 refinery survey carried out jointly by API and EPA. This approach would predict expected flows and raw waste load levels for such parameters as BOD, COD, etc. API proposed guidelines that were to be derived from the raw waste loads by assuming a removal efficiency for each parameter.

There were several major problems with the specific approach recommended by API: (1) After initially running their regressions, API discarded 20 percent of the data points in order to improve the correlation. Much of the discarded data pertained to large refineries. Thus, the validity of the analysis, particularly as applied to those refineries, is open to serious questions. (2) API adjusted the results of the mathematical analysis by making "engineering judgments." The Agency could find no defensible basis for these judgments. (3) The results of the regression on raw waste load showed little hope for a further subcategorization because of the poor correlations found. This might, in part, be explained by the fact that the regression data base included only a single day's sample for each refinery for each of the raw waste load parameters (BOD, COD, etc.).

A major drawback to API's proposal that EPA use these analyses was that a separate regression and set of criteria (achievable removal efficiency) would be required for each parameter (BOD, COD, suspended solids, oil and grease, phenolics, ammonia, sulfides, and chromium). Based on API's initial work, this approach did not appear to be workable. API expected to complete, by September 1974, a report embodying their recommended approach; this report has never been submitted to the Agency.

Nevertheless, it appeared that the regression analysis proposed by API might work well in predicting differences in flow volumes from refineries based on the configuration of each refinery, because the dry weather flows from refineries are relativley constant and the one day's data (taken during dry weather) gathered in the API/EPA survey would therefore be representative. A procedure for predicting flows based on refinery characteristics would also be usable in connection with the approach used in the proposed regulations, since the limitations were based on achievable concentrations for each parameter multiplied by a flow for each subcategory.

After several months of work, EPA arrived at a technique, utilizing regression analysis, for predicting flows. The promulgated regulations are based upon this technique. It was found that size as well as complexity (type of processing carried on in each refinery) had an effect on the expected flow volume. Using the results of a regression analysis would then allow the limits to vary up or down for each refinery based on the actual characteristics of the individual refinery.

EPA compared the median flows used in the proposed regulations and the flows predicted by the regression, to the actual refinery flows given in the API/EPA survey. It was found that the regression predicted flows for the individual refineries more accurately than did the median for the appropriate subcategory.

In the final regulations, EPA's regression analysis was used to develop factors by which the median flows are adjusted up or down, depending upon the complexity and size of the refinery. For example, a complex, very large refinery would be predicted to have a higher flow per unit of production than a simple, less complex refinery.

2. *Sources of data.* One of the difficulties encountered in developing these regulations has been, except for the data supplied by the API for flows, obtaining usable data. Few refineries either kept data on their effluent or reported it if kept. The data used and relied upon by EPA represents a significant fraction of all the pertinent data extant.

The draft contractor's report utilized, for its flow data, information from 94 of the refineries of the 1972 API/EPA Raw Waste Load Survey. The achievable concentrations in the report for Best Practicable Technology (BPT) (1977) were based upon data from 12 refineries, upon reference materials, and upon pilot plants. These 12 refineries, misnamed "exemplary" refineries, were selected because they had treatment in place and data available; they did not necessarily represent the best or even the better refineries. The achievable concentrations in the contractor's report for Best Available Technology (BAT) (1983) were based upon pilot plant and reference materials. The variabilities used in the report were derived from those of the 12 "exemplary" refineries for which long-term data were available.

The proposed regulations were issued using the same data as that in the contractor's report.

The flow basis of the final regulations was the same as that of the contractor's report. The BPT achievable concentrations used in the final regulations were the same as those in the contractor's report, except that three additional refineries were used to calculate the chemical oxidation demand (COD) concentrations. The BAT achievable concentrations for those regulations were the same as the contractor's. For variabilities, data from five additional refineries were added to those used in the contractor's report.

For EPA's reconsideration of the regulations, leading to promulgation of the amendments to the effluent limitations guidelines, the flow basis did not change from that utilized in the contractor's report. In reexamining the BPT achievable concentrations, however, additional refinery data were used, as well as the data from the above-cited 12 refineries used for the final regulations. In reexamining the BAT achievable concentrations, additional references and pilot plant data were used. Long-term data for 7 additional refineries were used in the reconsideration of the variabilities.

3. *Flow basis.* In the draft contractor's report the flows from the refineries were broken down into three categories: 1) process water, 2) storm runoff, and 3) once-through cooling water. The process waters included: waters which come into direct contact with a product, intermediate, or raw material; contaminated storm runoff; and cooling tower blowdown. Process waters were considered to require treatment, and were to be segregated and discharged separately from clean storm runoff and once-through cooling water which were presumed to be uncontaminated. If the clean storm runoff and once-through cooling water were contaminated, however, no additional allocations were made.

The process flows appropriate to each subcategory were derived from the 1972

API/EPA survey. This survey gave total flow data (process water plus once-through cooling water) for 136 refineries. Since Weston's proposed allocation was to be based on process flow, it was appropriate to restrict this data base to the 94 refineries having less than 3 percent removal of heat by once-through cooling water. Of the 94 refineries, 75 had no once-through cooling water.

EPA continued to use the 94-refinery data base, because it was believed that the inclusion of the 19 refineries with 1–3 percent of heat removal by once-through cooling would only cause a slight overestimate of the process water flows and that the disadvantage of the resultant over-allocation of process flow would be more than offset by the advantage of using a larger data base.

The proposed regulation differed from the contractor's report in several respects. The definition of process water remained the same, except that an added allocation was given for ballast water and contaminated storm water, over and above the basic allocation. In addition, concentration limits were set for both clean storm runoff and once-through cooling water. These changes meant that the basic pollutant allocation was now actually based on process water flows, and the contaminated storm runoff, ballast, clean storm runoff and once-through cooling water each received separate allocations.

In the promulgated regulation, the subcategory definitions were changed. This change altered the number of refineries in each subcategory, and consequently altered the median flows for each subcategory. However, these flows continued to be based upon the same 94 refineries, and the previous definitions of different types of waste streams (process water, ballast water, etc.) were retained. EPA has not modified the contractor's original approach to identifying flows used in the calculation of the BAT limitations. BAT flow is the average of the flows for those refineries in each subcategory having less flow than the BPT median flows. These flow values have changed as the subcategory definitions have changed.

4. *Achievable concentrations.* The effluent concentrations used to calculate the pound allocations (BPT and new source) were the same for both the contractor's draft report and the proposed regulations. The achievable concentrations were recommended by the contractor and were based upon actual performance within this and other industries, and in pilot plants.

When the effluent regulations were promulgated the achievable concentrations for chemical oxygen demand (COD) and ammonia were changed. The COD limitations were increased (for the cracking, petrochemical, lube, and integrated subcategories) to account for differences in treatability of raw waste associated with various feedstocks (specifically heavy crudes). The changes in the ammonia limitations were a consequence of the changes in subcategorization.

During the past several months EPA has obtained additional data, including data on refineries in cold climates. Analysis of these data shows that the pollutant parameter concentrations established for BPT are in fact practicably attainable. In fact, a number of refineries are achieving all of the regulations concentrations. As expected, refineries processing light crudes generally discharge COD concentrations 20–30 percent lower than the concentrations on which the final regulations are based. Only the ammonia limitations are occasionally being exceeded by a few of the refineries examined. However, most of these refineries are currently designing or installing additional stripping capacity or a second stage of sour water stripping which will allow them to achieve the ammonia limitations.

5. *Variability factor.* The flow basis and achievable concentrations discussed to this point are based on the limits refineries are designed to attain and expected to achieve over a long period of time (generally considered to be one year). For enforcement purposes, shorter term limits were set to allow determination to be made more quickly whether or not a given refinery is in compliance with its permit limitations.

In order to derive short-term limitations from long-term data, the dispersion of short-term values about a long-term mean must be taken into account. Some daily values will be higher than the mean, some will be lower. The daily variability is the magnitude of this dispersion of daily values about the long-term mean. The monthly averages will also show variability about the long-term mean, but to a lesser extent.

Variability occurs in both flow and concentration. Some of the factors which cause variability are listed below:

I. Flow volume variations—
A. Storm runoff in addition to dry weather flow
B. The varying throughput of the refinery, since it will not always operate at its rated capacity
C. Variations in pump capacity and pressure losses through the refinery
D. Variations in blowdown volume from the cooling towers because of the evaporation rate from the towers
E. Others
II. Variation in treatment system efficiency (effluent concentration)—
A. Flow variations result in varying retention times (since the biological treatment system for a given refinery are fixed in size, the retention time will vary with flow-volume and the removal efficiency varies with retention time)
B. System upsets
C. Raw waste variations
D. Amount of equalization, which controls the impact of system upsets or raw waste variations
E. Slugging of storm runoff
F. Start-up and shut downs
G. Spills
H. Extreme or unusual weather conditions
I. Temperature effects
III. Factors affecting both flow and concentrations—
A. Sampling techniques
B. Measurement error and variability

Many of the factors listed above can be minimized through proper design and operation of a given facility. Some techniques used to minimize variability are as follows:

1. *Storm-runoff.* Storm water holding facilities should be used. Their design capacity should be based on the rainfall history and area being drained at each refinery. They allow the runoff to be drawn off at a constant rate to the treatment system.

2. *Flow variations, system upsets and raw waste variations.* The solution to these problems is similar to that for storm runoff; leveling off the peaks through equalization. Equalization is simply a retention of the wastes in a holding system to average out the influent to the treatment system.

3. *Spills.* Spills which will cause a heavy loading on the system for a short period of time, can be most damaging. A spill may not only cause high effluent levels as it goes through the system, but may also kill or damage a biological treatment system and therefore have longer term effects. Equalization helps to lessen the effects of spills. However, long-term, reliable control can only be attained by an aggressive spill prevention and maintenance program including careful training of operating personnel.

4. *Start-up and shut-down.* These should be reduced to a minimum and their effect dampened through equalization or retention, as with storm runoff.

5. *Temperature.* The design operation and choice of type of biological treatment system should in part be based on the temperature range encountered at the refinery location so that this effect can be minimized. The data base utilized by the Agency includes refinery data from cold climates and very large summer-winter temperature differences.

6. *Sampling techniques and analytical error.* These can be minimized through utilization of trained personnel and careful procedures.

From the beginning it was realized that the causes of variability could not be quantified individually. The variability (variation from average) must therefore be calculated from actual refinery data, representing the combined effect of all causes. The information sought from the data were the maximum daily and monthly average limits, which should not be exceeded if the refinery is meeting the prescribed long-term averages.

The contractor analyzed data from several refineries. To determine the daily variability (variations of single values from the average) he arranged the data from each refinery for each parameter in ascending order. The data point that was exceeded only 5 percent of the time, and the median point (50 percent above, 50 percent below) were identified. The ratio of these values (95 percent probability/50 percent probability) was called the daily variability. For the monthly variability, the daily values for each month's data were averaged and these monthly averages were analyzed as above. The resulting daily and monthly variabilities for each parameter were averaged with the variabilities for the same parameter for all of the refineries

tc yield the daily and monthly variabilities for the entire industry. These industry variabilities were then multiplied by the long-term average limits to obtain the maximum daily and maximum monthly average limits.

For the proposed regulation, all of the variabilities were recalculated. The approach used by the contractor was rejected because it was inappropriate except for extremely large quantities of data, and it made no attempt to differentiate between preventable and unpreventable variability. EPA selected from the contractor's data those periods believed to represent proper operation. The data used by the contractor for some refineries contained unexplained periods of high values. Attempts were made to determine the causes of these values. In one case, one month of extremely high values occurred after a major hurricane hit the refinery in 1971. Not until a month later was the treatment system back in normal operation. In another case the treatment system operated with relatively low variability for over one year and then showed an unexplained large increase in variability the following year. Since the data for the first year of operation demonstrated that lower variability could be achieved over a long period of time, that year was selected for analysis.

The contractor determined daily variability by dividing the 95th percentile point by the 50th percentile point. EPA modified this approach by selecting the predicted 99th percentile divided by the mean. The change from 95th to 99th percentile was intended to minimize the chance that a refinery would be found in violation on the basis of random samples exceeding the limitations. Similarly, EPA selected the 98th percentile for use in determining the maximum monthly average.

The upper percentiles were derived based on the assumption that the data were distributed according to a normal or bell shaped distribution. An average variability for each parameter was then calculated and that average multiplied by the long-term average to set the daily maximum and maximum monthly averages.

Between proposal and promulgation, data were given to EPA by the American Petroleum Institute for five additional refineries, which were said to have BPT end-of-pipe treatment or its equivalent. EPA did not know the names or locations of these refineries and therefore could not check potential causes of variability. The BOD5 data from these refineries were studied, and the data base used to calculate the proposed BOD5 limits was reexamined. It was found that for most refineries the data more nearly approximate a log-normal (where the logarithm of the data is normally distributed) rather than a normal distribution. The variabilities were then recalculated assuming either a normal or log-normal distribution, whichever was the better fit. This analysis yielded an average daily variability for BOD5 of 3.1, instead of the proposed value of 2.1. The final regulations were based on the recalculated BOD5 value of 3.1. The monthly average variabilities were not changed. For other parameters, the variabilities in the proposed regulations were multiplied by the ratio of the recalculated BOD5 variability (3.1/2.3=1.35). The daily maximum to the median BOD5 variability assuming normal distribution limits were determned by multiplying the long-term average by the recalculated variability.

On reexamination following promulgation of the regulations, EPA has reviewed 1974 data from seven refineries on all parameters. With the exception of suspended solids, the variability factors derived from these data confirm the variability factors originally established. This additional data on suspended solids indicated that the daily variability of 2.9 and the monthly variability of 1.7 originally calculated may be too low. Accordingly, a daily variability of 3.3 and a monthly variability of 2.1 have been established, based on the addition of this new data.

No existing plant employs the treatment technology (biological treatment followed by activated carbon) specified for 1983. The variability used for 1983 was, however, based upon the lowest variability achieved by any plant for each parameter. The Agency believes that this low variability represents the best prediction that can be made at the present time of variabilities which will be achieved by 1983. These should be much lower than the average variabilities presently being attained for the following reasons: 1) the additional step of treatment should tend to dampen peaks in the data; 2) most of the effluent data were not from systems with a filter or polishing step after biological treatment and this should help dampen peaks; 3) the activated carbon is unaffected by several of the factors causing variability in biological systems; and 4) the industry will have 10–11 years of additional experience in the area of treatment plant operation and control from the time when data was taken.

### Summary of Major Comments

The following responded to the request for comments which was made in the preamble to the proposed amendment: Shell Oil Company, The American Petroleum Institute, and Texaco Inc.

Each of the comments received was carefully reviewed and analyzed. The following is a summary of the significant comments and EPA's response to those comments.

(1) One commenter stated that the regulations and the Development Document fail to disclose or explain the criteria employed by the engineering contractor or EPA for selecting the thirty candidate refineries for "exemplary plant treatment," and that EPA had not explained or justified why and how the thirty candidate refineries were narrowed down to only twelve "exemplary" refineries.

The sources of information available to the contractor for the development of the subcategorization and the choice of well-operated refineries (in terms of pollution abatement) were as follows:

1. 1972 EPA/API Raw Waste Load Survey
2. Corps of Engineers (Refuse Act) Permit Applications
3. Self-reporting discharge data from Texas, Illinois, and Washington
4. Monitoring data from state agencies and/or regional EPA offices for individual refineries.

A preliminary analysis of these data indicated an obvious need for additional information. Although 136 refineries were surveyed during the 1972 EPA/API Raw Waste Load Survey, the survey did not include any effluent data.

Refuse Act Permit Application data were limited to identification of the treatment systems used, and reporting of final concentrations (which were diluted with cooling waters in many cases); consequently, operating performance could not be established.

Self-reporting data was available from Texas, Illinois, and Washington. These reports show only the final effluent concentrations and in only some cases identify the treatment system in use; rarely is there production information available which would permit the establishment of unit waste loads.

Additional data in the following areas were required: (1) Currently practiced or potential in-process waste control techniques; (2) identity and effectiveness of end-of-pipe waste control techniques; and (3) long-term data to establish the variability of performance of the end-of-pipe waste control techniques. The best source of information was the petroleum refineries themselves. New information was obtained from direct interviews and inspection visits to petroleum refinery facilities. Verification of data relative to long-term performance of waste control techniques was obtained by the use of standard EPA reference samples to determine the reliability of data submitted by the petroleum refineries, and by comparison with monitoring data from the state agencies and/or regional EPA offices.

The selection of petroleum refineries as candidates to be visited was guided by the trial categorization, which was based on the 1972 EPA/API Raw Waste Load Survey. The final selection was developed from identifying information available in the 1972 EPA/API Raw Waste Load Survey, Corps of Engineers Permit Applications, State self-reporting discharge data, and contacts within regional EPA offices and the industry. Every effort was made to choose facilities where meaningful information on both treatment facilities and manufacturing processes could be obtained.

After development of a probability plot for the respective raw waste loads from the tentative refinery categorization, the tentative categorization was presented to API and EPA for review and comment. Three refineries in each category were then tentatively designated as "exemplary" refineries based

on low raw waste loads determined by the API/EPA survey. Simultaneously, tentative lists of additional refineries were collected from each of the Regional EPA offices. Several lists were then prepared and submitted to EPA. From the approximately 30 refineries on these lists, the refineries for further study were then selected.

During this screening process, arrangements were made to either visit the refineries or collect additional information relative to plant operations. In some cases, refineries declined to participate in the program. As a result of the screening program, twenty-three (23) refineries were then involved in plant visits. These refineries are listed in Table 1.

The purpose of the refinery visits was to collect sufficient data in the areas of wastewater plant operations to define raw waste loads, effluent treatment schematics, operating conditions, and effluent analyses. As a result of these plant visits, data from only twelve (12) refineries (designated by stars in Table 1) were found to be available for a sufficiently long-term period (one year or more) to provide an adequate data basis for further definitive projections. Consequently, operating data from these twelve (12) refineries were then used as one of the major data sources in development of the regulations.

TABLE 1

REFINERIES VISITED UNDER CONTRACT NO. 68-01-0598

| Company | Location |
|---|---|
| Union Oil | Lemont, Ill. |
| Amoco | Whiting, Ind. |
| Amoco [1] | Yorktown, Va. |
| Coastal States [1] | Corpus Christi, Tex. |
| Champlin [1] | Do. |
| Total Leonard [1] | Alma, Mich. |
| Union Oil [1] | Beaumont, Tex. |
| Exxon | Baton Rouge, La. |
| Marathon [1] | Texas City, Tex. |
| Shell [1] | Deer Park, Tex. |
| OKC Refining | Okmulgee, Okla. |
| Texaco [1] | Lockport, Ill. |
| Phillips [1] | Sweeney, Tex. |
| U.S. Oil & Refining [1] | Tacoma, Wash. |
| Shell [1] | Martinez, Calif. |
| BP | Philadelphia, Pa. |
| Gulf | Do. |
| Amerada Hess | Port Reading, N.J. |
| Arco | Philadelphia, Pa. |
| Gulf | Port Arthur, Tex. |
| Sun [1] | Duncan, Okla. |
| Kerr-McGee | Wynnwood, Okla. |
| Laketon Refinery | Lakeside, Ind. |

[1] Chosen as "exemplary" refineries.

As can be seen from the above, the selection of these twelve refineries was in large part dictated by the limited availability of information.

More complete or more recent data show some of the original twelve refineries to be less than "exemplary." See Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Petroleum Refining Point Source Category, pp. 12-14; "Draft Development Document for Effluent Limitations Guidelines and Standards of Performance, Petroleum Refining Industry," pp. III-2-4.

(2) One commenter objected to the calculation of 1977 flow rates from only 94 refineries, 40 percent of the industry.

Of a total of 253 petroleum refineries, EPA holds permit applications for surface water discharge for 190-200 refineries. The remaining 50-60 refineries are either "zero discharge" operations or are currently discharging to municipal waste treatment ystems. EPA is aware of a number of zero discharge refineries in arid or semi-arid areas of Texas, New Mexico and Southern California, and several refineries in Los Angeles County are currently discharging to municipal waste treatment. Since none of these plants have direct surface discharge, they are excluded as potential sources of data.

Of the remaining 190-200 discharging refineries, 136 were included in the 1972 API/EPA survey, which is the only available comprehensive source of data on refinery water use. Since the survey does not show process water use as a separate discharge, but instead lists total flow volume, this limited the number of refineries for which data could be used to those for which process flow constituted most or all of the total wastewater discharged. Data from refineries removing more than 3 percent of heat by means of once-through cooling were not used, since cooling water would cause any estimate of process flow based on total plant flow to be greatly overstated for those refineries. Thus, EPA could use data from only 94 refineries. Since the API/EPA raw waste load survey was designed to be representative of the total industry, and since EPA used all of the refineries in the survey with 3 percent or less heat removal by once-through cooling water, the flows used are actually higher than the process water flows achieved by the industry. (See "Flow Basis" portion of the History of Guidelines Development in this Document).

(3) One commenter stated that, of the twelve "exemplary" refineries only one actually complies with the prescribed 1977 levels for every pollutant parameter.

EPA based the regulations not upon the overall performance of the so-called "exemplary" refineries, but on the effluent concentrations achieved by the "exemplary" refineries and plants in other industries, the variabilities achieved by the "exemplary" refineries, and flows achieved by the industry as a whole. EPA did not expect that these refineries would uniformly comply with all limitations, since they did not have all the recommended technology in place. For example, few of the "exemplary" refineries were expected to meet the degree of ammonia removal specified, since few were practicing adequate ammonia stripping.

EPA has obtained effluent data covering a full year for six of the twelve refineries. Four of these had no violations of the 1977 limitations, while another had only five data points, out of several hundred data points, above the limits.

In addition, EPA now has data on 10 additional refineries in the United States which had no violations of the regulation limits in 1974, and four others that only exceed the ammonia limits.

Included in this group of 18 refineries (14 with no violations and 4 exceeding the ammonia limits) are "sour" crude users and refineries that are not located in areas with water shortages. It should be noted that these 18 refineries do not necessarily represent all of the refineries in the country currently meeting the regulations. The available data cover only 12 of 33 States which have refineries. EPA has requested the American Petroleum Institute to supply additional effluent data.

(4) One commenter stated that EPA failed to base the standards on the average of the best existing performances by plants currently in place.

EPA has based its limitations upon the best existing performance of plants currently providing treatment except where the industry is uniformly providing inadequate treatment. In every case, the limitations for the Petroleum Refining Point Source Category reflect actual performance of plants currently in place.

The following table summarizes the approach followed by the Agency in developing the regulations.

EPA set the BPT, BAT and New Source limits as follows:

| Level | Flow | Concentration | Variability |
|---|---|---|---|
| BPT (1977) | Flow being met by 50 percent of the plants in place adjusted for process and complexity factors. | Average of the best plants for which data were available. | The average of those plants with treatment in place for which long-term data were available. |
| BAT (1983) | Average of the best | Based on pilot plants | Best individual refinery. |
| BADT (new source). | do | Average of the best plants for which data were available. | The average of those plants with treatment in place for which long-term data were available. |

(See Sections IV, V, IX, X, XI of the Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Petroleum Refining Point Source Category, and Supplement B—"Probability Plots", refinery data and analysis files, "Variability Analysis.")

(5) One commenter objected to the Agency's reliance upon refineries in Texas and California, arguing that EPA's sample should be representative of the geographical distribution of the industry. The commenter noted that subcategories "C", "D", and "E" are represented solely by refineries in the coastal areas of Texas and California.

A. EPA's flow data base includes refineries from all areas of the country.

B. Of the four refineries selected by the contractor in the "A" and "B" subcategories, only one was located in Texas or California.

C. There is only one "E" refinery (Phillips, Kansas City) which is not located in Texas, California, or in a coastal area.

D. The data base for "D" refineries has been broadened by adding a refinery in Illinois.

E. Of the 17 "C" refineries in the country, 9 are in Texas, California, or in a coastal area. The agency has broadened its data base to include a "C" refinery in Illinois.

(6) Several commenters stated that EPA has ignored the effect of crude oil feedstock characteristics on the treatability of refinery effluent. They claim that feedstocks containing heavy crudes, in particular crudes from California, have a substantial impact on effluent quality.

Subsequent to publication of the proposed regulations, the Shell Oil Company and the Phillips Petroleum Company submitted data for three refineries processing California crudes: Shell at Martinez, California; Shell at Wilmington, California; and Phillips at Avon, California. These data indicated that these refineries appeared to have experienced higher pollutant raw waste loads (the quantities of pollutants in the waste stream before treatment) than the median refineries of their subcategories. EPA considered this additional information in assessing whether an additional pollutant allocation should be allowed those refineries processing heavy crudes.

EPA was interested in determining whether the above-median raw waste loads of the three refineries could be clearly attributed to their California crude feedstocks, or whether their high waste loads reflected the complexities of their refinery processes. Each of the three refineries is well above-average in complexity for its subcategory.

The commenters provided raw waste loads for five parameters (BOD5, COD, TOC, phenols and ammonia) from each of the three refineries. Of these raw waste loads, 13 out of the 15 instances were above the applicable subcategory median. This is shown by the following table:

REFINERY RAW WASTE LOAD AS PERCENT ABOVE THE MEDIAN FOR THE APPROPRIATE SUBCATEGORY

| | Phillips Avon | Shell Wilmington | Shell Martinez | 3 refineries average |
|---|---|---|---|---|
| BOD5 | 29 | 116 | 99 | 81 |
| COD | 7 | 198 | 330 | 178 |
| TOC | 77 | 93 | 111 | 94 |
| Ammonia | 20 | 351 | −47 | 95 |
| Phenols | 917 | 1,386 | 662 | 988 |

However, if refinery complexity is taken into account, by dividing each refinery's reported raw waste loads by that refinery's process factor, the resulting "complexity adjusted" raw waste loads exceed the appropriate subcategory median in only 7 of the 15 instances. This is demonstrated by the following table:

REFINERY RAW WASTE LOAD DIVIDED BY THE REFINERY PROCESS FACTOR AS PERCENT ABOVE THE MEDIAN FOR THE APPROPRIATE SUBCATEGORY

| | Phillips Avon | Shell Wilmington | Shell Martinez | 3 refineries average |
|---|---|---|---|---|
| BOD5 | −8 | −11 | −12 | −10 |
| COD | −24 | 22 | 90 | 29 |
| TOC | 25 | −21 | −6 | −1 |
| Ammonia | −43 | 85 | −77 | −12 |
| Phenols | 621 | 509 | 237 | 450 |

The above table shows that the increased refinery complexity associated with those refineries processing California crudes might well be a cause of their higher raw waste loads. Since the process factor is a component of the allowed effluent limitations, it adequately compensates (with the possible exception of phenols) for the larger raw waste loads of those refineries. Existing treatment facilities have demonstrated that the phenol limits are achievable, even when raw waste loads are greatly in excess of the median.

Even if it were possible unequivocally to attribute an increased raw waste load to a feedstock type, this would not in itself justify an increased effluent limitation for refineries processing that feedstock. The long-term average quantity of a pollutant in a refinery effluent depends more upon the design and operation of the treatment system than upon the average raw waste load input to the system.

To determine whether there exists in practice a relationship between average effluent quality and raw waste load, EPA compared, for 14 refineries with both raw waste load and effluent data available, the average amount of pollutant in the effluent with the raw waste load of the pollutant. No meaningful correlation between average effluent and raw waste load was observed for the pollutants BOD5, TSS, oil and grease, phenols, and ammonia.

Thus, for these pollutants, differences in effluent quality between refineries are associated more with other factors (e.g., differences in treatment systems or in-plant controls) than with differences in raw waste load. However, EPA did find a significant correlation between the quantity of COD in the effluent of each of the refineries and the refineries' raw waste loads.

This finding merely supports EPA's action, when it promulgated the regulations, in increasing the COD limitations to avoid any possible inequity to processors of heavy crudes. (See "History of the Regulations", Part 4, "achievable concentrations".)

In addition, EPA examined data from one refinery which processed a mixture of crude types. In particular, it was claimed that the effluent quality for BOD5, phenols, and ammonia decreased as the percentage of Arabian crude in the feedstock increased. The Agency could find no significant correlation between effluent quality and the percent of Arabian crude used.

(7) One commenter stated that operating experience with the full-scale carbon adsorption system at BP's Marcus Hook refinery has been less than satisfactory, that Gulf Oil Company has found that carbon treatment is not feasible for their Port Arthur refinery wastewater, and that Texaco has apparently reached the same conclusion with regard to its Eagle Point refinery.

The best available technology economically achievable specified for the petroleum refining industry is the application of carbon adsorption to the effluent from a well operated biological/physical treatment plant of the type required to meet the 1977 limitations. In each case specified by the commenter, activated carbon treatment was applied to wastewaters of considerably poorer quality than is required for 1977, since activated carbon was being used in lieu of biological treatment.

(8) Comments were received which assert that special unproven techniques, such as biological nitrification—denitrification for ammonia removal, and some unspecified technology for phenols, would be required to meet the ammonia and phenol limitations.

The achievable ammonia limits are based on in-plant sour water stripping techniques which are currently in use in the refining industry. A number of plants in this industry are meeting the ammonia limits using this technology. (See "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Petroleum Refining Point Source Category", pp. 95–97; 40 CFR Part 419, 39 FR 16562(23) May 9, 1974.)

The achievable phenol limits are based on the refinery effluent data and references cited in Tables 26 and 27 of the Development Document. In addition, EPA has recently acquired phenol effluent data from 11 refineries not cited in the Development Document, which data show an average phenol effluent concentration of 0.058 mg/l (0.10 mg/l was used as the achievable concentration in setting the BPT limits).

(9) Some commenters stated that neither the regulation nor the Development Document explains or assesses how refineries of widely varying age, process, geographic location, load availability, and other circumstances can further reduce flows to the 1983 volumes.

The methods currently being applied by the industry to achieve flow reductions are listed on page 169 of the Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Petroleum Refining Point Source Category.

Some other methods of reducing flows not listed on page 169 are:

1. Maximum reuse of treatment plant effluent, evaporation, and consumptive use.
2. Lime and lime soda softening to reduce hardness to allow further recycling.
3. Use of specially designed high dissolved solids cooling towers which would use the blowdown from other cooling towers as make-up water.

Of the 94 refineries used in determining the flow base for the 1977 limitations, 26 were doing as well or better than the 1983 flow base. These 26 refineries are located in 15 different states (Alaska, California, Colorado, Illinois, Kansas, Kentucky, Louisiana, Montana, North Dakota, New Mexico, Ohio, Oklahoma, Texas, Utah, and Wyoming).

(10) One commenter stated that the control efficiencies needed to meet the limitations are higher than those attained by municipal plants employing traditional secondary treatment, and are derived partially from EPA's inclusion of polishing steps, including granular filtration or polishing ponds. The commenter

argued that EPA's own publications concede that there is no carefully documented filter operating experience with wastewater, and that the operating experience of the two refineries using granular media filtration (Amoco, Yorktown; BP, Marcus Hook) shows that this technology will not achieve the limits.

Many dischargers will be able to meet the limitations without a polishing step. However, the cost of filters was included in the estimates since some refineries might need a polishing step to achieve the suspended solids and oil and grease limits.

The average effluent suspended solids for the 12 refineries for which EPA has 1974 suspended solids data is 15.1 mg/l (10 mg/l is the guideline basis). Only one of these plants (Marathon Oil, Robinson, Ill.) has a filter in operation. Several are achieving less than 10 mg/l of suspended solids without a polishing step. The ten refineries for which EPA has 1974 oil and grease data are averaging 5.0 mg/l (5.0 mg/l is the regulation basis).

Experience with granular media filters, as well as with other polishing steps, is extensive and well documented. EPA's "Process Design Manual for Suspended Solids Removal" gives the results of studies of filtration of effluent from secondary biological treatment for 32 facilities. These 32 show an average suspended solids effluent concentration of 6.6 mg/l, with only 3 of the 32 over 10 mg/l.

In addition, there are approximately 2500 granular media filters being used for suspended solids removal in the Water Supply industry. Many filters are in operation in other industries, such as steel, for oil and solids removal.

Within the petroleum industry many filters are being employed for oil removal from production water before its discharge from offshore oil platforms. Filters are also being used prior to secondary treatment (BP, Marcus Hook, Pa.; Exxon, Bayonne, N.J.; Amarada-Hess, Port Reading, N.J., etc.).

Two filters are currently being used as a polishing step for secondary treatment effluents (Amoco, Yorktown, Va. and Marathon, Robinson, Ill.) and several others are now in design or under construction.

It is true that the two installations with filters now in place do not achieve the 10 mg/l of suspended solids and 5 mg/l of oil and grease expected from these units. This is a result of the conditions under which these installations have been operated. EPA's 1977 treatment model assumes that the influent to a polishing step will be an effluent from a well designed, well operated secondary treatment plant, and that the average suspended solids and oil and grease influents to the filters will be 15–25 mg/l and 5–10 mg/l, respectively.

The following data from Amoco, Yorktown's filter operation show a distinct improvement in effluent quality when the influent is within the expected range:

| Date | Suspended solids (mg/l) | | Oil and grease (mg/l) | |
|---|---|---|---|---|
| | Influent | Effluent | Influent | Effluent |
| July 1971 to Aug. 1971 | 18 | [1] 4.8 | 7 | [1] 1.9 |
| Sept. 1971 to Nov. 1971 | 43 | [1] 13.6 | 16 | 8.3 |
| Dec. 1971 to Feb. 1972 | 68 | 39 | 16 | 10 |
| Mar. 1972 to May 1972 | 69 | 38 | 17 | 13 |
| Sept. 1972 to Nov. 1972 | 99 | 42 | 9 | [1] 6 |

[1] Lower than the monthly maximum limit of 17 mg/l for suspended solids, and of 8 mg/l for oil and grease, assuming median flow.

The above data indicates adequate performance of the filter when the secondary treatment effluent was within the ranges of expected operation, in spite of the following unusual (and correctable) difficulties encountered at the facility: 1) filter media losses and channeling eventually forced replacement of the entire filter bed; 2) an unexpected increase in flow volume was caused by refinery acceptance of ballast water; 3) untreated lagoon water (used for backwash) was left in the filter after backwashing; and 4) the filter was not properly designed for both summer and winter influent conditions.

Not as much information was available to EPA on the Marathon, Robinson filters as was available on Amoco, but the following is known: The data for the 9 months (8/72–4/73) of operation prior to the installation of the filters show a suspended solids effluent from the secondary treatment plant of 19 mg/l average. The secondary treatment plant effluent for the 12 months of 1974 showed an average suspended solids concentration of 49 mg/l. Thus, the filters were operating at a level well above their design limits and on 2.6 times higher influent suspended solids concentration than at their initial installation. It should be noted that in spite of this, the filter effluent averaged 12 mg/l of suspended solids for the first 18 months of operation.

Granular media filters are not a cure-all or a substitute for a well designed and well operated secondary treatment system, but rather, as EPA intended, a polishing step to further improve a good secondary treatment plant effluent. Thus employed, they can productively be part of a system to meet the 1977 limitations.

(11) In support of the previous comment opposing the use of granular media filtration, a discussion of the results from a pilot plant study carried out by Standard of Ohio at its Lima, Ohio Refinery was submitted. The pilot study was designed to determine the reductions achievable in BOD5, COD, and suspended solids when a granular media filter was used to treat the effluent from their biological treatment pond.

The commenter claimed that the growth of algae precluded attainment of the BPT suspended solids, BOD5, and COD limits.

As in the cases cited in response to comment no. 10, these filters were being used for more than the polishing step EPA intended. EPA did not base the regulations on the use of granular media filtration for BOD5 and COD removal. The treatment model assumes the influent to the filter be below 25 mg/l of suspended solids and 15 mg/l of BOD5. Thus, the biological treatment step preceding filtration should deliever an effluent of such quality to the filters. Such treatment can be accomplished by several techniques, either separately or in combination, including activated sludge, biological ponds, trickling filters, and aerated lagoons. The technique selected depends upon an engineering evaluation of the specific site and raw waste characteristics.

Where lagoons are employed, the effluent quality of a lagoon system can be affected adversely during certain periods of the year by the algae generated in the system. The algae can settle out in the bottom of a receiving stream or lake, undergo death and degradation, exert an oxygen demand in effluent samples and in the stream, and will be measured as part of the solids in the effluent.

There are, however, a variety of approaches which can be used to control the quantity of solids in the effluent. Most of these approaches either are in use or have been thoroughly demonstrated and can be used where needed. Under specific design and operational conditions, each approach can be economical. Applicable approaches include micro-straining, coagulation-flocculation, land disposal, granular media or intermittent sand filtration, and chemical control.

Micro-strainers have been used successfully in numerous applications for the removal of algae and other suspended material from water. In a series of nine investigations over a period of years, plankton removal averaged 89 percent. Micro-straining requires little maintenance and can be used for the removal of algae from stabilization ponds or lagoons.

Coagulation-flocculation, followed by sedimentation, has been applied extensively for the removal of suspended and colloidal material from water.

Land disposal (spray irrigation) for all or a portion of the lagoon effluent can reduce outflow to a stream during periods of high algae. This reduction can compensate for the increased solids concentrations and permit the limitations to be attained. Spray irrigation in a controlled manner onto adjacent land can be accomplished without additional environmental problems.

Although EPA did not contemplate using granular media filtration specifically to remove algae, filters have been shown to achieve the BPT limits even when influent quality was degraded due to algal growth. The Lima Refinery pilot project showed that the limits were obtained with certain media sizes and flow rates.

Chemical measures for the control of excessive algae growths in lagoons are also effective. Proper application depends upon the type, magnitude, and frequency of growth, the local conditions, and the degree of control that is necessary. For maximum effectiveness, algal control measures should be undertaken before the development of the algal bloom.

Thus, there are many alternatives that can be used for algae control and/or removal to assure that the lagoon effluent quality meets the described limitations. The alternative selected at a specific refinery will be a function of land availability, available operating personnel, degree of difficulty in meeting the limitations, and overall waste management economics.

(12) A commenter suggested that the BPT flow basis was based on flows experienced by refineries which apply good water conservation practices, and that only 50 (37 percent) of the 136 refineries in the 1972 API/EPA survey are meeting the EPA flow basis.

EPA based the BAT and BADT (1983 and New Source) flow bases on refineries employing good water conservation practices. The BPT flows were based on what one-half of the industry was achieving in 1972. In fact, 51 (54 percent) of the 94 refineries used from the 1972 API/EPA survey were at or below the BPT process water flows. No assessment of process water flows was made for the remaining 42 of the 136 refineries in the survey, since their flow volumes included large amounts of once-through cooling water, which was not included in the flow base definition. It must be recognized that the flow base is not a flow limitation, and that the pollutant allocations allowed by the regulations can be met with flows higher than predicted if the effluent concentrations are lower than those used by EPA. Since a number of refineries are achieving concentrations for each pollutant parameter that are considerably below the concentrations used by EPA, a refinery might be able to meet the effluent limits with a higher than predicted flow. The same result might be achieved by careful control and design and consequent lowered variability.

(13) Some commenters stated that EPA did not adequately consider the effects of climate on biological wastewater treatment and that substantially higher reductions can be achieved in southern states and for installations requiring summer operations only. Included were several examples of claimed summer-winter variations in refinery effluents.

EPA has collected data from ten refineries located in Illinois, Montana, North Dakota, Washington, and Utah. Effluent data from these ten refineries for the parameters which could be affected by cold climates are as follows: BOD5—13.2 mg/l average (the limitation basis is 15 mg/l), COD—75.5 mg/l average (the limitation basis for these refineries varies between 110–115 mg/l) and phenols—0.049 mg/l average (the limitation basis is 0.10 mg/l).

The commenters own data submitted with the comment provide little support for the position taken in the comment. These data tend to show, and EPA agrees, that temperature variations, with a host of other factors, do affect refinery variability. This effect is fully taken into account by the variability factors and does not appear to depend on refinery location.

(14) A commenter argued that EPA regulations would require in-plant modifications, and that EPA was not authorized under the law to require such modifications for 1977.

EPA's regulations do not require any particular form of treatment, nor do they require in-plant modifications. The regulations require the achievement of effluent limitations which are based upon the performance of good existing plants. Since the total effluent loading in pounds or kilograms is controlled by three variables, the total effluent flow, the concentration of pollutant in the effluent, and the variability, reduction of one or more of these components can be used to achieve the limitations. The limitations are based upon flow, concentration, and variability figures which are readily achievable. If a discharger's flow is higher than the flow upon which the regulations are based, the discharger has three options: he may reduce his flow to or below the predicted level, and maintain the appropriate effluent concentrations and variability; he may modify his treatment system so as to achieve lower effluent concentrations; or he may design and operate more carefully to achieve lower variability. EPA has data on dischargers which are achieving concentrations, flows, and variabilities well below those upon which the limitations are based.

EPA is aware, however, that for most such dischargers reduction of flow would be the most economical and, in the long run, the most effective means of meeting the regulations. Accordingly, our cost estimates are based upon the installation of treatment necessary to meet the regulations, and for any inplant modifications necessary to reduce process water flow commensurately.

It should be emphasized that, even for those dischargers who choose to reduce process water flow by in-plant modifications, such modifications amount to nothing more than modification and repiping of existing processes. To meet the 1983 guidelines, more extensive changes may be appropriate. For example, dischargers employing fluid catalytic cracking may change to hydro-cracking; or those acid treating may change to hydrotreating, to help in meeting the 1983 limitations. However, such changes will not be necessary for any discharger to meet the 1977 limitations.

(15) One commenter argued that EPA made many errors in its development of the median raw waste loads from the API/EPA survey used in the regression analysis.

The median raw waste loads (Tables 18–22 in the Development Document) were not used in the regression analysis. The regression analysis was based on the size, flow, and refining processes of each refinery used.

(16) A comment was received to the effect that EPA used median values rather than mean values to determine allowable effluent loadings and variability factors.

The commenter was incorrect. Mean values, not medians, were calculated from the "exemplary" refineries. These means were used to develop the achievable concentrations.

In calculating the variabilities for each refinery, the 99 percent probability limit was divided by the mean because the variabilities were used to predict 30-day and daily maximums from an annual average (mean).

(17) A commenter noted that the variability allowed in many of EPA's other industrial guidelines is greater than that used for the Petroleum Refining limitations. The commenter therefore requested higher variability factors, especially to cover upset conditions.

The variabilities used by EPA in setting the Petroleum Refining limitations are derived from extensive long-term data from refinery operations. These variabilities therefore reflect what is currently being achieved in this industry.

Comparison to variabilities in other industries is considered invalid for several reasons:

1. The data base used to calculate the variabilities in the Refining industry was at least 10 times larger than that available in any of the other industries mentioned by the commenter.

2. In other industries, the Agency was often required to establish variabilities based upon relatively little long-term data. In such cases, variabilities were often conservatively set at a high level, in order to compensate for the lack of data. Because of the availability of good long-term data on petroleum refiners, the Agency is confident that these variabilities are readily achievable by all refiners over the long-term.

3. The technology specified as the best practicable control technology currently available has been in use in the petroleum refining industry for a long period of time. The experience accumulated over this period of time has enabled the industry to iron out many irregularities which contribute to variability. This has enabled the petroleum industry to achieve lower variabilities than many other industries with less experience in pollution abatement. The Agency believes that the industry as a whole should be required to maintain the level of control presently practiced by many refiners.

The commenter also requested higher variabilities to cover upset conditions. As has been stated previously, data taken during periods of spills, in-plant upset conditions, etc., were included in calculating the variabilities. However, a few data points, which reported either preventable upsets of catastrophic events (such as the effects of hurricane Agnes on a coastal refinery in Texas), were deleted from the variability data base, since they did not reflect the normal operation of a well run, carefully maintained operation.

(18) One comment shows that EPA used an incorrect equation in the calculation of sample variance.

A minor error was made in the calculations used in preparation of the proposed regulations. However, since the approach used for data analysis after publication of the proposed regulations corrected that error, it did not appear in the final regulation.

(19) A commenter complained of biased data selection on the part of EPA in determining the variabilities.

The commenter presented four charts showing the monthly average loading for BOD, TSS, oil and grease, and ammonia from January, 1970 through April, 1973 for Shell, Martinez. EPA selected one year's data, for each parameter, to calculate the variability. For BOD, TSS, and oil and grease, EPA chose the year after the installation of Shell's waste treatment plant in September, 1971. The data for these parameters prior to that date could not be used because it was representative of raw waste and not effluent variability. A period of one year was chosen for several reasons: 1) one year's data should adequately represent the unpreventable causes of variability; and 2) the quantity of data is sufficient for statistical analysis and prediction of both variability and long-term performance. For oil and grease, EPA did erroneously analyze data for a period before the installation of biological treatment. However, EPA has recomputed the variability using data from the same period (after installation of treatment) used for the other parameters. the difference is negligible.

EPA believes, as indicated previously, that low variability is concomitant with good plant operation. For this reason a year different from that used for the other parameters, a year in which low ammonia variability was attained, was selected for calculating ammonia variability. It is immaterial that this year preceded installation of the biological treatment system, since most ammonia removal is accomplished by a separate system.

The commenter also pointed to several data points that were deleted from the data analyzed from the Marathon, Texas City Refinery. Five data points were dropped during the analysis of the ammonia data as not being representative of the normal plant operation. The data points were all of the data from the period 10/11/72 through 12/6/72. The data prior to 10/11/72 ranged from 2.2 to 23.4 mg/l and the data after 12/6/72 ranged from 3.2 to 39.4. The points dropped were 0.6, 0, 0, 0, and 80 mg/l. These data points were dropped because: 1) they immediately followed a 23 day period for which no data were recorded; and 2) for whatever reason (EPA has been unable to determine the cause of these aberrant values), these five consecutive deleted data points are both startingly lower and higher than all the rest of the data. They thus may represent sampling or analytical errors. These data are clearly so atypical that EPA decided not to use them in the analysis.

Six data points are depicted as having been ignored by EPA in its analysis of Marathon's COD data. Two of these points are duplicates (1/12/72 and 1/15/73), and one point (1/31/73) was mistakenly deleted by EPA. However, the deletion of this single point (which was a low value) would have no significant effect on the regulations. The remaining four data points were deleted because Weston's trip report identified them as the result of operator mistakes.

(20) A commenter questioned the inclusion of three data points since they were preceded by the symbol meaning "less than the sensitivity at that level."

For all analytical techniques a limit of sensitivity exists below which the method does not yield reliable quantitative measurements. EPA, throughout its analysis of the Refinery Industry data, has used the level of analytical sensitivity as the data points where a "less than sensitivity" indicator appeared in the data. It is believed that elimination of these low data points might significantly bias the analysis of the total data base.

(21) A commenter questioned EPA's variability analysis on Amoco, Yorktown's BOD5 data, on the grounds that two analyses by EPA of the same data yielded strikingly different results (4.54 vs. 2.29).

This supposed inconsistency arose as a result of the progression followed by EPA in preparing the regulations (see "Variability" above). The 2.29 daily variability is the result of fitting Amoco's data to a normal distribution, while the 4.54 figure is based on a log-normal fit. The improved methodology now being used by EPA results in a 2.80 daily variability. The corrections made initially for the facts that the data fit only imperfectly to either a normal or log-normal distribution are no longer necessary.

(22) A commenter stated that EPA erred in using 2.3 as the BOD5 variability for three refineries in calculating variabilities for other parameters, since the mean of the three refineries' BOD5 variabilities is 2.14.

The mean of the three refineries' BOD5 variabilities is in fact 2.22; however, EPA used the median value, 2.3, instead of the mean.

(23) A commenter indicated that EPA did not avail itself of the data in the Brown and Root Variability study.

EPA did in fact utilize data from five of the refineries used in the Brown and Root Variability Study. However, the Brown and Root Variability Study itself could not be used in deriving the limitations. The study did not give any raw data, or identify the refineries used in the study. Thus, EPA had no knowledge of the operation of these refineries and no opportunity to determine the causes of suspect data. Moreover, the statistical approach used by Brown and Root was inconsistent with that selected by the Agency.

The data from five of the refineries used in the Brown and Root Variability Study were used, along with other refinery data, to make the adjustment to the original variabilities which had been based upon a normal distribution. Since EPA has been unable to obtain the names of the refineries used by Brown and Root, it has been unable to make further use of these data.

(24) One commenter stated that since there is enormous variation in the variability factors themselves, their statistical veracity must be challenged.

The validity of a variability factor increases as the number of data points and the length of time analyzed increase. The commenter has calculated daily variabilities within each month and a coefficient of variation (standard deviation divided by the mean) for each month. Thus, his calculations would be expected to show relatively wide fluctuations. EPA used longer term data (in most cases, a full year). Accordingly, the uncertainty observed by the commenter is minimized by EPA's method of analysis.

The commenter also compared the daily variabilities based on long-term data to show the wide range of values. EPA is perfectly aware of the wide range of variabilities, and one of the intentions of the limitations is to prevent these widely varying discharges. In defining BPT, operational control is considered extremely important.

The prevention of spills, operator education, limiting analytical error, and proper treatment plant design for the control of variability are just as important as flow minimization or designing to achieve a long-term concentration limit.

(25) One commenter stated that, since EPA based effluent limits (in pounds) on the product of flow times concentration times variability, and since the commenter found no consistent correlation between flow and any effluent parameter, EPA should reevaluate the basis of its effluent limits.

The commenter provided EPA with a list of ten refineries for which he examined the correlation of effluent load with flow, and a list of those effluent parameters which he found to be significantly correlated with flow. These lists, for which the commenter failed to provide either the data on which they are based or the regression model he used to analyze that data, constitute merely a summary of results obtained.

EPA determined which effluent parameters were reported by each of the ten refineries used by the commenter. None of the ten refineries reported all effluent parameters, although the commenter's lists might lead one to believe they did. Based upon the commenter's own submission, then, the following table can be constructed:

| Effluent parameter | Number of refineries (with more than 25 data points) reporting the effluent parameter | Number of refineries with significant correlation between effluent parameter and flow |
|---|---|---|
| BOD5 | 6 | 5 |
| COD | 8 | 7 |
| TOC | 1 | 1 |
| TSS | 8 | 8 |
| Phenol | 8 | 6 |
| Oil and grease | 9 | 6 |

Thus, in most cases where the refineries recorded data on a specific parameter, the commenter actually reported a significant correlation between effluent loading and flow. There was no reason, therefore, for EPA to reevaluate the basis for its effluent limits.

(26) One commenter stated that, since data from Shell's Martinez refinery were not distributed either normally or log-normally, EPA's approach to variability was incorrect.

The commenter provided with his comment a table summarizing the statistical parameters he investigated at the Martinez refinery. He did not provide EPA with the data he used. From the number of data points he reported, however, he apparently used data taken over approximately a three-year period. Since the treatment plant at the Martinez refinery was not installed until late in 1971, it is likely that the commenter combined in his summary data taken both before and after the treatment facilities were installed. If two such disparate statistical populations were so combined, the results obtained would be meaningless.

In addition, the procedure now used by EPA to determine the variability factor does not require that the data be distributed either normally or log-normally over its entire range.

(27) A commenter analyzed BOD data from Exxon's Baytown refinery, and derived a variability factor of 3.06, not 2.03 as given by EPA.

The commenter's value of 3.06 is the ratio between the 99th percentile of the variability distribution and the 50th percentile of that distribution (C99/C50) for the Baytown refinery. EPA actually defines the variability factor as the ratio between the 99th percentile of the variability distribution and the mean (C99/A). The correct variability factor for the Baytown refinery therefore is 2.69. EPA originally gave the figure 2.03 as that factor. Upon reanalyzing the Baytown data, EPA discovered that it had made an error in transcribing the original figures from the work sheets. EPA then recomputed the overall variability factor using the 2.69 figure, and found it remained unchanged, to within the round-off limits.

(28) A commenter argued that EPA has not demonstrated the availability of carbon adsorption as a proper basis for establishing the 1983 limitations. The commenter cited several references, in addition to those used by EPA, in making this argument.

Carbon adsorption technology has been used by industry for many years for the removal of organic contamination in the Sugar and Liquor Industries. In 1960, the detailed evaluation of carbon adsorption as a possible wastewater treatment technology began as part of the mandate of Congress (Pub. L. 87-88) to investigate advanced waste treatment technology.

A 1974 article by Hager in Industrial Water Engineering cites sixteen examples of full-scale industry wastewater treatment installations using activated carbon. In addition, the article gives the results of 220 carbon isothern tests, depicting the almost universal applicability of activated carbon as a viable treatment.

Much of the work done to date on activated carbon adsorption has been to show it is an alternative to biological treatment. However, carbon adsorption seems more universally applicable as a polishing step after biological treatment. A paper by Short and Myers states: "the best levels of reduction were obtained with biological treatment followed by carbon adsorption. Apparently, bio-treatment and activated carbon complement each other very well and those materials which are resistant to biological degradation are adsorbed fairly easily while those materials which are not adsorbed by carbon are biologically degradable." This statement is confirmed by: (1) A paper by Hale and Myers entitled "The Organics Removed by Carbon Treatment of Refinery Wastewater"; (2) A study carried out by Union Carbide Corporation on 93 organic compounds; (3) a paper by E. G. Paulson, "Adsorption as a Treatment of Refinery Effluent" in which carbon isotherm tests show higher BOD and COD percent removals from biological effluents than from raw wastes; and (4) the 1974 pilot plant study at the BP, Marcus Hook Refinery where a Bio-Disk was used to remove a portion of BOD5 prior to carbon adsorption, resulting in substantially better effluent quality than provided by the carbon alone.

The Agency derived its achievable BAT effluent concentrations from the information available on the results of activated carbon polishing of biologically treated effluents. The sources used to confirm the probable achievability of these effluent concentrations are as follows: Short and Myers—"Pilot Plant Activated Carbon Treatment of Petroleum Refining Wastewater"; The BP, Marcus Hook 1974 pilot plant study of Filtration and Activated Carbon (Bio-Disk); EPA Process Design Manual for Carbon Adsorption, especially the South Lake Tahoe, California, and Orange, California, biological-activated carbon treatment plant studies.

An important factor in the EPA's choice of activated carbon adsorption as a treatment step on which to base the 1983 limitations was the fact that it would be an add-on to the 1977 treatment technology. In addition, the current interest in activated carbon adsorption should make available sufficient information for the Agency to determine, prior to the implementation of BAT technology not later than 1983, if the limitations will require modification.

The commenter also questioned the justification for lower ammonia concentrations for 1983, since activated carbon does not remove ammonia. While the commenter is correct, he misunderstood the BAT ammonia limitation. That limitation is not based upon use of carbon adsorption, but rather is based on improved control of the amount of ammonia released from the ammonia stripper to reach the amount just needed to satisfy the nutrient needs of the biological treatment plant. The Agency concluded that several additional years of experience and experimentation with both ammonia strippers and individual biological system should result in better control of stripper effluents and more complete knowledge of the nutrient needs of biological systems. Therefore, the Agency set the BAT ammonia limitations to reflect the expected reduction in "excess" ammonia (the difference between the amount discharged from strippers now and the amount of ammonia needed by biological systems).

(29) Several comments were received concerning the apparent anomaly in the final pound allocations (base limits times process factors times size factor) for certain subcategories. That is, hypothetically, in some instances, if sufficient petrochemical operations were added to either cracking refineries ("B") or lube refineries ("D") to change their classifications to, respectively, petrochemical refineries ("C") or integrated refineries ("E"), the final pound allocations for those refineries would decrease. The commenters suggested two solutions for this anomaly; either (1) add a weighting factor for the various petrochemical operations to increase the size of their process factors, or (2) eliminate the "C" and "E" subcategories, and add to the pound allocations for "B" and "D" refineries additional pounds based upon the regulations for the plastics, rubber, and organic chemical industries.

In calculating the flows, based upon the API/EPA survey (see "flow basis" above), EPA attempted to derive from the survey data the actual process wastewater flow which would require treatment. For the most part, the flows listed in the survey combined both process water and once-through cooling water. Since the once-through cooling water would ordinarily not require treatment, it was necessary to develop a means for deriving the process flow from the total flow listed in the survey.

The promulgated regulations were based upon the flows from 94 of the refineries in the API/EPA survey. Of these 94 refineries, 75 had no once-through cooling and 19 removed less than 3 percent of their heat by means of once-through cooling water. It was considered that total flow for these 94 refineries would correspond closely to process flow.

After promulgation of the regulations, EPA undertook to identify the cause of the apparent anomaly identified by the commenters. Upon careful examination of the flows in the API/EPA survey, it was found that the actual process flows for 108 of these 136 refineries (including all the original 94) could be calculated. When these process flows were compared to the total flows used, the reason for the anomaly became apparent: of the original 94 refineries, most of those with more than zero but less than 3 percent once-through heat removed by cooling water (13 of 19) were in the cracking ("B") or lube ("C") subcategories. This

cooling water appeared in the process flow allocations for the cracking and lube refineries, giving those refineries an extra "cushion" which will make the regulations easier to attain for such refineries.

EPA does not believe that the excess water allocations for the cracking and lube subcategories require modification of the regulations. Such modification would have the effect of decreasing the quantity of pollutants allowed to be discharged by refineries in these subcategories. Petrochemical and integrated refineries would be less affected, since the original flow data for these subcategories included a relatively lower proportion of once-through cooling water.

It is clear, in any event, that the solutions proposed by the commenters would be inappropriate. Since the regulations are based upon actual performance by refineries in each subcategory, it would be absurd to attempt to modify them on the basis of regulations designed for other industries. Moreover, no "weighting factor" is necessary to account for petrochemical operations, since the flows contributed by such operations are fully reflected in the flow data from petrochemical and integrated refineries used to develop the regulations.

(30) One commenter argued that the limitation for hexavalent chromium was unreasonable since technology to measure such low concentrations was unavailable.

The commenter was correct. Consequently, the achievable concentration for hexavalent chromium has been changed from 0.005 mg/l, to 0.02 mg/l in the amended regulations.

(31) Several commenters stated that EPA underestimated the costs of achieving compliance with the regulations.

EPA reexamined the economic impact analysis assuming that the cost of compliance would be 50 percent higher than the costs estimated when the regulations were originally analyzed. That is, the conclusions of the analysis were checked using cost estimates that were 50 percent higher than those shown in the economic impact report (EPA 230/2-74-020) for BAT treatment and for the "b" inplant cost extrapolation (see Table III on page II-30). The conclusion of this sensitivity analysis was that the impact of the regulations would not be appreciably changed even if the costs were assumed to be 50 percent higher. Thus, even if this assumption about costs were correct, the results of the impact study and the appropriateness of the regulations would be unchanged.

Specifically, using the higher cost assumption, the analysis indicates that a total of ten small refineries, representing a total of 33,000 barrels per day capacity, would be economically threatened by the regulations. Two of these refineries, representing 7,000 barrels per day capacity, would face a significant threat of closure. These essentially are the impacts projected under the original analysis using the lower cost estimates, and may be affected in any event by governmental policy.

This sensitivity analysis was conducted using a 50 percent increase in the cost estimates, whereas the industry has suggested that the costs actually are as much as 150 percent higher than originally estimated. This claim was believed to be totally unrealistic for several reasons. Specifically, the estimates should not include "sunk costs" (those costs that already have been increased in the past for pollution abatement). Neither should costs which would be incurred regardless of EPA regulations be included in the estimated costs of the guidelines. Therefore, an increase in the cost estimates of 50 percent is more than adequate to test for the possibility that the original costs were in error. This is particularly true because it is likely that any price increases which might have raised the costs since the original analysis was made would be offset by the conservative assumptions which were built into the original cost estimates.

The cost estimates are based upon a complete activated sludge treatment system including equalization, flotation cells, and polishing with mixed media filters. However, from the data before the Agency, it is clear that such an elaborate system will not be required in all cases. Of the plants which are achieving the limitations, a number use only aeration lagoons for treatment. Where adequate land is available at a reasonable cost, the costs of constructing a lagoon system can be considerably lower than the costs associated with installing an activated sludge system. Moreover, the operating costs of a lagoon system are minimal. Thus, if EPA cost estimates are in error, they are more likely to overstate, rather than to understate, the required capital and operating costs.

(c) As a result of the review undertaken by EPA in response to public comment upon the promulgated regulations, and upon the modifications thereto proposed on October 14, 1974, the following changes have been made in the regulations as promulgated:

Revision of the proposed amendment and promulgated regulation:

(1) The proposed amendments have been promulgated without change (See 39 FR 37069);

(2) The achievable concentration for hexavalent chromium has been changed from .005 mg/l to .02 mg/l; and

(3) The daily and monthly variabilities for suspended solids have been changed from 2.9 and 1.7 to 3.3 and 2.1 respectively.

40 CFR Chapter I, Subchapter N, Part 419 is hereby amended as set forth below to be effective June 19, 1975.

Dated: May 9, 1975.

RUSSELL E. TRAIN,
*Administrator.*

EFFLUENT LIMITATIONS GUIDELINES FOR EXISTING SOURCES AND STANDARDS OF PERFORMANCE AND PRETREATMENT STANDARDS FOR NEW SOURCES FOR THE PETROLEUM REFINING POINT SOURCE CATEGORY

(1) The tables in § 419.12 (a), (b) (1) and (2), and (c) (1) and (2) are revised to read as follows:

**§ 419.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.**

(a) * * *

| Effluent characteristic | Effluent limitations: Maximum for any one day | Effluent limitations: Average of daily values for thirty consecutive days shall not exceed— |
|---|---|---|
| **Metric units (kilograms per 1,000 m³ of feedstock)** | | |
| $BOD_5$ | 22.7 | 12.0 |
| TSS | 15.8 | 10.1 |
| COD [1] | 117 | 60.3 |
| Oil and grease | 6.9 | 3.7 |
| Phenolic compounds | .168 | .076 |
| Ammonia as N | 2.81 | 1.27 |
| Sulfide | .149 | .068 |
| Total chromium | .345 | .20 |
| Hexavalent chromium | .028 | .012 |
| pH | Within the range 6.0 to 9.0. | |
| **English units (pounds per 1,000 bbl of feedstock)** | | |
| $BOD_5$ | 8.0 | 4.25 |
| TSS | 5.6 | 3.6 |
| COD [1] | 41.2 | 21.3 |
| Oil and grease | 2.5 | 1.3 |
| Phenolic compounds | .060 | .027 |
| Ammonia as N | .99 | .45 |
| Sulfide | .053 | .024 |
| Total chromium | .122 | .071 |
| Hexavalent chromium | 0.10 | .0044 |
| pH | Within the range 6.0 to 9.0. | |

(b) * * *

(1) Size factor.

| 1,000 bbl of feedstock per stream day: | Size factor |
|---|---|
| Less than 24.9 | 1.02 |
| 25.0 to 49.9 | 1.06 |
| 50.0 to 74.9 | 1.16 |
| 75.0 to 99.9 | 1.26 |
| 100.0 to 124.9 | 1.38 |
| 125.0 to 149.9 | 1.50 |
| 150.0 or greater | 1.57 |

(2) Process factor.

| Process configuration: | Process factor |
|---|---|
| Less than 2.49 | 0.62 |
| 2.5 to 3.49 | 0.67 |
| 3.5 to 4.49 | 0.80 |
| 4.5 to 5.49 | 0.95 |
| 5.5 to 5.99 | 1.07 |
| 6.0 to 6.49 | 1.17 |
| 6.5 to 6.99 | 1.27 |
| 7.0 to 7.49 | 1.39 |
| 7.5 to 7.99 | 1.51 |
| 8.0 to 8.49 | 1.64 |
| 8.5 to 8.99 | 1.79 |
| 9.0 to 9.49 | 1.95 |
| 9.5 to 9.99 | 2.12 |
| 10.0 to 10.49 | 2.31 |
| 10.5 to 10.99 | 2.51 |
| 11.0 to 11.49 | 2.73 |
| 11.5 to 11.99 | 2.98 |
| 12.0 to 12.49 | 3.24 |
| 12.5 to 12.99 | 3.53 |
| 13.0 to 13.49 | 3.84 |
| 13.5 to 13.99 | 4.18 |
| 14.0 or greater | 4.36 |

(c) * * *

(1) * * *

| Effluent characteristic | Effluent limitations: Maximum for any one day | Effluent limitations: Average of daily values for thirty consecutive days shall not exceed— |
|---|---|---|
| **Metric units (kilograms per cubic meter of flow)** | | |
| BOD5 | 0.048 | 0.026 |
| TSS | .033 | .021 |
| COD [1] | .37 | .19 |
| Oil and grease | .015 | .008 |
| pH | Within the range 6.0 to 9.0. | |
| **English units (pounds per 1,000 gal of flow)** | | |
| BOD5 | 0.40 | 0.21 |
| TSS | .26 | .17 |
| COD [1] | 3.1 | 1.6 |
| Oil and grease | .126 | .067 |
| pH | Within the range 6.0 to 9.0. | |

(2) * * *

| Effluent characteristic | Effluent limitations: Maximum for any one day | Effluent limitations: Average of daily values for thirty consecutive days shall not exceed— |
|---|---|---|
| **Metric units (kilograms per cubic meter of flow)** | | |
| BOD5 | 0.048 | 0.026 |
| TSS | .033 | .021 |
| COD [1] | .47 | .24 |
| Oil and grease | .015 | .008 |
| pH | Within the range 6.0 to 9.0. | |
| **English units (pounds per 1,000 gal of flow)** | | |
| BOD5 | 0.40 | 0.21 |
| TSS | .26 | .17 |
| COD [1] | 3.9 | 2.0 |
| Oil and grease | .126 | .067 |
| pH | Within the range 6.0 to 9.0. | |

* * * * *

(2) The tables in § 419.13(b) (1) and (2) are revised to read as follows:

**§ 419.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.**

* * * * *

(b) * * *

(1) Size factor.

| 1,000 bbl of feedstock per stream day: | Size factor |
|---|---|
| Less than 24.9 | 1.02 |
| 25.0 to 49.9 | 1.06 |
| 50.0 to 74.9 | 1.16 |
| 75.0 to 99.9 | 1.26 |
| 100.0 to 124.9 | 1.38 |
| 125.0 to 149.9 | 1.50 |
| 150.0 or greater | 1.57 |

(2) Process factor.

| Process configuration: | Process factor |
|---|---|
| Less than 2.49 | 0.62 |
| 2.5 to 3.49 | 0.67 |
| 3.5 to 4.49 | 0.80 |
| 4.5 to 5.49 | 0.95 |
| 5.5 to 5.99 | 1.07 |
| 6.0 to 6.49 | 1.17 |
| 6.5 to 6.99 | 1.27 |
| 7.0 to 7.49 | 1.39 |
| 7.5 to 7.99 | 1.51 |
| 8.0 to 8.49 | 1.64 |
| 8.5 to 8.99 | 1.79 |
| 9.0 to 9.49 | 1.95 |
| 9.5 to 9.99 | 2.12 |
| 10.0 to 10.49 | 2.31 |
| 10.5 to 10.99 | 2.51 |
| 11.0 to 11.49 | 2.73 |
| 11.5 to 11.99 | 2.98 |
| 12.0 to 12.49 | 3.24 |
| 12.5 to 12.99 | 3.53 |
| 13.0 to 13.49 | 3.84 |
| 13.5 to 13.99 | 4.18 |
| 14.0 or greater | 4.36 |

* * * * *

(3) The tables in § 419.15(a), (b)(1) and (2), and (c)(1) and (2) are revised to read as follows:

**§ 419.15 Standards of performance for new sources.**

(a) * * *

| Effluent characteristic | Effluent limitations: Maximum for any one day | Effluent limitations: Average of daily values for thirty consecutive days shall not exceed— |
|---|---|---|
| **Metric units (kilograms per 1,000 m³ of feedstock)** | | |
| BOD5 | 11.8 | 6.3 |
| TSS | 8.3 | 4.9 |
| COD [1] | 61 | 32 |
| Oil and grease | 3.6 | 1.9 |
| Phenolic compounds | .088 | .043 |
| Ammonia as N | 2.8 | 1.3 |
| Sulfide | .078 | .035 |
| Total chromium | .18 | .105 |
| Hexavalent chromium | .015 | .0068 |
| pH | Within the range 6.9 to 9.9. | |
| **English units (pounds per 1,000 bbl of feedstock)** | | |
| BOD5 | 4.2 | 2.2 |
| TSS | 3.0 | 1.9 |
| COD [1] | 21.7 | 11.2 |
| Oil and grease | 1.3 | .79 |
| Phenolic compounds | .031 | .016 |
| Ammonia as N | 1.0 | .45 |
| Sulfide | .027 | .012 |
| Total chromium | .064 | .037 |
| Hexavalent chromium | .0052 | .0025 |
| pH | Within the range 6.9 to 9.9. | |

(b) * * *

(1) Size factor.

| 1,000 bbl of feedstock per stream day: | Size factor |
|---|---|
| Less than 24.9 | 1.02 |
| 25.0 to 49.9 | 1.06 |
| 50.0 to 74.9 | 1.16 |
| 75.0 to 99.9 | 1.26 |
| 100.0 to 124.9 | 1.38 |
| 125.0 to 149.9 | 1.50 |
| 150.0 or greater | 1.57 |

(2) Process factor.

| Process configuration: | Process factor |
|---|---|
| Less than 2.49 | 0.62 |
| 2.5 to 3.49 | 0.67 |
| 3.5 to 4.49 | 0.80 |
| 4.5 to 5.49 | 0.95 |
| 5.5 to 5.99 | 1.07 |
| 6.0 to 6.49 | 1.17 |
| 6.5 to 6.99 | 1.27 |
| 7.0 to 7.49 | 1.39 |
| 7.5 to 7.99 | 1.51 |
| 8.0 to 8.49 | 1.64 |
| 8.5 to 8.99 | 1.79 |
| 9.0 to 9.49 | 1.95 |
| 9.5 to 9.99 | 2.12 |
| 10.0 to 10.49 | 2.31 |
| 10.5 to 10.99 | 2.51 |
| 11.0 to 11.49 | 2.73 |
| 11.5 to 11.99 | 2.98 |
| 12.0 to 12.49 | 3.24 |
| 12.5 to 12.99 | 3.53 |
| 13.0 to 13.49 | 3.84 |
| 13.5 to 13.99 | 4.18 |
| 14.0 or greater | 4.36 |

(c) * * *

(1) * * *

| Effluent characteristic | Effluent limitations: Maximum for any one day | Effluent limitations: Average of daily values for thirty consecutive days shall not exceed— |
|---|---|---|
| **Metric units (kilograms per cubic meter of flow)** | | |
| BOD5 | 0.048 | 0.026 |
| TSS | .033 | .021 |
| COD [1] | .37 | .19 |
| Oil and grease | .015 | .0080 |
| pH | Within the range 6.0 to 9.0. | |
| **English units (pounds per 1,000 gal of flow)** | | |
| BOD5 | 0.40 | 0.21 |
| TSS | .27 | .17 |
| COD [1] | 3.1 | 1.6 |
| Oil and grease | .126 | .067 |
| pH | Within the range 6.0 to 9.0. | |

(2) * * *

| Effluent characteristic | Effluent limitations: Maximum for any one day | Effluent limitations: Average of daily values for thirty consecutive days shall not exceed— |
|---|---|---|
| **Metric units (kilograms per cubic meter of flow)** | | |
| BOD5 | 0.048 | 0.026 |
| TSS | .033 | .021 |
| COD [1] | .47 | .24 |
| Oil and grease | .015 | .008 |
| pH | Within the range 6.0 to 9.0. | |
| **English units (pounds per 1,000 gal of flow)** | | |
| BOD5 | 0.40 | 0.21 |
| TSS | .27 | .17 |
| COD [1] | 3.9 | 2.0 |
| Oil and grease | .126 | .067 |
| pH | Within the range 6.0 to 9.0. | |

* * * * *

(4) The tables in § 419.22 (a) and (b) (1) and (2) are revised to read as follows:

**§ 419.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.**

(a) * * *

| Effluent characteristic | Effluent limitations: Maximum for any one day | Effluent limitations: Average of daily values for thirty consecutive days shall not exceed— |
|---|---|---|
| **Metric units (kilograms per 1,000 m³ of feedstock)** | | |
| BOD5 | 28.2 | 15.6 |
| TSS | 19.5 | 12.6 |
| COD [1] | 210 | 109 |
| Oil and grease | 8.4 | 4.5 |
| Phenolic compounds | .21 | .10 |
| Ammonia as N | 18.5 | 8.5 |
| Sulfide | .18 | .082 |
| Total chromium | .43 | .25 |
| Hexavalent chromium | .035 | .016 |
| pH | Within the range 6.0 to 9.0. | |
| **English units (pounds per 1,000 bbl of feedstock)** | | |
| BOD5 | 9.9 | 5.5 |
| TSS | 6.9 | 4.4 |
| COD [1] | 74 | 38.4 |
| Oil and grease | 3.0 | 1.6 |
| Phenolic compounds | .074 | .036 |
| Ammonia as N | 6.6 | 3.0 |
| Sulfide | .065 | .029 |
| Total chromium | .15 | .088 |
| Hexavalent chromium | .012 | .0056 |
| pH | Within the range 6.0 to 9.0. | |

(b) * * *

(1) Size factor.

| 1,000 bbl of feedstock per stream day: | Size factor |
|---|---|
| Less than 24.9 | 0.91 |
| 25.0 to 49.9 | 0.95 |
| 50.0 to 74.9 | 1.04 |
| 75.0 to 99.9 | 1.13 |
| 100.0 to 124.9 | 1.23 |
| 125.0 to 149.9 | 1.35 |
| 150.0 or greater | 1.41 |

(2) Process factor.

| Process configuration: | Process factor |
|---|---|
| Less than 2.49 | 0.58 |
| 2.5 to 3.49 | 0.63 |
| 3.5 to 4.49 | 0.74 |
| 4.5 to 5.49 | 0.88 |
| 5.5 to 5.99 | 1.00 |
| 6.0 to 6.49 | 1.09 |
| 6.5 to 6.99 | 1.19 |
| 7.0 to 7.49 | 1.29 |
| 7.5 to 7.99 | 1.41 |
| 8.0 to 8.49 | 1.53 |
| 8.5 to 8.99 | 1.67 |
| 9.0 to 9.49 | 1.82 |
| 9.5 or greater | 1.89 |

* * * * *

(5) The tables in § 419.23(b) (1) and (2) are revised to read as follows:

**§ 419.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically available.**

(b) * * *

(1) Size factor.

| 1,000 bbl of feedstock per stream day: | Size factor |
|---|---|
| Less than 24.9 | 0.91 |
| 25.0 to 49.9 | 0.95 |
| 50.0 to 74.9 | 1.04 |
| 75.0 to 99.9 | 1.13 |
| 100.0 to 124.9 | 1.23 |
| 125.0 to 149.9 | 1.35 |
| 150.0 or greater | 1.41 |

(2) Process factor.

| Process configuration: | Process factor |
|---|---|
| Less than 2.49 | 0.58 |
| 2.5 to 3.49 | 0.63 |
| 3.5 to 4.49 | 0.74 |
| 4.5 to 5.49 | 0.88 |
| 5.5 to 5.99 | 1.00 |
| 6.0 to 6.49 | 1.09 |
| 6.5 to 6.99 | 1.19 |
| 7.0 to 7.49 | 1.29 |
| 7.5 to 7.99 | 1.41 |
| 8.0 to 8.49 | 1.53 |
| 8.5 to 8.99 | 1.67 |
| 9.0 to 9.49 | 1.82 |
| 9.5 or greater | 1.89 |

* * * * *

(6) The tables in § 419.25 (a) and (b) (1) and (2) are revised to read as follows:

**§ 419.25 Standards of performance for new sources.**

(a) * * *

| Effluent characteristic | Effluent limitations: Maximum for any one day | Effluent limitations: Average of daily values for thirty consecutive days shall not exceed— |
|---|---|---|
| **Metric units (kilograms per 1,000 m³ of feedstock)** | | |
| BOD5 | 16.3 | 8.7 |
| TSS | 11.3 | 7.2 |
| COD [1] | 118 | 61 |
| Oil and grease | 4.8 | 2.6 |
| Phenolic compounds | .119 | .058 |
| Ammonia as N | 18.8 | 8.6 |
| Sulfide | .105 | .048 |
| Total chromium | .24 | .14 |
| Hexavalent chromium | .020 | .0088 |
| pH | Within the range 6.0 to 9.0. | |
| **English units (pounds per 1,000 bbl of feedstock)** | | |
| BOD5 | 5.8 | 3.1 |
| TSS | 4.0 | 2.5 |
| COD [1] | 41.5 | 21 |
| Oil and grease | 1.7 | .93 |
| Phenolic compounds | .042 | .020 |
| Ammonia as N | 6.6 | 3.0 |
| Sulfide | .037 | .017 |
| Total chromium | .084 | .049 |
| Hexavalent chromium | .0072 | .0032 |
| pH | Within the range 6.0 to 9.0. | |

(b) * * *

(1) Size factor.

| 1,000 bbl of feedstock per stream day: | Size factor |
|---|---|
| Less than 24.9 | 0.91 |
| 25.0 to 49.9 | 0.95 |
| 50.0 to 74.9 | 1.04 |
| 75.0 to 99.9 | 1.13 |
| 100.0 to 124.9 | 1.23 |
| 125.0 to 149.9 | 1.35 |
| 150.0 or greater | 1.41 |

(2) Process factor.

| Process configuration: | Process factor |
|---|---|
| Less than 2.49 | 0.58 |
| 2.5 to 3.49 | 0.63 |
| 3.5 to 4.49 | 0.74 |
| 4.5 to 5.49 | 0.88 |
| 5.5 to 5.99 | 1.00 |
| 6.0 to 6.49 | 1.09 |
| 6.5 to 6.99 | 1.19 |
| 7.0 to 7.49 | 1.29 |
| 7.5 to 7.99 | 1.41 |
| 8.0 to 8.49 | 1.53 |
| 8.5 to 8.99 | 1.67 |
| 9.0 to 9.49 | 1.82 |
| 9.5 or greater | 1.89 |

* * * * *

(7) The tables in § 419.32(a) and (b) (1) and (2) are revised to read as follows:

**§ 419.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.**

(a) * * *

| Effluent characteristic | Effluent limitations: Maximum for any one day | Effluent limitations: Average of daily values for thirty consecutive days shall not exceed— |
|---|---|---|
| **Metric units (kilograms per 1,000 m³ of feedstock)** | | |
| BOD5 | 34.6 | 18.4 |
| TSS | 23.4 | 14.8 |
| COD [1] | 210 | 109 |
| Oil and grease | 11.1 | 5.9 |
| Phenolic compounds | .25 | .120 |
| Ammonia as N | 23.4 | 10.6 |
| Sulfide | .22 | .099 |
| Total chromium | .52 | .30 |
| Hexavalent chromium | .046 | .020 |
| pH | Within the range 6.0 to 9.0. | |
| **English units (pounds per 1,000 bbl of feedstock)** | | |
| BOD5 | 12.1 | 6.5 |
| TSS | 8.3 | 5.25 |
| COD [1] | 74 | 38.4 |
| Oil and grease | 3.9 | 2.1 |
| Phenolic compounds | .088 | .0425 |
| Ammonia as N | 8.25 | 3.8 |
| Sulfide | .078 | .035 |
| Total chromium | .183 | .107 |
| Hexavalent chromium | .016 | .0072 |
| pH | Within the range 6.0 to 9.0. | |

(b) * * *

(1) Size factor.

| 1,000 bbl of feedstock per stream-day: | Size factor |
|---|---|
| Less than 24.9 | 0.73 |
| 25.0 to 49.9 | 0.76 |
| 50.0 to 74.9 | 0.83 |
| 75.0 to 99.9 | 0.91 |
| 100.0 to 124.9 | 0.99 |
| 125.0 to 149.9 | 1.08 |
| 150.0 or greater | 1.13 |

(2) Process factor.

| Process configuration: | Process factor |
|---|---|
| Less than 4.49 | 0.73 |
| 4.5 to 5.49 | 0.80 |
| 5.5 to 5.99 | 0.91 |
| 6.0 to 6.49 | 0.99 |
| 6.5 to 6.99 | 1.08 |
| 7.0 to 7.49 | 1.17 |
| 7.5 to 7.99 | 1.28 |
| 8.0 to 8.49 | 1.39 |
| 8.5 to 8.99 | 1.51 |
| 9.0 to 9.49 | 1.65 |
| 9.5 or greater | 1.72 |

* * * * *

(8) The tables in § 419.33(b) (1) and (2) are revised to read as follows:

**§ 419.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.**

(b) * * *

(1) Size factor.

| 1,000 bbl of feedstock per stream day: | Size factor |
|---|---|
| Less than 24.9 | 0.73 |
| 25.0 to 49.9 | 0.76 |
| 50.0 to 74.9 | 0.83 |
| 75.0 to 99.9 | 0.91 |
| 100.0 to 124.9 | 0.99 |
| 125.0 to 149.9 | 1.08 |
| 150.0 or greater | 1.13 |

(2) Process factor.

| Process configuration: | Process factor |
|---|---|
| Less than 4.49 | 0.73 |
| 4.5 to 5.49 | 0.80 |
| 5.5 to 5.99 | 0.91 |
| 6.0 to 6.49 | 0.99 |
| 6.5 to 6.99 | 1.08 |
| 7.0 to 7.49 | 1.17 |
| 7.5 to 7.99 | 1.28 |
| 8.0 to 8.49 | 1.39 |
| 8.5 to 8.99 | 1.51 |
| 9.0 to 9.49 | 1.65 |
| 9.5 or greater | 1.72 |

* * * * *

(9) The tables in § 419.35 (a) and (b) (1) and (2) are revised to read as follows:

**§ 419.35 Standards of performance for new sources.**

(a) * * *

| Effluent characteristic | Effluent limitations: Maximum for any one day | Effluent limitations: Average of daily values for thirty consecutive days shall not exceed— |
|---|---|---|
| **Metric units (kilograms per 1,000 m³ of feedstock)** | | |
| BOD5 | 21.8 | 11.6 |
| TSS | 14.9 | 9.5 |
| COD [1] | 133 | 69 |
| Oil and grease | 6.6 | 3.5 |
| Phenolic compounds | .158 | .077 |
| Ammonia as N | 23.4 | 10.7 |
| Sulfide | .140 | .063 |
| Total chromium | .32 | .19 |
| Hexavalent chromium | .025 | .012 |
| pH | Within the range 6.0 to 9.0. | |
| **English units (pounds per 1,000 bbl of feedstock)** | | |
| BOD5 | 7.7 | 4.1 |
| TSS | 5.2 | 3.3 |
| COD [1] | 47 | 24 |
| Oil and grease | 2.4 | 1.3 |
| Phenolic compounds | .056 | .027 |
| Ammonia as N | 8.3 | 3.8 |
| Sulfide | .050 | .022 |
| Total chromium | .116 | .068 |
| Hexavalent chromium | .0096 | .0044 |
| pH | Within the range 6.0 to 9.0. | |

(b) * * *

(1) Size factor.

| 1,000 bbl of feedstock per stream day: | Size factor |
|---|---|
| Less than 24.9 | 0.73 |
| 25.0 to 49.9 | 0.76 |
| 50.0 to 74.9 | 0.83 |
| 75.0 to 99.9 | 0.91 |
| 100.0 to 124.9 | 0.99 |
| 125.0 to 149.9 | 1.06 |
| 150.0 or greater | 1.13 |

(2) Process factor.

| Process configuration: | Process factor |
|---|---|
| Less than 4.49 | 0.73 |
| 4.5 to 5.49 | 0.80 |
| 5.5 to 5.99 | 0.91 |
| 6.0 to 6.49 | 0.99 |
| 6.5 to 6.99 | 1.08 |
| 7.0 to 7.49 | 1.17 |
| 7.5 to 7.99 | 1.28 |
| 8.0 to 8.49 | 1.39 |
| 8.5 to 8.99 | 1.51 |
| 9.0 to 9.49 | 1.65 |
| 9.5 or greater | 1.72 |

(10) The tables in § 419.42 (a) and (b) (1) and (2) are revised to read as follows:

**§ 419.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.**

(a) * * *

| Effluent characteristic | Effluent limitations: Maximum for any one day | Effluent limitations: Average of daily values for thirty consecutive days shall not exceed— |
|---|---|---|
| **Metric units (kilograms per 1,000m³ of feedstock)** | | |
| BOD5 | 50.6 | 25.8 |
| TSS | 35.6 | 22.7 |
| COD [1] | 360 | 187 |
| Oil and grease | 16.2 | 8.5 |
| Phenolic compounds | .38 | .184 |
| Ammonia as N | 23.4 | 10.6 |
| Sulfide | .33 | .150 |
| Total chromium | .77 | .45 |
| Hexavalent chromium | .068 | .030 |
| pH | Within the range 6.0 to 9.0. | |
| **English units (pounds per 1,000 bbl of feedstock)** | | |
| BOD5 | 17.9 | 9.1 |
| TSS | 12.5 | 8.0 |
| COD [1] | 127 | 66 |
| Oil and grease | 5.7 | 3.0 |
| Phenolic compounds | .133 | .065 |
| Ammonia as N | 8.3 | 3.8 |
| Sulfide | .118 | .053 |
| Total chromium | .273 | .160 |
| Hexavalent chromium | .024 | .011 |
| pH | Within the range 6.0 to 9.0. | |

(b) * * *

(1) Size factor.

| 1,000 bbl of feedstock per stream day: | Size factor |
|---|---|
| Less than 49.9 | 0.71 |
| 50.0 to 74.9 | 0.74 |
| 75.0 to 99.9 | 0.81 |
| 100.0 to 124.9 | 0.88 |
| 125.0 to 149.9 | 0.97 |
| 150.0 to 174.9 | 1.05 |
| 175.0 to 199.9 | 1.14 |
| 200.0 or greater | 1.19 |

(2) Process factor.

| Process configuration: | Process factor |
|---|---|
| Less than 6.49 | 0.81 |
| 6.5 to 7.49 | 0.88 |
| 7.5 to 7.99 | 1.00 |
| 8.0 to 8.49 | 1.09 |
| 8.5 to 8.99 | 1.19 |
| 9.0 to 9.49 | 1.29 |
| 9.5 to 9.99 | 1.41 |
| 10.0 to 10.49 | 1.53 |
| 10.5 to 10.99 | 1.67 |
| 11.0 to 11.49 | 1.82 |
| 11.5 to 11.99 | 1.98 |
| 12.0 to 12.49 | 2.15 |
| 12.5 to 12.99 | 2.34 |
| 13.0 or greater | 2.44 |

* * * * *

(11) The tables in § 419.43(b)(1) and (2) are revised to read as follows:

**§ 419.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.**

* * * * *

(b) * * *

(1) Size factor.

| 1,000 bbl of feedstock per stream-day: | Size factor |
|---|---|
| Less than 49.9 | 0.71 |
| 50.0 to 74.9 | 0.74 |
| 75.0 to 99.9 | 0.81 |
| 100.0 to 124.9 | 0.88 |
| 125.0 to 149.9 | 0.97 |
| 150.0 to 174.9 | 1.05 |
| 175.0 to 199.9 | 1.14 |
| 200.0 or greater | 1.19 |

(2) Process factor.

| Process configuration: | Process factor |
|---|---|
| Less than 6.49 | 0.81 |
| 6.5 to 7.49 | 0.88 |
| 7.5 to 7.99 | 1.00 |
| 8.0 to 8.49 | 1.09 |
| 8.5 to 8.99 | 1.19 |
| 9.0 to 9.49 | 1.29 |
| 9.5 to 9.99 | 1.41 |
| 10.0 to 10.49 | 1.53 |
| 10.5 to 10.99 | 1.67 |
| 11.0 to 11.49 | 1.82 |
| 11.5 to 11.99 | 1.98 |
| 12.0 to 12.49 | 2.15 |
| 12.5 to 12.99 | 2.34 |
| 13.0 or greater | 2.44 |

* * * * *

(12) The tables in § 419.45 (a) and (b) (1) and (2) are revised to read as follows:

**§ 419.45 Standards of performance for new sources.**

(a) * * *

| Effluent characteristic | Effluent limitations: Maximum for any one day | Effluent limitations: Average of daily values for thirty consecutive days shall not exceed— |
|---|---|---|
| Metric units (kilograms per 1,000 m³ of feedstock) | | |
| BOD5 | 34.6 | 18.4 |
| TSS | 23.4 | 14.9 |
| COD [1] | 245 | 126 |
| Oil and grease | 10.5 | 5.6 |
| Phenolic compounds | .25 | .12 |
| Ammonia as N | 23.4 | 10.7 |
| Sulfide | .220 | .10 |
| Total chromium | .52 | .31 |
| Hexavalent chromium | .046 | .021 |
| pH | Within the range 6.0 to 9.0. | |
| English units (pounds per 1,000 bbl of feedstock) | | |
| BOD5 | 12.2 | 6.5 |
| TSS | 8.3 | 5.3 |
| COD [1] | 87 | 45 |
| Oil and grease | 3.8 | 2.0 |
| Phenolic compounds | .088 | .043 |
| Ammonia as N | 8.3 | 3.8 |
| Sulfide | .078 | .035 |
| Total chromium | .180 | .105 |
| Hexavalent chromium | .022 | .0072 |
| pH | Within the range 6.0 to 9.0. | |

(b) * * *

(1) Size factor.

| 1,000 bbl of feedstock per stream day: | *Size factor* |
|---|---|
| Less than 49.9 | 0.71 |
| 50.0 to 74.9 | 0.74 |
| 75.0 to 99.9 | 0.81 |
| 100.0 to 124.9 | 0.88 |
| 125.0 to 149.9 | 0.97 |
| 150.0 to 174.9 | 1.05 |
| 175.0 to 199.9 | 1.14 |
| 200.0 or greater | 1.19 |

(2) Process factor.

| Process configuration: | *Process factor* |
|---|---|
| Less than 6.49 | 0.81 |
| 6.5 to 7.49 | 0.88 |
| 7.5 to 7.99 | 1.00 |
| 8.0 to 8.49 | 1.09 |
| 8.5 to 8.99 | 1.19 |
| 9.0 to 9.49 | 1.29 |
| 9.5 to 9.99 | 1.41 |
| 10.0 to 10.49 | 1.53 |
| 10.5 to 10.99 | 1.67 |
| 11.0 to 11.49 | 1.82 |
| 11.5 to 11.99 | 1.98 |
| 12.0 to 12.49 | 2.15 |
| 12.5 to 12.99 | 2.34 |
| 13.0 or greater | 2.44 |

* * * * *

(13) The tables in § 419.52 (a) and (b) (1) and (2) are revised to read as follows:

**§ 419.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.**

(a) * * *

| Effluent characteristic | Effluent limitations: Maximum for any one day | Effluent limitations: Average of daily values for thirty consecutive days shall not exceed— |
|---|---|---|
| Metric units (kilograms per 1,000 m³ of feedstock) | | |
| BOD5 | 54.4 | 28.9 |
| TSS | 37.3 | 23.7 |
| COD [1] | 388 | 198 |
| Oil and grease | 17.1 | 9.1 |
| Phenolic compounds | .40 | .192 |
| Ammonia as N | 23.4 | 10.6 |
| Sulfide | .35 | .158 |
| Total chromium | .82 | .48 |
| Hexavalent chromium | .068 | .032 |
| pH | Within the range 6.0 to 9.0. | |
| English units (pounds per 1,000 bbl of feedstock) | | |
| BOD5 | 19.2 | 10.2 |
| TSS | 13.2 | 8.4 |
| COD [1] | 136 | 70 |
| Oil and grease | 6.0 | 3.2 |
| Phenolic compounds | .14 | .068 |
| Ammonia as N | 8.3 | 3.8 |
| Sulfide | .124 | .056 |
| Total chromium | .29 | .17 |
| Hexavalent chromium | .025 | .011 |
| pH | Within the range 6.0 to 9.0. | |

(b) * * *

(1) Size factor.

| 1,000 bbl of feedstock per stream day: | *Size factor* |
|---|---|
| Less than 124.9 | 0.73 |
| 125.0 to 149.9 | 0.76 |
| 150.0 to 174.9 | 0.83 |
| 175.0 to 199.9 | 0.91 |
| 200.0 to 224.9 | 0.99 |
| 225 or greater | 1.04 |

(2) Process factor.

| Process configuration: | *Process factor* |
|---|---|
| Less than 6.49 | 0.75 |
| 6.5 to 7.49 | 0.82 |
| 7.5 to 7.99 | 0.92 |
| 8.0 to 8.49 | 1.00 |
| 8.5 to 8.99 | 1.10 |
| 9.0 to 9.49 | 1.20 |
| 9.5 to 9.99 | 1.30 |
| 10.0 to 10.49 | 1.42 |
| 10.5 to 10.99 | 1.54 |
| 11.0 to 11.49 | 1.68 |
| 11.5 to 11.99 | 1.83 |
| 12.0 to 12.49 | 1.99 |
| 12.5 to 12.99 | 2.17 |
| 13.0 or greater | 2.26 |

* * * * *

(14) The tables in § 419.53(b) (1) and (2) are revised to read as follows:

**§ 419.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.**

* * * * *

(b) * * *

(1) Size factor.

| 1,000 bbl of feedstock per stream day: | *Size factor* |
|---|---|
| Less than 124.9 | 0.73 |
| 125.0 to 149.9 | 0.76 |
| 150.0 to 174.9 | 0.83 |
| 175.0 to 199.9 | 0.91 |
| 200.0 to 224.9 | 0.99 |
| 225 or greater | 1.04 |

(2) Process factor.

| Process configuration: | *Process factor* |
|---|---|
| Less than 6.49 | 0.75 |
| 6.5 to 7.49 | 0.82 |
| 7.5 to 7.99 | 0.92 |
| 8.0 to 8.49 | 1.00 |
| 8.5 to 8.99 | 1.10 |
| 9.0 to 9.49 | 1.20 |
| 9.5 to 9.99 | 1.30 |
| 10.0 to 10.49 | 1.42 |
| 10.5 to 10.99 | 1.54 |
| 11.0 to 11.49 | 1.68 |
| 11.5 to 11.99 | 1.83 |
| 12.0 to 12.49 | 1.99 |
| 12.5 to 12.99 | 2.17 |
| 13.0 or greater | 2.26 |

* * * * *

(15) The tables in 419.55 (a) and (b) (1) and (2) are amended to read as follows:

**§ 419.55 Standards of performance for new sources.**

(a) * * *

| Effluent characteristic | Effluent limitations: Maximum for any one day | Effluent limitations: Average of daily values for thirty consecutive days shall not exceed— |
|---|---|---|
| Metric units (kilograms per 1,000 m³ of feedstock) | | |
| BOD5 | 41.6 | 22.1 |
| TSS | 28.1 | 17.9 |
| COD [1] | 295 | 152 |
| Oil and grease | 12.6 | 6.7 |
| Phenolic compounds | .30 | .14 |
| Ammonia as N | 23.4 | 10.7 |
| Sulfide | .26 | .12 |
| Total chromium | .64 | .37 |
| Hexavalent chromium | .052 | .024 |
| pH | Within the range 6.0 to 9.0. | |
| English units (pounds per 1,000 bbl of feedstock) | | |
| BOD5 | 14.7 | 7.8 |
| TSS | 9.9 | 6.3 |
| COD [1] | 104 | 54 |
| Oil and grease | 4.5 | 2.4 |
| Phenolic compounds | .105 | .051 |
| Ammonia as N | 8.3 | 3.8 |
| Sulfide | .093 | .042 |
| Total chromium | .220 | .13 |
| Hexavalent chromium | .019 | .0084 |
| pH | Within the range 6.0 to 9.0. | |

(b) * * *

(1) Size factor.

| 1,000 bbl of feedstock per stream day: | Size factor |
|---|---|
| Less than 124.9 | 0.73 |
| 125.0 to 149.9 | 0.76 |
| 150.0 to 174.9 | 0.83 |
| 175.0 to 199.9 | 0.91 |
| 200.0 to 224.9 | 0.99 |
| 225 or greater | 1.04 |

(2) Process factor.

| Process configuration: | Process factor |
|---|---|
| Less than 6.49 | 0.75 |
| 6.5 to 7.49 | 0.82 |
| 7.5 to 7.99 | 0.92 |
| 8.0 to 8.49 | 1.00 |
| 8.5 to 8.99 | 1.10 |
| 9.0 to 9.49 | 1.20 |
| 9.5 to 9.99 | 1.30 |
| 10.0 to 10.49 | 1.42 |
| 10.5 to 10.99 | 1.54 |
| 11.0 to 11.49 | 1.68 |
| 11.5 to 11.99 | 1.83 |
| 12.0 to 12.49 | 1.99 |
| 12.5 to 12.99 | 2.17 |
| 13.0 or greater | 2.26 |

[FR Doc.75-12959 Filed 5-19-75;8:45 am]

## Title 41—Public Contracts and Property Management

## CHAPTER 114—DEPARTMENT OF THE INTERIOR

## PART 114-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

### Reassignment by Agencies and Report of Identical Bids

Pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301, and sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)), Subparts 114-47.2 and 114-47.3, Chapter 114, of Title 41 of the Code of Federal Regulations, are amended as set forth below.

It is the general policy of the Department of the Interior to allow time for interested parties to take part in the rulemaking process. However, these amendments are entirely administrative in nature. Therefore, the public rulemaking process is waived and these amendments will become effective on May 20, 1975.

RICHARD R. HITE,
*Deputy Assistant Secretary of the Interior.*

MAY 12, 1975.

### Subpart 114-47.2—Utilization of Excess Real Property

Section 114-47.203-1 is amended by revising paragraph (d) to read as follows:

**§ 114-47.203-1 Reassignment of real property by the agencies.**

* * * * *

(d) *Circularization of power transmission facilities.* The approval of the appropriate program Assistant Secretary shall be obtained prior to circularization of any available power transmission line or related facility having an estimated fair market value of $1,000 or more.

(1) In the case of planned disposal of facilities held by the Bonneville Power Administration, Alaska Power Administration, and the Southwestern Power Administration such approval shall be obtained from the Assistant Secretary—Energy and Minerals.

(2) In the case of planned disposal of facilities held by the Bureau of Reclamation, approval of the Assistant Secretary—Land and Water Resources shall be obtained.

(3) Requests for approval to initiate action to dispose of power transmission facilities shall be accompanied by a complete description of the circumstances which the holding Bureau believes makes such disposal feasible. A copy of each request shall be furnished the Assistant Director for Property Management, Office of Management Services.

### Subpart 114-47.3—Surplus Real Property Disposal

Section 114-47.304-8 is revised to read as follows:

**§ 114-47.304-8 Report of identical bids.**

(a) The reporting requirements specified in FPMR 114-47.304-8 are applicable to all sales of Government-owned property made on a competitive basis whether competition is obtained through sealed bid, negotiation, auction, or spot bid procedures. They apply to:

(1) Program sales made pursuant to special statutes authorizing the Secretary of the Interior to sell specific real properties, and

(2) Sales of surplus real property made pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as amended.

(b) Reports on identical bids required by this subsection shall be submitted by the heads of Bureaus and Offices directly to the Attorney General in accord with FPMR 101-47.304-8. A copy of the transmittal letter and a copy of the abstract of bids shall be furnished to the Assistant Director for Property Management, Office of Management Services.

[FR Doc.75-13146 Filed 5-19-75;8:45 am]

## Title 45—Public Welfare

## CHAPTER 1—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## PART 100a—DIRECT PROJECT GRANT AND CONTRACT PROGRAM

## PART 184—ETHNIC HERITAGE STUDIES PROGRAM

### Miscellaneous Amendments

Notice of proposed rule making was published in the FEDERAL REGISTER on December 31, 1974 (39 FR 45297), setting forth regulations for the Ethnic Heritage Studies Program (Title IX of the Elementary and Secondary Education Act) as added by section 504 of the Education Amendments of 1972, Pub. L. 92-318 (20 U.S.C. 900 to 900a-5), and amended by section 111 of the Education Amendments of 1974, Pub. L. 93-380.

These proposed rules would replace standards and funding criteria which were published on April 12, 1974 (39 FR 13297) by adding a new Part 184 to the Code of Federal Regulations. This program was administered under the April 12 standards last fiscal year.

The following paragraphs reiterate the fundamental changes between the standards published on April 12, 1974 and the regulations as they will be published in final form.

a. The standards published in April required all authorized activities (curriculum development, dissemination, and training) to be performed by a grant recipient. This may have had the result of unduly restricting entry into the program because some applicants with the ability to perform some activities lacked the capacity to perform all activities. Section 184.11(a) of the rule permits an applicant to qualify for consideration if it can perform at least one of the three activities listed. This change results from a substantive amendment to the Act made by section 111 of Pub. L. 93-380.

b. Previously, the Act required that curriculum materials developed be for use in elementary *and* secondary schools *and* institutions of higher education. The amendment contained in section 111 of Pub. L. 93-380 permits the development of materials for elementary schools, secondary schools, or institutions of higher education, thus allowing a more flexible approach. This change is reflected in § 184.11(a) (i) of the rule.

c. As a result of the 1974 amendments, funding criteria have been added for separate activities (curriculum, dissemination, and training). (see § 184.31(c).)

d. The section on advisory councils (§ 184.12) is essentially in the form set forth in the previous standard, with some drafting and clarifying changes.

Interested parties were invited to submit written comments, suggestions and objections. Below is a summary of the comments received pertaining to the proposed rule and the responses from this Office. All comments received were given careful consideration, but none was sufficiently substantive to merit a change in the proposed rules. Several technical corrections were made in the citations of legal authority under the table of contents and under subpart D, Funding Criteria. Several typographical errors were also corrected.

1. *Comment.* A commenter, an Indian tribe, requested that American Indian tribes be specifically designated as eligible applicants in the regulations.

*Response.* Title IX acknowledges the importance of the ethnic heritage of all Americans, consequently the scope of the legislative intent encompasses native American tribes and organizations as eligible to the extent that they are nonprofit and have an educational purpose. Section 184.21 states the parties eligible for assisance, as provided by the statute, including nonprofit educational organizations. The nonprofit educational organizations of an Indian tribe would be eligible under this language. This office received applications from several different Indian organizations which were considered in the preceding year.

2. *Comment.* A commenter, a nonprofit organization, commended the flexibility of the regulations and indicated a belief that they implemented congressional intent. The commenter specifically supports three facets of the regulations: (a) the dissemination of curriculum materials; (b) the equal emphasis given to the development and training in the use of curriculum materials; and (c) the multi-ethnic preference accorded to applications.

*Response.* The proposed rule was designed to introduce a greater degree of flexibility in the program regulations and to respond to concerns previously expressed to the program that participation by ethnic groups might have been hampered by regulatory requirements. The Office of Education appreciates the commenter's expression of views that this purpose has, in large measure, been achieved, particularly in the respects mentioned by the commenter.

3. *Comment.* A commenter stresses the importance of dissemination of ethnic heritage materials, including materials developed under the program.

*Response.* Dissemination of materials is an authorized activity under the proposed rules at § 184.11(a)(ii). This activity is considered an essential aspect of the program in creating a national awareness of ethnic heritage studies. Dissemination of materials also serves to maximize independent efforts and eliminates duplication of materials.

4. *Comment.* A commenter submitted several comments. They are particularized below with response.

(a) *Comment.* With regard to § 184.2, relating to definitions, the commenter suggests that a definition of "ethnic," which excluded racial or religious groups, should be incorporated.

*Response.* The regulations follow the approach set by Congress which did not define "ethnic" in the legislation itself. The commenter's point relating to exclusion of minority and religious groups is at odds with the legislative history of Title IX which includes reference to such groups. See Senate Report No. 93–763 at page 50.

(b) *Comment.* Commenter requests that the regulations "spell out" that "genuine ethnic organizations" should be a prime vehicle for assistance.

*Response.* A conscious effort was made to encourage and enhance participation of ethnic groups and ethnic organizations as evidenced by § 184.12 (a) and (b), § 184.21, §184.22 (a) and (b), § 184.31(b)(6)(iii) and § 184.31(c)(i).

However, under the legislation, ethnic organizations are not the sole category of eligible applicants. Furthermore, to accord one eligible applicant category priority over others merely by virtue of that category would be outside the congressional intent and an unauthorized action. Awards are based on competition among eligible applicants found in § 184.-21.

(c) *Comment.* Commenter suggests that it should be specifically required that ethnic groups which have been organized within the past two years be required to submit proof that they are a bona fide ethnic group.

*Response.* Documentation of the organizational legal status of nonprofit applicants has been a concern of the Ethnic Heritage Studies Program. In an attempt to determine this status, certain information is required for submission. From the documentation submitted under § 184.21 (charter, notarized articles of incorporation, by-laws, etc.) we believe the program has sufficient data to judge an applicant's status.

(d) *Comment.* Commenter wishes to declare ineligible any applicant which has hired a former OE employee within the last 12 months.

*Response.* The conflict of interest statutes govern situations regarding use of former employees by a grantee organization. It would be inappropriate for the Office to develop a particularized set of prohibitions for this program.

(e) *Comment.* Commenter wishes to deny preferential treatment to any previous grantee.

*Response.* Eligible applicants which were previously awarded grants under Title IX are not given preferential treatment in these rules.

Accordingly, after consideration of the above comments, part 100a of Title 45 as amended and Part 184 of Title 45 of the Code of Federal Regulations are adopted to read as set forth below.

*Effective date:* The notice of proposed rulemaking was transmitted to Congress on December 24, 1974 pursuant to section 431(d) of the General Education Provisions Act. (20 U.S.C. 1232(d).) The time period set forth therein for congressional action has expired without such action having been taken. Therefore these criteria shall become effective on May 20, 1975.

(Catalog of Federal Domestic Assistance Number 13.549, Ethnic Heritage Studies)

Dated: May 1, 1975.

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

Approved: May 14, 1975.

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

Title 45 of the Code of Federal Regulations is amended as follows:

1. § 100a.10 is amended by adding a new paragraph (a)(33) to read as follows:

§ 100a.10 Scope.

(a) * * *

(33) Financial assistance for carrying out Ethnic Heritage Studies Programs under Title IX of the Elementary and Secondary Education Act.

(20 U.S.C. 900)

2. A new Part 184 is added, to read as follows:

**Subpart A—Purpose; Scope; Definition; General Provisions**

Sec.
184.1 Purpose.
184.2 Definition.
184.3 Applicability and general provisions.

**Subpart B—Authorized Activities and Program Advisory Councils**

Sec.
184.11 Authorized activities.
184.12 Advisory councils.

**Subpart C—Eligibility and Applications for Assistance**

184.21 Eligibility for financial assistance.
184.22 Application for assistance.
184.23 Costs.
184.24 Coordination of efforts.

**Subpart D—Criteria**

184.31 Criteria for assistance.

AUTHORITY: Title IX of ESEA as added by sections 901–907 of P.L. 92–318 (1972) (20 U.S.C. 900a to 900a–5) and as amended by Section 111 of P.L. 93–380 (1974).

## Subpart A—Purpose, Scope; Definition; General Provisions

### § 184.1 Purpose.

The purpose of the Act is to provide assistance designed to afford students opportunities to learn about the nature of their own cultural heritage and to study the contributions of the cultural heritages of the other ethnic groups of the Nation.

(20 U.S.C. 900)

### § 184.2 Definition.

As used in this notice, "Act" means title IX of the Elementary and Secondary Education Act of 1965, as added by section 504 of the Education Amendments of 1972 (P.L. 92–318), and amended by section 111 of the Education Amendments of 1974 (P.L. 93–380).

(20 U.S.C. 900 to 900a–5)

### § 184.3 Applicability and general provisions.

The regulations in this part apply to assistance provided under the Act. Such assistance is also subject to the provisions of Part 100a of the Office of Education General Provisions Regulations. (45 CFR Part 100a).

(20 U.S.C. 900)

## Subpart B—Authorized Activities and Program Advisory Councils

### § 184.11 Authorized activities.

(a) Any ethnic heritage studies program assisted under the Act, in accordance with section 903 of the Act.

(1)(i) Shall develop curriculum materials for use in elementary or secondary schools or institutions of higher education, relating to the culture of the ethnic group or groups with which the program is concerned, and the contributions of that group or groups to the American heritage in such areas as history, geography, society, economy, literature, arts, music, drama, language or general culture; or

(ii) Shall disseminate such curriculum materials to permit their use in elementary or secondary schools or institutions of higher education throughout the Nation; or

(iii) Shall provide training for persons using, or preparing to use, ethnic heritage curriculum materials developed under the Act whether or not such materials were developed by the applicant; and

(2) Shall cooperate with persons and organizations which have a special interest in the ethnic group or groups with which the program is concerned to assist them in promoting, encouraging, developing, or producing programs or other activities which relate to the history, culture, or traditions of that group or groups.

(b) An application which does not make adequate provision for the carrying out by the applicant of one or more of the activities in paragraph (a)(1) of this section and the activities described in paragraph (a)(2) of this section will not be approved.

(20 U.S.C. 900a-1; 900a-2(a)(2))

§ 184.12 Advisory councils.

(a) The Act requires that an ethnic heritage studies program assisted under the Act must be planned and carried out in consultation with an advisory council which is representative of the ethnic group or groups with which the program is concerned.

(20 U.S.C. 900a-2)

(b) The appointment of council members shall be made with the participation of appropriate ethnic and community groups and shall meet the following requirements:

(1) Each of the ethnic groups with which the program is concerned is represented on the council;

(2) More than one-half of the membership of the council consists of community representatives of the ethnic group or groups with which the program is concerned;

(3) The council is broadly representative of educational and professional backgrounds relevant to the program, and at least one member of the council is affiliated with an educational organization or institution and has expertise and experience in curriculum development, training of personnel, and/or dissemination of curriculum materials.

(4) The members of the council are not employed by, or otherwise associated with, the applicant.

(c)(1) An applicant for assistance under the Act shall consult with an advisory council (as described above) regarding the planning of the program for which assistance is requested and the preparation and submission of the application.

(2) In carrying out a program assisted under the Act, a recipient shall:

(i) Consult periodically (and in no event less frequently than once a month) with such council regarding such program;

(ii) Provide such council in a timely fashion with advance copies of all reports required by the Commissioner with respect to the program and all materials prepared or distributed pursuant to it;

(iii) Request semi-annual assessment of the program and its effect by the council; and

(iv) Otherwise involve the council in its advisory capacity in the planning, implementation, and evaluation of the program.

(20 U.S.C. 900a-2(a)(3))

## Subpart C—Eligibility and Applications for Assistance

§ 184.21 Eligibility for financial assistance.

The Commissioner will make grants to public and private nonprofit educational agencies, institutions, and organizations to assist them in developing and implementing ethnic heritage studies programs pursuant to the Act and this part. Eligible organizations include ethnic, community, and professional associations and local educational agencies, State educational agencies, and institutions of higher education as defined in section 801 of the Elementary and Secondary Education Act of 1965.

(20 U.S.C. 881; 20 U.S.C. 900a)

§ 184.22 Application for assistance.

(a) An applicant other than a local educational agency, State educational agency, or institution of higher education shall furnish a copy of its charter or other documentary evidence (such as notarized articles of incorporation, by-laws, or other appropriate organic documents) which demonstrates that it is a nonprofit organization and that it has an educational purpose. (See 45 CFR § 100.1 for definition of nonprofit organization.)

(20 U.S.C. 900a; 900a-2(a))

(b) An application for assistance under the Act shall contain information indicating the manner in which the requirements of § 184.12 have been and will be implemented.

(20 U.S.C. 900a-2(a)(3))

§ 184.23 Costs.

(a) Funds will be made available to cover all or part of the cost of establishing and implementing ethnic heritage studies programs, including such items as the cost of research materials and resources, ethnic group and academic consultants, and related training of educational and community resource persons.

(b) Funds are not available under the Act for construction or remodeling of facilities.

(c) Funds requested under this Act for nonexpendable items such as printing equipment, copying machines, typewriters and audiovisual machines will be allowable only in exceptional circumstances.

(20 U.S.C. 900a; 900a-3)

(d) The Commissioner is prohibited from making any payment under the Act for religious worship or instruction.

(20 U.S.C. 885)

§ 184.24 Coordination of efforts.

In approving applications under the Act, the Commissioner will require that adequate provision is made for cooperation and coordination of efforts among the programs assisted under the Act, including exchange of materials and information. An applicant for assistance under this part will provide an affirmative assurance that it will cooperate and coordinate efforts with other programs assisted under the Act.

(20 U.S.C. 900a-2(b))

## Subpart D—Criteria

§ 184.31 Criteria for assistance.

(a) *General criteria.* Applications for assistance under the Act which qualify for consideration will be evaluated in accordance with the following general criteria:

(1) General criteria set forth in § 100a.26(b) of Part 100a of the Office of Education General Provisions Regulations (45 CFR 100a.26(b)); and

(2) The overall quality of the program, with respect to the activities described in section 903 of the Act, and § 184.11 in helping students learn about their own cultural heritage and about the cultural heritages of other ethnic groups.

(b) *Specific criteria.* Applications for assistance under the Act will also be evaluated on the extent to which:

(1) There is evidence of commitment by the applicant and other interested groups to the program and to its continuation upon the expiration of Federal assistance;

(2) There is a clear demonstration of a specific contribution which the proposed program will make toward meeting the purpose of the Act;

(3) Approval of the application would promote an appropriate distribution of ethnic heritage studies programs throughout the Nation;

(4) The impact of the program is multi-ethnic;

(5) The program materials are designed for widespread use in schools or institutions of higher education and not exclusively for the applicants or the ethnic group(s) with which the program is concerned; and

(6) Provision is made for cooperation:

(i) With persons and organizations having a special interest in the program, as provided in section 903(4) of the Act;

(ii) With other programs assisted under this Act, including such joint activities as exchange of materials, personnel development models and cooperative dissemination efforts; and

(iii) Between ethnic or community groups and educational institutions or other agencies in order to implement the goals of the program.

(c) *Additional criteria.* (1) Programs described in § 184.11(a)(1)(i) (relating to development of curriculum materials) shall also be evaluated on the extent to which provision is made for:

(i) Obtaining data from resources within the community;

(ii) Field-testing curriculum materials to determine their effectiveness prior to use; and

(iii) Incorporating tested materials within the regular curriculum of schools or colleges;

(2) Programs described in § 184.11(a)(1)(ii) (relating to dissemination) shall also be evaluated on the extent to which provision is made for:

(i) Analysis of the materials to be disseminated;

(ii) Dissemination of materials on a nationwide basis; and

(iii) Facilitating exchange of materials among programs assisted under the Act.

(3) Programs described in § 184.11(a)(1)(iii) (relating to training) shall also be evaluated on the extent to which provision is made for:

(i) Maximum involvement of such leadership personnel as community leaders, teachers, teacher trainers, educational administrators, and/or curriculum development specialists and supervisors; and

(ii) Evaluation of the training program.

(20 U.S.C. 900–900a–5)

[FR Doc.75–13216 Filed 5–19–75;8:45 am]

---

## PART 183—FINANCIAL ASSISTANCE FOR ENVIRONMENTAL EDUCATION PROJECTS

### Funding Priorities

Notice of proposed rulemaking was published in the FEDERAL REGISTER on November 26, 1974 (39 FR 41260) which described priorities for determining the award of Environmental Education Act funds (Pub. L. 91–516, as amended). This program provides financial assistance for research, demonstration, and pilot projects designed to educate the public on problems of environmental quality and ecological balance. Pursuant to section 431(d) of the General Education Provisions Act, as amended, (20 U.S.C. 1231(d)) these regulations were transmitted to the Congress concurrently with the publication of the notice of proposed rulemaking in the FEDERAL REGISTER. That section provides that regulations subject thereto shall become effective on the forty-fifth day following the day of such transmission, subject to the provisions therein concerning congressional action and adjournment.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed priorities. No comments have been received and the proposed priorities are hereby adopted without change and are set forth below.

*Effective date.* The notice of proposed rulemaking was transmitted to Congress on November 20, 1974, pursuant to section 431(d) of the General Education Provisions Act (20 U.S.C. 1232(d)). The time period set forth therein for congressional action has expired without such action having been taken. These priorities shall become effective on May 20, 1975.

(Catalog of Federal Domestic Assistance No. 13.522, Environmental Education)

Dated: April 28, 1975.

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

Approved: May 14, 1975.

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

Part 4 of the Guidelines appendix to Part 183 is revised as follows:

GUIDELINES

ENVIRONMENTAL EDUCATION ACT

Financial Assistance for Pilot and Demonstration Projects to Educate the Public on Problems of Environmental Quality and Ecological Balance

Part 4—Funding Objectives and Areas of Special Interest

SEC. 4.1 *General projects.*—(a) *Objectives.* General projects should be designed to assist the development of effective environmental education practices and materials suitable for use by formal and/or nonformal education sectors.

Financial assistance may also be awarded for projects designed to assist the utilization of effective environmental education processes, practices, and materials.

"Formal education sectors" means all public and nonprofit private accredited educational agencies, institutions, and organizations; "nonformal education sectors" means public or nonprofit private agencies or organizations that contribute, directly or indirectly, toward the education of citizens, such as libraries, museums, community centers, organized citizens' groups, and similar organizations.

(20 U.S.C. 1532(b)(2))

(b) *Areas of special interest for funding.* (1) *Resource material development projects.* Resource material development projects foster the development of supplementary, guide, or curriculum materials, primarily for one or more grades, at the junior and senior high school levels (grades 7–12) and for nonformal/community education.

The projects should focus on the material resource needs of specific schools or organizations while at the same time developing these materials in such a way that they can be used by a large number of schools and organizations around the country.

(2) *Personnel development projects.* Personnel development projects are designed primarily for educational personnel associated with grades 7 through 12 and for personnel in other fields whose decisions and activities have an impact on environmental problems and environmental education opportunities in schools, communities, and elsewhere.

The purpose of personnel development projects should be to provide participants with skills and techniques in communicating environmental principles and concepts to others and in utilizing these concepts within the framework of their jobs.

(3) *Community education projects.* Community education projects are designed to test or demonstrate promising methods of providing broad sectors of a community with an understanding of environmental principles, concepts, and problems.

Such projects should focus on the local environment and local environmental problems as they relate to local needs, public policies, and laws.

(4) *Elementary and secondary education projects.* Elementary and secondary education projects are sponsored primarily by local school districts and are designed to assist the introduction of environmental education concepts into the existing curriculum of the school district.

Such project will deal with community environmental problems and will be conducted and in many cases designed by students.

(20 U.S.C. 1532(b)(2))

(c) *Additional areas for funding.* Grant assistance may be considered for other environmental education general projects if funding is available and if such projects show unusual potential in advancing the art of environmental education. Such general project activities include information dissemination relating to environmental education curricula; preservice training programs; planning of outdoor ecological study centers; preparation of environmental education materials for use by the mass media; and evaluation of environmental education activities.

(20 U.S.C. 1532(b)(2))

SEC. 4.2. *Minigrant workshops.* (a) Examples of minigrant workshops may include:

(1) Workshops for community residents on the positive and negative environmental, economic, and social effects of a proposed industrial air pollution ban;

(2) Symposia on the—past, present, and future—impacts of community population distribution and change on the physical, economic, and social environment of the community;

(3) Seminars on the environmental implications of alternative urban renewal or land use plans; or

(4) Conferences on community energy needs, current use patterns, and alternatives.

(20 U.S.C. 1534(a); 45 CFR 183.20)

(b) The specific objective of any such project might be that of assisting citizen participation in the determination of local policies and practices which impact on the environment, or it might address the resolution of a specific issue. Activities might include such things as: a survey of target group knowledge of and attitude toward the issue to be addressed, followed by the conduct of town or neighborhood meetings for discussion sessions with representatives of various interests involved and with technical and environmental impact experts; a community symposium to translate in lay terms and disseminate the impact of new local, State, regional or Federal laws or standards on local environmental resources and needs.

(20 U.S.C. 1534(a); 45 CFR 183.20)

[FR Doc.75–13214 Filed 5–19–75;8:45 am]

## Title 46—Shipping

### CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 74-275]

### SUBCHAPTER D—TANK VESSELS

### SUBCHAPTER O—CERTAIN BULK DANGEROUS CARGOES

### PART 30—GENERAL PROVISIONS

### PART 151—UNMANNED BARGES

### Unmanned Barges Carrying Certain Bulk Dangerous Cargoes

On January 15, 1975, there was published in the FEDERAL REGISTER (40 FR 2702) a notice of proposed rulemaking deleting ethyleneimine from the list of cargoes permitted to be carried under the provisions of Subchapters D and O. The Coast Guard also proposed to redesignate reference to § 111.60-40 in Subpart 151.05 to § 111.80-5. Interested parties were given the opportunity to submit, not later than February 28, 1975, written data, views or arguments.

No comments have been received, and the proposed amendments are hereby adopted without change as set forth below.

**§§ 30.25-5, 151.01-10, 151.05, 151.05-1 and 151.50-60 [Amended]**

Parts 30 and 151 of Chapter I of Title 46, Code of Federal Regulations, are amended as follows:

1. By striking out ethyleneimine from Tables 30.25-5, 151.01-10(b) and 151.05.

2. By revoking § 151.50-60.

3. By striking out references to § 111.60-40 in § 151.05-1(p) and Table 151.05 and inserting § 111.80-5 in place thereof.

(80 Stat. 937; 46 U.S.C. 170, 391a, 375, 416; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b) and (O)(4))

*Effective date.* These amendments become effective on: August 18, 1975.

Dated: May 8, 1975.

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

[FR Doc.75-13210 Filed 5-19-75;8:45 am]

## Title 47—Telecommunication

### CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 75-519; 34931]

### PART 1—PRACTICE AND PROCEDURE

### Order; Designation of Decision-Making Personnel

1. The Commission has under consideration a proposal to amend §§ 1.1205 and 1.1209 of the rules (47 CFR 1.1205 and 1.1209) to list the Chief of The Office of Plans and Policy and his staff as "Decision-making Commission personnel" in restricted adjudicative and restricted rule making proceedings, respectively.

2. At present, § 1.1205 designates the following categories of persons as decision-making personnel in restricted adjudicative proceedings:

a. The Commissioners and their personal office staffs.

b. The Chief of the Office of Opinions and Review and his staff.

c. The Review Board and its staff.

d. The Chief Administrative Law Judge, the Administrative Law Judges, and the staff of the Office of Administrative Law Judges.

e. The General Counsel and his staff.

f. The Chief Engineer and his staff.

3. In addition, § 1.1209 designates the following categories of persons as decision-making personnel in restricted rule making proceedings:

a. The Commissioners and their personal office staffs.

b. The Chief of the Office of Opinions and Review and his staff.

c. The Chief Administrative Law Judge, the Administrative Law Judges, and the staff of the Office of Administrative Law Judges.

d. The Chief of the Common Carrier Bureau and his staff.

e. The General Counsel and his staff.

f. The Chief Engineer and his staff.

g. The Chief of the Cable Television Bureau and his staff when participating in proceedings involving service by common carriers to community antenna television systems.

4. In its 1965 Report and Order adopting the rules concerning ex parte communications (1 FCC 2d 49), the Commission designated as decision-making personnel those who play a part or participate in the process of deciding adjudicative and record rule making proceedings. The functions of the Office of Plans and Policy have been broadly drawn. The Office ". . . assists, advises, and makes recommendations to the Commission with respect to the development and implementation of communications policies in all areas of Commission authority and responsibility." 47 CFR § 0.21. The Office has the duty ". . . [t]o review and comment on all significant actions proposed to be taken by the Commission. . . ." and ". . . [t]o prepare briefings, position papers, proposed Commission actions, or other agenda items as appropriate. . . ." 47 CFR § 0.21 (d) and (f). In carrying out these responsibilities, it is quite likely that the Office would be advising the Commission on matters under consideration in restricted adjudicative or rule making proceedings.

5. We believe, therefore, that the Chief of the Office of Plans and Policy and his staff should be listed as decision-making personnel in §§ 1.1205 and 1.1209 of our rules.

6. Authority for this amendment is contained in section 4 (i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j). Because the amendment relates to a matter of agency organization and practice, the notice and effective date provisions of 5 U.S.C. 553 are inapplicable.

7. In view of the foregoing, *it is ordered*, effective May 21, 1975, that §§ 1.1205 and 1.1209 of the rules and regulations are amended as set out below.

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

Adopted: May 6, 1975.

Released: May 12, 1975.

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

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 1.1205 is amended to read as follows:

**§ 1.1205 Decision-making Commission personnel (restricted adjudicative proceedings).**

The following categories of persons are designated as decision-making Commission personnel in restricted adjudicative proceedings:

(a) The Commissioners and their personal office staffs.

(b) The Chief of the Office of Opinions and Review and his staff.

(c) The Review Board and its staff.

(d) The Chief Administrative Law Judge, the Administrative Law Judges, and the staff of the Office of Administrative Law Judges.

(e) The General Counsel and his staff.

(f) The Chief Engineer and his staff.

(g) The Chief of the Office of Plans and Policy and his staff.

2. Section 1.1209 is amended to read as follows:

**§ 1.1209 Decision-making Commission personnel (restricted rule making proceedings).**

The following categories of persons are designated as decision-making Commission personnel in restricted rule making procedures:

(a) The Commissioners and their personal office staffs.

(b) The Chief of the Office of Opinions and Review and his staff.

(c) The Chief Administrative Law Judge, the Administrative Law Judges, and the staff of the Office of Administrative Law Judges.

(d) The Chief of the Common Carrier Bureau and his staff.

(e) The General Counsel and his staff.

(f) The Chief Engineer and his staff.

(g) The Chief of the Cable Television Bureau and his staff when participating in proceedings involving service by common carriers to cable television systems.

(h) The Chief of the Office of Plans and Policy and his staff.

[FR Doc.75-13287 Filed 5-19-75;8:45 am]

## Title 49—Transportation

## CHAPTER X—INTERSTATE COMMERCE COMMISSION

### SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. No. 1213]

### PART 1033—CAR SERVICE

### St. Louis-San Francisco Railway Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 14th day of May, 1975.

It appearing, That because of unsafe track conditions, the St. Louis-San Francisco Railway Company (SLSF) is unable to operate over its line between Mulberry, Kansas, and Pittsburg, Kansas, a distance of approximately fourteen (14) miles; that SLSF service between these two points can be accomplished by the use of The Kansas City Southern Railway Company (KCS); that the KCS has consented to such use of its tracks by the SLSF; that operation by the SLSF over the aforementioned tracks of the KCS is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

*It is ordered*, That: § 1033.1213 *Service Order No. 1213 (St. Louis-San Francisco Railway Company authorized to operate over tracks of the Kansas City Southern Railway Company)*

(a) The St. Louis-San Francisco Railway Company (SLSF) be, and it is hereby, authorized to operate over tracks of The Kansas City Southern Railway Company (KCS) between a point of connection of SLSF and KCS at KCS milepost 119.3 near Mulberry, Crawford County, Kansas, and KCS milepost 129.7 near Pittsburg, Crawford County, Kansas, a distance of approximately ten (10) miles.

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

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

(d) *Effective date.* This order shall become effective at 11:59 p.m., May 18, 1975.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., November 15, 1975, unless otherwise modified, changed, or suspended by order of this Commission.

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

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

By the Commission, Railroad Service Board.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[FR Doc.75-13254 Filed 5-19-75;8:45 am]

---

### SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. 274; Sub-No. 1]

### PART 1121—ABANDONMENT OF RAILROAD LINES

### Special Procedures for Proposed Railroad Abandonments Where the Requirements of Public Convenience and Necessity Are Minimal or Non-Existent

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 1st day of May 1975.

On April 3, 1975, the Commission, on its own motion, reopened the proceeding in Ex Parte No. 274 (Sub-No. 1) for the purpose of amending 49 CFR 1121.21(d). This section prescribes the information to be included in railroad abandonment applications filed under the Commission's "Special Rules for Railroads Proposing Abandonments Where the Requirements of Public Convenience and Necessity Are Minimal or Non-Existent", frequently referred to as the "34-car rule".

Presently, this section requires that railroads seeking authority to abandon trackage or operations under the "34-car rule", submit, among other information, the names of the "consignor and/or consignee" of each car moved over the abandonment trackage. However, such a requirement may be in conflict with the prohibition of section 15(11) of the Interstate Commerce Act, 49 U.S.C. § 15(11), which makes it unlawful for a railroad to disclose, or for any person or corporation to solicit or receive "any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor . . .". The Commission has, therefore, determined that the subject rule should be amended to eliminate this potential conflict.

The Commission further finds that the amendment prescribed herein is in the public interest and constitutes a procedural rule change within the exception to section 553 of the Administrative Procedure Act, 5 USC 553, that notice and hearing in connection with the proposed amendment is not required, and good cause exists for making the amendment effective upon publication hereof in the FEDERAL REGISTER.

Accordingly, Title 49 of the Code of Federal Regulations is amended by revising § 1121.21(d) to read as follows:

§ 1121.21 Form of application.

* * * * *

(d) *Information to establish the presumption described in § 1121.23.* Applicant shall submit a list of all freight carloads moved by the applicant over the abandonment trackage during the preceding 12 months, the dates of such shipments, the railroad mileposts, stations or points of interchange, or connection with other railroads between which each moved, and the distance each moved over the abandonment trackage. On the basis of these facts, the applicant shall prepare and submit its computations in terms of the statistical criterion, i.e., average number of carloads per mile of abandonment trackage. Thus, for a 10-mile segment, a total carload figure less than 340, or an average carloads-per-mile figure less than 34, would suffice to establish the presumption.

*It is ordered*, That this order shall become effective on May 20, 1975, and

*It is further ordered*, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

NOTE: This decision is not a major Federal action having a significant impact on the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[FR Doc.75-13252 Filed 5-19-75;8:45 am]

---

### SUBCHAPTER C—ACCOUNTS, RECORDS AND REPORTS

[No. 35129; Sub-No. 4]

### PART 1249—REPORTS OF MOTOR CARRIERS

### Quarterly Financial Reports of Class I Common and Contract Motor Carriers of Property

At a General Session of the Interstate Commerce Commission, held at its Office in Washington, D.C., on the 9th day of April 1975.

Past experience shows that in order for the Commission to properly monitor the financial condition of Class I motor carriers of property under our Early Warning Program, it is necessary that we obtain certain balance sheet information not presently reported quarterly. The selected items are shown in the enclosed appendix.[1]

Because the selected information is readily available from the accounting records and is reported annually to the

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

Commission, the addition of page 11 to Form QFR is not considered burdensome or controversial. Therefore, rulemaking proceedings under section 553 of the Administrative Procedures Act (5 U.S.C. 553) are unnecessary.

Wherefore, and for good cause appearing:

*It is ordered*, That quarterly report Form QFR for Class I Common and Contract Motor Carriers of Property is hereby revised as shown in the appendix to this order.

*It is further ordered*, That the prescribed amendment shall be effective for all quarters beginning with the first quarter in 1975 following receipt of the requisite clearance of the General Accounting Office.

*It is further ordered*, That service of this order shall be made on all Class I common and contract motor carriers of property; and to the Governor of every state and to the Public Utilities Commission or boards of each state having jurisdiction over transportation; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and by filing a copy with the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

(49 U.S.C. 304, 320)

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.

By the Commission.

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

[FR Doc.75-13253 Filed 5-19-75;8:45 am]

# proposed rules



## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### [ 27 CFR Parts 178, 181 ]

[Notice No. 277]

### COMMERCE IN FIREARMS AND AMMUNITION AND IN EXPLOSIVES

### Notice of Proposed Rulemaking

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Director, Bureau of Alcohol, Tobacco and Firearms, with the approval of the Secretary of the Treasury or his delegate. This notice contains proposed amendments to Part 178 (Commerce in Firearms and Ammunition) and Part 181 (Commerce in Explosives) of Title 27 of the Code of Federal Regulations, the primary objective being to exempt from regulatory provisions commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

#### Background

The proposed regulations are drafted to implement Public Law 93–639, effective January 4, 1975. The legislation removes the exemption in 18 U.S.C. 845 (a)(5) on all black powder in quantities not exceeding five pounds. In its place, the new law permits anyone to purchase and use commercially manufactured black powder in quantities of fifty pounds or less for sporting, recreational, or cultural purposes in antique firearms, as defined in 18 U.S.C. 921(a)(16), or in antique devices, as exempted from the term "destructive device" in 18 U.S.C. 921(a)(4). 18 U.S.C. 921(a)(4) is also amended by Pub. L. 93–639 to add language exempting antiques such as small muzzle-loading cannons used for sporting, recreational, or cultural purposes, from the definition of "destructive device".

The Department of the Treasury has supported strict controls on black powder in the past, because it is a hazardous explosive material and has often been used for criminal purposes. However, many feel the previous five pound limitation on amounts of black powder exempt from regulation has severely restricted the legitimate use by sporting, recreational, and cultural enthusiasts. The new law eliminates some of these restrictions, while at the same time permits some control to prevent the use of black powder for improper purposes.

#### Explanation of Pub. L. 93–639

Essentially, Pub. L. 93–639 applies only to the black powder user and has four main points:

(1) The user is restricted to the purchase of commercially manufactured black powder. The sportsman is only able to employ high-grade commercially manufactured black powder in the safe operation of antique weapons and has no use for crude, homemade black powder. The law removes any homemade black powder, often found in terrorist bombs, from the exemption to the law and regulations.

(2) The user is limited to purchases of commercially manufactured black powder in quantities of fifty pounds or less. This amount relieves the hardships that legitimate sporting users have had in obtaining black powder and yet retains some regulatory controls on quantities which may be purchased.

(3) The purchase of fifty pound quantities or less of commercially manufactured black powder is exempt only if it is intended to be used for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

(4) In addition to the black powder exemption, certain igniters used in antique weapons are exempted, if intended for sporting, recreational, or cultural purposes. These are percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers.

#### Effect of Pub. L. 93–639 on Regulations

In commenting on the proposed bill, the House of Representatives, Committee on the Judiciary, stated:

> The Committee also wishes to stress that the bill will not unduly disrupt the regulatory scheme established under regulations by ATF. The regulations need only be modified so that retailers will be required to keep records of their sales of black powder under the new exemption. Moreover, it is the expectation of the Committee that ATF will promulgate regulations and establish forms to require sporting users to identify themselves on purchase of black powder. Moreover, such ATF regulations could require that a purchaser-sportsman certify by affidavit that he intends to use the black powder for sporting, recreational, or cultural purposes. Such a regulatory scheme would identify the purchasers of black powder and would aid in the enforcement of the law and prosecution of violators.
>
> [House Report (Judiciary Committee) No. 93–1570, December 11, 1974]

It is clear from the preceding passage that we are acting within the intent of Congress. Based on the foregoing, the Bureau, with the approval of the Department of the Treasury, is proposing the following changes to the regulations in 27 CFR Parts 178 and 181:

(1) *Definition of "destructive device".* The definition of "destructive device", found in Part 178, is proposed to be amended by the addition of language exempting antique devices, such as small muzzle-loading cannons used for sporting, recreational, or cultural purposes, from the term "destructive device". (§ 178.11 amended.)

(2) *Licenses.* Under the previous law, black powder in amounts of five pounds, for any purpose, was exempt from the licensing provisions of Part 181. Since Pub. L. 93–639 requires a determination as to whether commercially manufactured black powder in quantities of fifty pounds or less is going to be used solely for sporting, recreational, or cultural purposes, the retailer will be required to keep records certifying that the purchaser intends to use the black powder in accordance with the provisions of the law. We must, therefore, require that all dealers be licensed to permit ATF officers to maintain such a check on distributions of black powder, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers. (§§ 181.26 and 181.41 amended.)

(3) *User permits.* A user permit is required in order to acquire explosive materials in interstate or foreign commerce. Under the proposed regulatory amendments, it will not be necessary for a person to obtain a user permit, if he intends to receive in interstate or foreign commerce, commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

(§§ 181.28 and 181.41 amended.)

(4) *Transaction record for black powder and certain igniters to be used in antique weapons.* The proposed regulations provide that a licensee or permittee may sell to a nonlicensee or nonpermittee commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, to be used in antique weapons, if he records the transaction on new Form 5400.3. The executed transaction record will identify the purchaser and will contain his certification that the materials purchased are intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

(§§ 181.105, 181.106, 181.122, 181.123, 181.124 and 181.125 amended and § 181.130 added.)

ALTERNATE METHODS AND PROCEDURES

In addition to the proposed regulatory amendments implementing Pub. L. 93-639, we are also proposing an administrative change to provide alternate methods or procedures, in lieu of methods or procedures prescribed in Part 181. Subject to certain conditions, the Director may approve an alternate method or procedure if (1) good cause is shown, (2) the requested method or procedure is substantially equivalent to that prescribed, and (3) no increased cost to the Government or hindrance to the effective administration of the regulations will result.

Presently, the Director may approve variations from the requirements of Part 181, only where an emergency exists and the requested method or procedure is judged necessary. Occasionally, however, a condition arises, often the result of the frequent technological advances being made by the industry ,that is not covered under the regulations. The inflexible requirements of the regulations have prevented the approval of alternate methods or procedures and have thus imposed unnecessary hardships and financial burdens upon the industry. Permitting the approval of variations, under specifically stated conditions, allows the Bureau to be adaptable to change and still maintain important controls.

PUBLIC PARTICIPATION

Prior to final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, on or before June 4, 1975. Written comments or suggestions which are not exempt from disclosure by the Bureau of Alcohol, Tobacco and Firearms, may be inspected by any person upon compliance with 27 CFR 71.22 (d)(7). The provisions of 27 CFR 71.31 (b) shall apply with respect to designation of portions of comments or suggestions as exempt from disclosure. Any interested person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request in writing, to the Director, Bureau of Alcohol, Tobacco and Firearms, on or before June 4, 1975.

The proposed regulations are to be issued under the authority contained in 18 U.S.C. 847 (84 Stat. 959) and 18 U.S.C. 926 (82 Stat. 1226).

SPECIFIC CHANGES TO THE REGULATIONS

In consideration of the foregoing, the following specific changes to the regulations are proposed:

## PART 178—COMMERCE IN FIREARMS AND AMMUNITION

PARAGRAPH 1. Section 178.11 is changed by amending the definition of "destructive device". As amended, § 178.11 reads as follows:

**§ 178.11 Meaning of terms.**

* * * * *

*Destructive device.* (a) Any explosive, incendiary, or poison gas (1) bomb, (2) grenade, (3) rocket having a propellant charge of more than 4 ounces, (4) missile having an explosive or incendiary charge of more than one-quarter ounce, (5) mine, or (6) device similar to any of the devices described in the preceding subparagraphs of this definition; (b) any type of weapon (other than a shotgun or a shotgun shell which the Director finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (c) any combination of parts either designed or intended for use in converting any device into any destructive device described in paragraph (a) or (b) of this definition and from which a destructive device may be readily assembled. The term shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signalling, pyrotechnic, line throwing, safety, or similar device; surplus ordinance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684 (2), 4685, or 4686 of title 10, United States Code; or any other device which the Director finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational, or cultural purposes.

* * * * *

## PART 181—COMMERCE IN EXPLOSIVES

PAR. 2. Section 181.11 is amended to (1) change the definition of "Assistant Regional Commissioner", and (2) add a definition for "regional director" immediately following the definition of "Regional Commissioner". As amended, § 181.11 reads as follows:

**§ 181.11 Meaning of terms.**

* * * * *

*Assistant Regional Commissioner.* Whenever used in this part shall mean a regional director as defined in this section.

* * * * *

*Regional director.* A regional director who is responsible to, and functions under the direction and supervision of, the Director, Bureau of Alcohol, Tobacco and Firearms.

* * * * *

PAR. 3. Section 181.22 is revised to provide for alternate methods or procedures, in lieu of methods or procedures prescribed in Part 181. As revised, § 181.22 reads as follows:

**§ 181.22 Alternate methods or procedures; and emergency variations from requirements.**

(a) *Alternate methods or procedures.* The permittee or licensee, on specific approval by the Director as provided by this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when he finds that—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that such alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and

(3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part.

Where the permittee or licensee desires to employ an alternate method or procedure, he shall submit a written application, in triplicate, to the regional director, for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The permittee or licensee shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization of any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of such authorization. As used in this paragraph, alternate methods or procedures shall include alternate construction or equipment.

(b) *Emergency variations from requirements.* The Director may approve construction, equipment, and methods of operation other than as specified in this part, where he finds that an emergency exists and the proposed variations from the specified requirements are necessary and the proposed variations—

(1) Will afford security and protection that are substantially equivalent to those prescribed in this part;

(2) Will not hinder the effective administration of this part; and

(3) Will not be contrary to any provisions of law.

Variations from requirements granted under this paragraph are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations shall automatically terminate the authority for

such variations and the licensee or permittee thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of such variation. Where the licensee or permittee desires to employ such variation, he shall submit a written application, in triplicate, to the regional director, for transmittal to the Director. The application shall describe the proposed variation and set forth the reasons therefor. Variations shall not be employed until the application has been approved, except when the emergency requires immediate action to correct a situation that is threatening to life or property. Such corrective action may then be taken concurrent with the filing of the application and notification of the Director via telephone.

(c) *Retention of approved variations.* The licensee or permittee shall retain, as part of his records available for examination by alcohol, tobacco and firearms officers, any application approved by the Director under the provisions of this section.

PAR. 4. Section 181.26 is amended to provide that a nonlicensee or nonpermittee is not prohibited from shipping, transporting, or receiving in interstate or foreign commerce, commercially manufactured black powder in quantities not to exceed fifty pounds and certain igniters, intended to be used solely for sporting, recreational, or cultural purposes in antique weapons. As revised, § 181.26 reads as follows:

**§ 181.26 Prohibited shipment, transportation, or receipt of explosive materials.**

(a) No person, other than a licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee, shall transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials: *Provided*, That the provisions of this paragraph shall not apply to—

(1) The transportation, shipment, or receipt of explosive materials by a nonlicensed person or nonpermittee who lawfully purchases explosive materials from a licensee in a State contiguous to the purchaser's State of residence if, (i) the purchaser's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State, (ii) the provisions of § 181.105(c) are fully complied with, and (iii) the purchaser is not otherwise prohibited under paragraph (b) of this section from shipping or transporting explosive materials in interstate or foreign commerce or receiving explosive materials which have been shipped or transported in interstate or foreign commerce; or

(2) The lawful purchase by a nonlicensee or nonpermittee of commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, if (i) the materials are intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, and (ii) the provisions of § 181.105(g) are fully complied with.

(b) No person may ship or transport any explosive material in interstate or foreign commerce or receive any explosive materials which have been shipped or transported in interstate or foreign commerce who (1) is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of or addicted to marihuana (as defined in section 4761 of the Internal Revenue Code of 1954; 26 U.S.C. 4761) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321(v)), or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954; 26 U.S.C. 4731(a)), or (4) has been adjudicated as a mental defective or has been committed to a mental institution.

PAR. 5. Paragraph (a) of § 181.41 is amended to exclude users of commercially manufactured black powder in quantities not to exceed fifty pounds and certain igniters, intended to be used solely for sporting, recreational, or cultural purposes in antique weapons, from the permit requirements of Part 181. As revised, § 181.41(a) reads as follows:

**§ 181.41 General.**

(a) Each person intending to engage in business as an importer or manufacturer of, or a dealer in, explosive materials, including black powder, shall, before commencing such business, obtain the license required by this subpart for the business to be operated. Each person who intends to acquire for use explosive materials from a licensee in a State other than the State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, shall obtain a permit under the provisions of this subpart: *Provided*, That it is not necessary to obtain such permit if the user intends to lawfully purchase—

(1) Explosive materials from a licensee in a State contiguous to the user's State of residence and the user's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State, or

(2) Commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

* * * * *

PAR. 6. A new paragraph (g) is added to § 181.105, permitting a licensee to distribute commercially manufactured black powder in quantities not to exceed fifty pounds and certain igniters to a nonlicensee or nonpermittee, if (1) they are intended to be used solely for sporting, recreational, or cultural purposes in antique weapons, and (2) a transaction record is executed. As added, new § 181.105(g) reads as follows:

**§ 181.105 Distributions to nonlicensees and nonpermittees.**

* * * * *

(g) Notwithstanding any other provision of this section, a licensed importer, licensed manufacturer, or licensed dealer may sell or distribute commercially manufactured black powder in quantities of fifty pounds or less, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, to a nonlicensee or nonpermittee if:

(1) The above materials are intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, and

(2) The nonlicensee or nonpermittee furnishes to the licensee the transaction record, Form 5400.3, required by § 181.130. Disposition of Form 5400.3 shall be made in accordance with the provisions of § 181.130(c).

PAR. 7. Paragraph (a) of § 181.106 is amended to provide that a licensee is not prohibited from distributing to an out-of-State nonlicensee or nonpermittee, commercially manufactured black powder in quantities not to exceed fifty pounds and certain igniters intended to be used solely for sporting, recreational, or cultural purposes in antique weapons. As revised, § 181.106(a) reads as follows:

**§ 181.106 Certain prohibited distributions.**

(a) A licensed importer, licensed manufacturer, licensed manufacturer-limited, or licensed dealer shall not distribute explosive materials to any person not licensed or holding a permit under this part, who the licensee knows or has reason to believe does not reside in the State in which the licensee's place of business is located: *Provided*, That the foregoing provisions of this paragraph shall not apply to—

(1) The distribution of explosive materials to a resident of a State contiguous to the State in which the licensee's place of business is located, if the requirements of § 181.105(c) are fully met, or

(2) The purchase of commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, if the requirements of § 181.105(g) are fully met.

* * * * *

PAR. 8. Section 181.108 is revised to provide procedures for the release from customs custody to a nonlicensee or nonpermittee, of imported commercially

manufactured black powder in quantities not to exceed fifty pounds and certain igniters intended to be used solely for sporting, recreational, or cultural purposes in antique weapons. As revised, § 181.108 reads as follows:

**§ 181.108 Importation.**

(a) Explosive materials imported or brought into the United States by a licensed importer or permittee may be released from customs custody to the licensed importer or permittee upon proof of his status as a licensed importer or permittee. Such status shall be established by the licensed importer or permittee furnishing to the Customs officer a certified copy of his license or permit (see § 181.104).

(b) A nonlicensee or nonpermittee may import or bring into the United States commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers. Upon submitting to the Customs officer completed Form 5400.3, certifying the above materials are intended to be used solely for sporting, recreation, or cultural purposes in antique firearms or in antique devices, they may be released from customs custody. The Customs officer shall forward the executed Form 5400.3 in accordance with the instructions on the form.

(c) The provisions of this section are in addition to, and are not in lieu of, any applicable requirement under 27 CFR Part 47.

PAR. 9. Section 181.122 is amended to add a new paragraph (f) instructing licensed importers to maintain separate records of distributions of commercially manufactured black powder in quantities not to exceed fifty pounds and certain igniters to be used in antique weapons. As revised, § 181.122(f) reads as follows:

**§ 181.122 Records maintained by importers.**

* * * * *

(f) Each licensed importer shall maintain separate records of the sales or other distributions made to nonlicensees or nonpermittees of commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner as prescribed by § 181.130.

PAR. 10. Section 181.123 is amended to add a new paragraph (f) instructing licensed manufacturers to maintain separate records of distributions of commercially manufactured black powder in quantities not to exceed fifty pounds and certain igniters to be used in antique weapons. As added, § 181.123(f) reads as follows:

**§ 181.123 Records maintained by licensed manufacturers.**

* * * * *

(f) Each licensed manufacturer shall maintain separate records of the sales or other distributions made to nonlicensees or nonpermittees of commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner as prescribed by § 181.130.

PAR. 11. Section 181.124 is amended to add a new paragraph (g) instructing licensed dealers to maintain separate records of distributions of commercially manufactured black powder in quantities not to exceed fifty pounds and certain igniters to be used in antique weapons. As added, § 181.124(g) reads as follows:

**§ 181.124 Records maintained by dealers.**

* * * * *

(g) Each licensed dealer shall maintain separate records of the sales or other distributions made to nonlicensees or nonpermittees of commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner as prescribed by § 181.130.

PAR. 12. Section 181.125 is amended to instruct licensed manufacturers-limited and permittees to maintain separate records of dispositions of surplus stocks of commercially manufactured black powder in quantities not to exceed fifty pounds and certain igniters to be used in antique weapons. As amended, § 181.125 (b) and (c) read as follows:

**§ 181.125 Records maintained by licensed manufacturers-limited and permittees.**

* * * * *

(b) A licensed manufacturer-limited disposing of surplus stocks of explosive materials to other licensees or to permittees shall record in the permanent record not later than the close of the next business day following the date of the disposition, the information prescribed in § 181.123(c)(1). Each licensed manufacturer-limited shall maintain separate records of dispositions of surplus stocks of explosive materials to nonlicensees or nonpermittees. Such records shall be maintained in the form and manner as prescribed by § 181.126. Each licensed manufacturer-limited shall maintain separate records of dispositions of surplus stocks of commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner as prescribed by § 181.130.

(c) Each permittee shall record in a permanent record the manufacturers' marks of identification (if any), the quantity and class of explosive materials, as prescribed in the Explosives List, he daily acquires, the date of such acquisition, and the name, address and license number of the person from whom explosive materials were obtained. The information required by this paragraph shall be recorded not later than the close of the next business day following the date of such acquisition. A permittee disposing of surplus stocks of explosive materials to other permittees or to licensees shall record in the permanent record not later than the close of the next business day following the date of the disposition, the information prescribed in § 181.124(d). Each permittee shall maintain separate records of dispositions of surplus stocks of explosive materials to nonlicensees or nonpermittees. Such records shall be maintained in the form and manner as prescribed by § 181.126. Each permittee shall maintain separate records of dispositions of surplus stocks of commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner as prescribed by § 181.130.

* * * * *

PAR. 13. Section 181.126 is amended to (1) provide for the disposition of the copy of Form 4710 to be made in accordance with the instructions on the form, and (2) inform licensees and permittees that supplies of Form 4710 may now be obtained, upon request, from the Director. As revised, § 181.126 (c) and (f) read as follows:

**§ 181.126 Explosives transaction record.**

* * * * *

(c) Form 4710 shall be completed in duplicate, the original of which shall be retained by the licensee or permittee as part of his permanent records in accordance with the requirements in paragraph (d) of this section, and the copy shall be forwarded in accordance with the instructions on the form on or before the close of business on the business day next succeeding that on which the transaction occurs.

* * * * *

(f) A licensee or permittee may obtain, upon request, a supply of Form 4710 from the Director.

PAR. 14. A new section, § 181.130, is added immediately following § 181.129, providing instructions for the use and disposition of the new transaction record for commercially manufactured black powder in quantities not to exceed fifty pounds and certain igniters to be used in antique weapons. As added, new § 181.130 reads as follows:

**§ 181.130 Transaction record for black powder and certain igniters to be used in antique weapons.**

(a) A licensee or permittee shall not sell or otherwise distribute to a nonlicensee or nonpermittee commercially manufactured black powder in quantities of fifty pounds or less, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational or cultural purposes in antique firearms or in antique devices, unless he records the transaction on Form 5400.3.

(b) Prior to the sale or other distribution of the materials in paragraph (a) to a nonlicensee or nonpermittee who is acquiring them under the provision contained in § 181.105(g), the licensee or permittee so distributing the black powder or other materials listed shall obtain an executed Form 5400.3 from the distributee. The Form 5400.3 shall contain all the information as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

(c) Form 5400.3 shall be completed, in duplicate, the original of which shall be retained by the licensee or permittee as part of his permanent records in accordance with the requirements of paragraph (d) of this section, and the copy shall be forwarded in accordance with the instructions on the form, on or before the close of business on the business day next succeeding that on which the transaction occurs.

(d) Each original Form 5400.3 shall be retained in numerical (by transaction serial number) order commencing with "1" and continuing in regular sequence. When the numbering of any series reaches "1,000,000", the licensee or permittee may recommence the series. The recommenced series shall be given an alphabetical prefix or suffix. Where there is a change in proprietorship, or in the individual, firm, corporate name, or trade name, the series in use at the time of such change may be continued.

(e) The requirements of this section shall be in addition to any other recordkeeping requirement contained in this part.

(f) A licensee or permittee may obtain, upon request, a supply of Form 5400.3 from the Director.

PAR. 15. Section 181.41 is revised to (1) delete the current general exemption from the regulations with respect to black powder in quantities not to exceed five pounds, and (2) insert a new paragraph (b) specifically addressing the exemption from the regulations of black powder as provided by Pub. L. 93–639. As revised, § 181.141 reads as follows:

**§ 181.141 Exemptions.**

(a) *General.* The provisions of this part shall not apply with respect to:

(1) Any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the U.S. Department of Transportation, and agencies thereof.

(2) The use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopoeia, or the National Formulary.

(3) The transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof.

(4) Small arms ammunition and components thereof.

(5) The manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States.

(6) Arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States.

(7) The importation and distribution of fireworks in a finished state, commonly sold at retail for personal use in compliance with State laws or local ordinances.

(8) Gasoline, fertilizers, propellant actuated devices, or propellant actuated industrial tools manufactured, imported, or distributed for their intended purposes.

(b) *Black powder.* The provisions of this part shall not apply with respect to commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers: *Provided*, That such materials are intended to be used solely for sporting, recreational, or cultural purposes in antique firearms, as defined in 18 U.S.C. 921(a)(16), or in antique devices, as exempted from the term "destructive device" in 18 U.S.C. 921(a)(4), and the provisions of §§ 181.105(g) and 181.130 are fully complied with.

Dated: April 23, 1975.

REX D. DAVIS,
*Director, Bureau of Alcohol, Tobacco and Firearms.*

Dated: May 12, 1975.

Approved:
DAVID R. MACDONALD,
*Assistant Secretary of the Treasury.*

[FR Doc.75-13162 Filed 5-19-75;8:45 am]

---

## Internal Revenue Service

## [ 26 CFR Parts 31, 301 ]

## EMPLOYMENT TAX LIABILITY OF THIRD PARTIES PAYING OR PROVIDING FOR WAGES; DISCHARGE OF LIENS

### Notice of Proposed Rule Making

Notice is hereby given that the regulation set forth in tentative form in the attached appendix 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 June 19, 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 June 19, 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. 917; 26 U.S.C. 7805).

[SEAL] DONALD C. ALEXANDER,
*Commissioner of Internal Revenue.*

This document contains proposed amendments to the Employment Tax Regulations (26 CFR Part 31) in order to provide regulations under section 3505 of the Internal Revenue Code of 1954, as added by section 105 of the Federal Tax Lien Act of 1966 (80 Stat. 1138), relating to the employment tax liability of third parties paying or providing for wages. Further, this document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) to provide regulations under section 7425 of such Code, as added by section 109 of such Act (80 Stat. 1141), relating to the discharge of liens.

Section 31.3505–1 of the proposed regulations provides rules relating to the liability for withholding taxes imposed upon third persons who finance employers' payrolls. Generally, these provisions apply to a lender, surety, or other person who directly pays wages to the employees of another person or who supplies funds to an employer for the specific purpose of paying wages of the employees of that employer with actual notice or knowledge that the employer does not intend to, or will not be able to, pay the withholding taxes.

Section 301.7425–1(c) of the proposed regulations contains provisions relating to the discharge of a Federal tax lien in the case of formal judicial proceedings, concerning property on which the United States has or claims a tax lien,

where the United States is not joined as a party.

Section 301.7425–2 of the proposed regulations contains provisions relating to the discharge of a Federal tax lien in the case of a nonjudicial foreclosure sale of property on which the United States has or claims a tax lien. The provisions of § 301.7425–2 are presently set forth, without significant difference, under § 400.4–1(b) of the Temporary Regulations Under the Federal Tax Lien Act of 1966 (26 CFR Part 400).

Section 301.7425–3 of the proposed regulations contains provisions prescribing the manner and form of giving notice to the United States of nonjudicial foreclosure sales of property on which the United States has or claims a tax lien. Without significant change, the provisions of §§ 400.4–1 (c), (d), (e), and (f) of the Temporary Regulations Under the Federal Tax Lien Act of 1966 (26 CFR Part 400) are contained in §§ 301.-7425–3(a), relating to notice of sale requirements, 301.7425–3(b), relating to consent to sale, 301.7425–3(c), relating to perishable goods, and 301.7425–(d), relating to content of notice of sale, respectively.

Section 301.7425–4 of the proposed regulations contains provisions relating to the redemption by the United States of real property that is sold in a nonjudicial foreclosure sale to satisfy a lien prior to a Federal tax lien on such property. Provisons relating to such redemptions are presently contained in § 400.5–1 of the Temporary Regulations Under the Federal Tax Lien Act of 1966 (26 CFR Part 400). These temporary regulations are to be superseded upon the adoption of the proposed regulations. Generally, § 400.5–1(c) of the temporary regulations provides that the redemption price shall consist of the sum of the amount bid and paid by the purchaser at the foreclosure sale, interest thereon at six percent per annum, and the excess of certain expenses necessarily incurred in connection with the property over the income therefrom. The proposed regulations under subparagraphs (1) and (4) of § 301.7425–4(b) would expand the items to be taken into account in determining the redemption price to be paid by the United States by providing a procedure under which the purchaser at the foreclosure sale may claim reimbursement for the payments he has made to a senior lienor prior to redemption by the United States. Under the proposed regulations, reimbursement for such payments will be made only if the purchaser waives, or assigns to the United States, any interest in, or lien on, such property which may arise under local law with respect to the payments.

PROPOSED AMENDMENTS TO THE REGULATIONS

In order to provide regulations under section 3505 of the Internal Revenue Code of 1954, as added by section 105 (a) of the Federal Tax Lien Act of 1966 (Public Law 89–719, 80 Stat. 1138) and under section 7425 of such Code, as added by section 109 of such Act (80 Stat. 1141), the Employment Tax Regulations (26 CFR Part 31) and the Regulations on Procedure and Administration (26 CFR Part 301) are amended as follows: Section 301.7425 and §§ 301.7425–1 through 301.7425–4 (inclusive) of the regulations hereby adopted supersede §§ 400.4, 400.4–1, 400.5, and 400.5–1 of this chapter (Temporary Regulations under the Federal Tax Lien Act of 1966) which were prescribed by T.D. 6944, approved January 17, 1968 (33 FR 732).

PARAGRAPH 1. There are added immediately after § 31.3504–1 the following new §§ 31.3505 and 31.3505–1.

**§ 31.3505 Statutory provisions; liability of third parties paying or providing for wages.**

SEC. 3505. *Liability of third parties paying or providing for wages*—(a) *Direct payment by third parties.* For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

(b) *Personal liability where funds are supplied.* If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge (within the meaning of section 6323(i)(1) that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the liability of such lender, surety, or other person shall be limited to an amount equal to 25 percent of the amount so supplied to or for the account of such employer for such purpose.

(c) *Effect of payment.* Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer.

(Sec. 3505 as added by sec. 105(a), Federal Tax Lien Act 1966 (80 Stat. 1138))

**§ 31.3505–1 Liability of third parties paying or providing for wages.**

(a) *Personal liability in case of direct payment of wages*—(1) *In general.* A lender, surety, or other person—

(i) Who is not an employer for purposes of section 3102 (relating to deduction of tax from wages under the Federal Insurance Contributions Act), section 3202 (relating to deduction of tax from compensation under the Railroad Retirement Tax Act), or section 3402 (relating to deduction of income tax from wages) with respect to an employee or group of employees, and

(ii) Who pays wages on or after January 1, 1967, directly to such employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees,

shall be liable in his own person and estate for payment to the United States of an amount equal to the sum of the taxes required to be deducted and withheld from those wages by the employer under subtitle C of the Code and interest from the due date of the employer's return relating to such taxes for the period in which the wages are paid.

(2) *Example.* The provisions of this paragraph may be illustrated by the following example:

*Example.* Pursuant to a wage claim of $200, A, a surety company, paid a net amount of $158 to B, an employee of the X Construction Company. This was done in accordance with A's payment bond covering a private construction job on which B was an employee. If X Construction Company fails to make timely payment or deposit of $42.00, the amount of tax required by subtitle C of the Code to be deducted and withheld from a $200 wage payment to B, A becomes personally liable for $42.00 (*i.e.*, an amount equal to the unpaid taxes), plus interest upon this amount from the due date of X's return.

(b) *Personal liability where funds are supplied*—(1) *In general.* A lender, surety, or other person who—

(i) Advances funds to or for the account of an employer for the specific purpose of paying wages of the employees of that employer, and

(ii) At the time the funds are advanced, has actual notice of knowledge (within the meaning of section 6323(i)(1)) that the employer does not intend to, or will not be able to, make timely payment or deposit of the amounts of tax required by subtitle C of the Code to be deducted and withheld by the employer from those wages,

shall be liable in his own person and estate for payment to the United States of an amount equal to the sum of the taxes which are required by subtitle C of the Code to be deducted and withheld from wages paid on or after January 1, 1967, and which are not paid over to the United States by the employer, and interest from the due date of the employer's return relating to such taxes. However, the liability of the lender, surety, or other person for such taxes shall not exceed 25 percent of the amount supplied by him for the payment of wages. The preceding sentence and the second sentence of section 3505(b) limit the liability of a lender, surety, or other person arising solely by reason of section 3505, and they do not limit the liability which the lender, surety or other person may incur to the United States as a third-party beneficiary of an agreement between the lender, surety, or other person and the employer. The liability of a lender, surety, or other person does not include penalties imposed on the taxpayer.

(2) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

*Example (1).* D, a savings and loan association, advances $10,000 to Y for the specific purpose of paying the net wages of

Y's employees. D advances those funds with knowledge that Y will not be able to make timely payment of the taxes required to be deducted and withheld from these wages by subtitle C of the Code. Y uses the $10,000 to pay the net wages of his employees but fails to remit withholding taxes under subtitle C in the amount of $2,500. D's liability, under this section, is limited to $2,500, 25 percent of the amount supplied for the payment of wages to Y's employees, plus interest thereon.

*Example* (2). E, a loan company, advances $15,000 to F, a contractor, for the specific purpose of paying $20,000 of net wages due to F's employees. E advances those funds with knowledge that F will not be able to make timely payment of the taxes required to be deducted and withheld from these wages by subtitle C of the Code. F applies $5,000 of its own funds toward payment of these wages. The amount of tax required to be deducted and withheld from the gross wages is $4,500. The limitation applicable to E's liability for withholding taxes is $3,750 (25 percent of $15,000). However, because E furnished only a portion of the total net wages, E is liable for $3,375 of the taxes required to be deducted and withheld ($4,500×$15,000/$20,000) plus interest thereon.

*Example* (3). J, a prime contractor, agrees to periodically advance funds to K, a subcontractor, to cover the net weekly payrolls indicated on payroll sheets submitted by K. J advances the funds with the knowledge that K will not be able to make timely payment of the taxes required to be deducted and withheld from these wages under subtitle C of the Code. K does not make any deposit of the tax required to be deducted and withheld from the weekly payrolls. J is personally liable in an amount equal to the unpaid taxes (subject to the limitation upon J's liability for withholding taxes of 25 percent of the funds supplied) plus interest from the due date of K's return for the period in which the net wages were paid. It is immaterial for purposes of imposing liability under section 3505 that subsequent to the advances J learns that K has other funds from which payment of the taxes could have been made.

(3) *Ordinary working capital loan.* The provisions of section 3505(b) do not apply in the case of an ordinary working capital loan made to an employer, even though the person supplying the funds knows that part of the funds advanced may be used to make wage payments in the ordinary course of business. Generally, an ordinary working capital loan is a loan which is made to enable the borrower to meet current obligations as they arise. The person supplying the funds is not obligated to determine the specific use of an ordinary working capital loan or the ability of the employer to pay the amounts of tax required by subtitle C of the Code to be deducted and withheld. However, section 3505(b) is applicable where the person supplying the funds has actual notice or knowledge (within the meaning of section 6323 (i)(1)) at the time of the advance that the funds, or a portion thereof, are to be used specifically to pay net wages, whether or not the written agreement under which the funds are advanced states a different purpose. Whether or not a lender has actual notice or knowledge that the funds are to be used to pay net wages, or merely that the funds may be so used, depends upon the facts and circumstances of each case. For example, a lender, who has actual notice or knowledge that the withheld taxes will not be paid, will be deemed to have actual notice or knowledge that the funds are to be used specifically to pay net wages where substantially all of the employer's ordinary operating expenses consist of salaries and wages even though funds for other incidental operating expenses may be supplied pursuant to an agreement described as a working capital loan agreement.

(c) *Definition of other person*—(1) *In general.* As used in this section, the term "other person" means any person who directly pays the wages or supplies funds for the specific purpose of paying the wages of an employee or group of employees of another employer. It does not include a person acting only as agent of the employer or as agent of the employees.

(2) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

*Example* (1). Pursuant to an agreement between L, a labor union, and M, an employer, M makes monthly vacation payments (of a sum equal to a certain percentage of the remuneration paid to each union member employed by M during the previous month) to a union administered pool plan under which each employee's rights are fully vested and nonforfeitable from the time the money is paid by M. Vacation allowances are accumulated by the plan and distributed to eligible employees during their vacations. L, acting merely as a conduit with respect to these payments, would incur no liability under section 3505.

*Example* (2). N, a construction company, maintains a payroll account with the O Bank in which N deposits its own funds. Pursuant to an automated payroll service agreement between N and O, O prepares payroll checks and earnings statements for each of N's employees reflecting the net pay due each such employee. These checks are delivered to N for signature. After the checks are signed, O distributes them directly to N's employees on the regularly scheduled pay day. O, acting only in the capacity of a disbursing agent of N's funds, would incur no liability under section 3505 with respect to these payroll distributions. However, O may incur liability under section 3505 in the capacity of a lender if it supplies the funds for the payment of wages.

(d) *Payment of taxes and interest*—(1) *Procedure for payment.* A lender, surety, or other person may satisfy the personal liability imposed upon him by section 3505 by executing Form 4219 and filing it, accompanied by payment of the amount of tax and interest due the United States, in accordance with the instructions for the form. In the event the lender, surety, or other person does not satisfy the liability imposed by section 3505, the United States may collect the liability by appropriate civil proceeding commenced within 6 years after assessment of the tax against the employer.

(2) *Effect of payment*—(i) *In general.* A person paying the amounts of tax required to be deducted and withheld by subtitle C of the Code as a result of section 3505 and this section is not required to pay the employer's portion of the payroll taxes upon those wages, or file an employer's tax return with respect to those wages, or furnish annual wage and tax statements to the employees.

(ii) *Amounts paid by a lender, surety, or other person.* Any amounts paid by the lender, surety, or other person to the United States pursuant to this section shall be credited against the liability of the employer on whose behalf those payments are made and shall also reduce the total liability imposed upon the lender, surety, or other person under section 3505 and this section.

(iii) *Amounts paid by the employer.* Any amounts paid to the United States by an employer and applied to his liability under subtitle C of the Code shall reduce the total liability imposed upon that employer by subtitle C. Such payments will also reduce the liability imposed upon a lender, surety, or other person under section 3505 except that such liability shall not be reduced by any portion of an employer's payment applied against the employer's liability under subtitle C which is in excess of the total liability imposed upon the lender, surety, or other person under section 3505. For example, if a lender supplies $1,000 to an employer for the payment of net wages, upon which $300 withholding tax liability is imposed, a part-payment of $25 by the employer which is applied to this liability would reduce the employer's total liability under subtitle C of the Code by that amount, but the liability imposed upon the lender by section 3505(b) in an amount equal to the withholding tax liability of the employer, which is limited to 25 percent of the amount supplied by him, would remain $250. However, if the employer makes another payment of $200 which is applied to his liability for the withholding taxes, the lender's liability under section 3505 attributable to the withholding taxes is reduced by $175 ($225 less $50 (the amount by which the employer's liability exceeds the lender's liability after application of the limitation)). Thus, after the second payment by the employer, the lender's liability under section 3505(b) is $75 ($250 less $175) plus interest due on the underpayment for the period of underpayment.

(e) *Returns required by employers and statements for employees.* This section does not relieve the employer of the responsibilities imposed upon him to file the returns and supply the receipts and statements required under subchapter A, Chapter 61 of the Code (relating to returns and records).

(f) *Time when liability arises.* The liability under section 3505 and this section of a lender, surety, or other person paying or supplying funds for the payment of wages is incurred on the last day prescribed for the filing of the employer's Federal employment tax return (determined without regard to any extension of time) in respect of such wages.

PAR. 2. Section 301.7425 is amended by renumbering such section as § 301.7427,

by renumbering section 7425 of such section as Sec. 7427, and by adding a historical note. These renumbered and added provisions read as follows:

**§ 301.7427 Statutory provisions; cross references.**

Sec. 7427. *Cross references.* * * *

* * * * *

[Sec. 7427 as renumbered by sec. 109, Federal Tax Lien Act 1966 (80 Stat. 1141)]

PAR. 3. There are added immediately after § 301.7424–1 the following new §§ 301.7425 through 301.7425–4.

**§ 301.7425 Statutory provisions; discharge of liens.**

(a) Section 7425 of the Internal Revenue Code of 1954, as added by section 109 of the Federal Tax Lien Act of 1966:

Sec. 7425. *Discharge of liens*—(a) *Judicial proceedings.* If the United States is not joined as a party, a judgment in any civil action or suit described in subsection (a) of section 2410 of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of this title—

(1) Shall be made subject to and without disturbing the lien of the United States, if notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced, or

(2) Shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated, if no notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.

If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the same priority as its lien had against the property sold, the proceeds (exclusive of costs) of such sale at any time before the distribution of such proceeds is ordered.

(b) *Other sales.* Notwithstanding subsection (a) a sale of property on which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title, made pursuant to an instrument creating a lien on such property, pursuant to a confession of judgment on the obligation secured by such an instrument, or pursuant to a nonjudicial sale under a statutory lien on such property—

(1) Shall, except as otherwise provided, be made subject to and without disturbing such lien or title, if notice of such lien was filed or such title recorded in the place provided by law for such filing or recording more than 30 days before such sale and the United States is not given notice of such sale in the manner prescribed in subsection (c)(1); or

(2) Shall have the same effect with respect to the discharge or divestment of such lien or such title of the United States, as may be provided with respect to such matters by the local law of the place where such property is situated, if—

(A) Notice of such lien or such title was not filed or recorded in the place provided by law for such filing more than 30 days before such sale,

(B) The law makes no provision for such filing, or

(C) Notice of such sale is given in the manner prescribed in subsection (c)(1).

(c) *Special Rules*—(1) *Notice of sale.* Notice of a sale to which subsection (b) applies shall be given (in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, not less than 25 days prior to such sale, to the Secretary or his delegate.

(2) *Consent to sale.* Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property shall discharge or divest such property of the lien or title of the United States if the United States consents to the sale of such property free of such lien or title.

(3) *Sale of perishable goods.* Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property liable to perish or become greatly reduced in price or value by keeping, or which cannot be kept without great expense, shall discharge or divest such property of the lien or title of the United States if notice of such sale is given (in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, to the Secretary or his delegate before such sale. The proceeds (exclusive of costs) of such sale shall be held as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the property sold, for not less than 30 days after the date of such sale.

(d) *Redemption by United States*—(1) *Right to redeem.* In the case of a sale of real property to which subsection (b) applies to satisfy a lien prior to that of the United States, the Secretary or his delegate may redeem such property within the period of 120 days from the date of such sale or the period allowable for redemption under local law, whichever is longer.

(2) *Amount to be paid.* In any case in which the United States redeems real property pursuant to paragraph (1), the amount to be paid for such property shall be the amount prescribed by subsection (d) of section 2410 of title 28 of the United States Code.

(3) *Certificate of redemption*—(A) *In general.* In any case in which real property is redeemed by the United States pursuant to this subsection, the Secretary or his delegate shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to such property in the name of the United States. If no such officer is designated by local law or if such officer fails to issue such documents, the Secretary or his delegate shall execute a certificate of redemption therefor.

(B) *Filing.* The Secretary or his delegate shall, without delay, cause such documents or certificate to be duly recorded in the proper registry of deeds. If the State in which the real property redeemed by the United States is situated has not by law designated an office in which such certificate may be recorded, the Secretary or his delegate shall file such certificate in the office of the clerk of the United States district court for the judicial district in which such property is situated.

(C) *Effect.* A certificate of redemption executed by the Secretary or his delegate shall constitute prima facie evidence of the regularity of such redemption and shall, when recorded, transfer to the United States all the rights, title, and interest in and to such property acquired by the person from whom the United States redeems such property by virtue of the sale of such property.

[Sec. 7425 as added by sec. 109, Federal Tax Lien Act of 1966 (80 Stat. 1141)]

(b) Section 2410 of title 28 of the United States Code, as amended by section 201 of the Federal Tax Lien Act of 1966:

Sec. 2410. Actions affecting property on which United States has lien. * * *

(d) In any case in which the United States redeems real property under * * * section 7425 of the Internal Revenue Code of 1954, the amount to be paid for such property shall be the sum of—

(1) The actual amount paid by the purchaser at such sale (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent satisfied by reason of such sale),

(2) Interest on the amount paid (as determined under paragraph (1)) at 6 percent per annum from the date of such sale, and

(3) The amount (if any) equal to the excess of (A) the expenses necessarily incurred in connection with such property, over (B) the income from such property plus (to the extent such property is used by the purchaser) a reasonable rental value of such property.

[Sec. 2410 (d) as amended by sec. 201, Federal Tax Lien Act 1966 (80 Stat. 1147)]

**§ 301.7425–1 Discharge of liens; scope and application; judicial proceedings.**

(a) *In general.* A tax lien of the United States, or a title derived from the enforcement of a tax lien of the United States, may be discharged or divested under local law only in the manner prescribed in section 2410 of Title 28 of the United States Code or in the manner prescribed in section 7425 of the Internal Revenue Code. Section 7425 (a) contains provisions relating to the discharge of a lien when the United States is not joined as a party in the judicial proceedings described in subsection (a) of section 2410 of Title 28 of the United States Code. These judicial proceedings are plenary in nature and proceed on formal pleadings. Section 7425(b) contains provisions relating to the discharge of a lien or a title derived from the enforcement of a lien in the event of a nonjudicial sale with respect to the property involved. Section 7425 (c) contains special rules relating to the notice of sale requirements contained in section 7425(b). Section 301.7425–2 contains rules with respect to the nonjudicial sales described in section 7425 (b). Paragraph (a) of § 301.7425–3 contains rules with respect to the notice of sale provisions of section 7425(c)(1). Paragraph (b) of § 301.7425–3 contains rules relating to the consent to sale provisions of section 7425(c)(2). Paragraph (c) of § 301.7425–3 contains rules relating to the sale of perishable goods provisions of section 7425(c)(3). Paragraph (d) of § 301.7425–3 contains the requirements with respect to the contents of a notice of sale. Section 301.7425–4 prescribes rules with respect to the redemption of real property by the United States.

(b) *Effective date.* The provisions of section 7425, as added by the Federal

Tax Lien Act of 1966, are effective with respect to sales described in section 7425 occurring after November 2, 1966. The notice of sale provisions of section 7425 (c) (1) or (3) do not apply to sales occurring after November 2, 1966, if the seller of the property performed an act before November 3, 1966, which act at the time of performance was required and effective under local law with respect to the sale. An example of such an act is publication of a notice of the sale in a local newspaper before November 3, 1966, if local law requires such publication before a sale and the publication is effective under local law. Accordingly, in such a case, it is not necessary to notify the Internal Revenue Service pursuant to the provisions of section 7425 (c) (1) or (3). With respect to a notice of sale required under section 7425 (c) (1) or (3)—

(1) Any notice of sale given to an office of the Internal Revenue Service or the Treasury Department during the period November 3, 1966, through December 21, 1966, shall be considered as adequate;

(2) Any notice of sale given during the period December 22, 1966, through January 31, 1968, which complies with the provisions of either—

(i) Revenue Procedure 67–25, 1967–1 C.B. 626 (based on Technical Information Release 873, dated December 22, 1966), or

(ii) Section 301.7425–3, shall be considered as adequate; and

(3) Any notice of sale given after January 31, 1968, which complies with the provisions of § 301.7425–3 shall be considered as adequate.

(c) *Judicial proceedings*—(1) *In general.* Section 7425 (a) provides rules, where the United States is not joined as a party, to determine the effect of a judgment in any civil action or suit described in subsection (a) of section 2410 of title 28 of the United States Code (relating to joinder of the United States in certain proceedings), or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of this title. If the United States is improperly named as a party to a judicial proceeding, the effect is the same as if the United States were not joined.

(2) *Notice of lien filed when the proceeding is commenced.* Where the United States is not properly joined as a party in the court proceeding and a notice of lien has been filed in accordance with section 6323 (f) or (g) in the place provided by law for such filing at the time the action or suit is commenced, a judgment or judicial sale pursuant to such a judgment shall be made subject to and without disturbing the lien of the United States.

(3) *Notice of lien not filed when the proceeding is commenced.*—(i) *General rule.* Where the United States is not joined as a party in the court proceeding and either a notice of lien has not been filed in accordance with section 6323 (f) or (g) in the place provided by law for such filing at the time the action or suit is commenced, or the law makes no provision for that filing, a judgment or judicial sale pursuant to such a judgment shall have the same effect with respect to the discharge or divestment of the lien of the United States as may be provided with respect to these matters by the local law of the place where the property is situated.

(ii) *Examples.* The provisions of subparagraph (3) may be illustrated by the following examples:

*Example (1).* A, the first mortgagee of an apartment building located in State Y, commenced a foreclosure action on the mortgage prior to the time that a notice of a Federal tax lien, on that building, had been filed. Under the law of Y, junior liens on real property are discharged by a judicial sale pursuant to a judgment in a foreclosure action. Therefore, the Federal tax lien on the building will be discharged by the judicial sale. This result is the same whether the tax lien arose before or after the date of commencement of the foreclosure action and whether notice of the tax lien was filed at any time after commencement of the foreclosure action.

*Example (2).* On January 10, 1969, B dies testate and devises Blackacre to C. At B's death, Blackacre is subject to a first mortgage held by D. Realty is subject to administration as part of a decedent's estate under the laws of State X. However, C takes possession of Blackacre with the assent of E, the executor of B's estate. On January 5, 1970, D commences a foreclosure action on the mortgage. Under the law of X, junior liens on real property are discharged by a judicial sale pursuant to a judgment in a foreclosure action. After commencement of the proceedings, an assessment for estate taxes is made and, thereafter, a notice of lien is filed in accordance with section 6323. The special lien on Blackacre, arising at the date of B's death, for estate taxes under section 6324(a) will be discharged by the judicial sale because there are no provisions for filing a notice thereof under law and junior liens are discharged by the sale under local law. The lien is discharged even though the executor failed to obtain a discharge of his personal liability under section 2204. Furthermore, the general lien on Blackacre under section 6321 will be discharged by the judicial sale because the foreclosure action was commenced prior to the time that a notice of lien was filed.

(4) *Proceeds of a judicial sale.* If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of the Internal Revenue Code of 1954, the United States may claim the proceeds of the sale (exclusive of costs) prior to the time that distribution of the proceeds is ordered. The claim of the United States in such a case is treated as having the same priority with respect to the proceeds as the lien had with respect to the property which was discharged from the lien by the judicial sale.

**§ 301.7425–2 Discharge of liens; nonjudicial sales.**

(a) *In general.* Section 7425(b) contains provisions with respect to the effect on the interest of the United States in property in which the United States has or claims a lien, or a title derived from the enforcement of a lien, of a sale made pursuant to—

(1) An instrument creating a lien on the property sold,

(2) A confession of judgment on the obligation secured by an instrument creating a lien on the property sold, or

(3) A statutory lien on the property sold.

For purposes of this section, such a sale is referred to as a "nonjudicial sale." The term "nonjudicial sale" includes, but is not limited to, the divestment of the taxpayer's interest in property which occurs by operation of law, by public or private sale, by forfeiture, or by termination under provisions contained in a contract for a deed or a conditional sales contract. Under section 7425(b)(1), if a notice of lien is filed in accordance with section 6323 (f) or (g), or the title derived from the enforcement of a lien is recorded as provided by local law, more than 30 days before the date of sale, and the appropriate district director is not given notice of the sale (in the manner prescribed in § 301.7425–3), the sale shall be made subject to and without disturbing the lien or title of the United States. Under section 7425(b)(2)(C), in any case in which notice of the sale is given to the district director not less than 25 days prior to the date of sale (in the manner prescribed in section 7425(c)(1)), the sale shall have the same effect with respect to the discharge or divestment of the lien or title as may be provided by local law with respect to other junior liens or other titles derived from the enforcement of junior liens. A nonjudicial sale pursuant to a lien which is junior to a tax lien does not divest the tax lien, even though notice of the nonjudicial sale is given to the appropriate district director. However, under the provisions of section 6325(b) and § 301.6325–1, a district director may discharge the property from a tax lien, including a tax lien which is senior to another lien upon the property.

(b) *Date of sale.* In the case of a nonjudicial sale subject to the provisions of section 7425(b), in order to compute any period of time determined with reference to the date of sale, the date of sale shall be determined in accordance with the following rules:

(1) In the case of divestment of junior liens on property resulting directly from a public sale, the date of sale is deemed to be the date the public sale is held, regardless of the date under local law on which junior liens on the property are divested or the title to the property is transferred,

(2) In the case of divestment of junior liens on property resulting directly from a private sale, the date of sale is deemed to be the date title to the property is transferred, regardless of the date junior liens on the property are divested under local law, and

(3) In the case of divestment of junior liens on property not resulting directly from a public or private sale, the date of sale is deemed to be the date on which

junior liens on the property are divested under local law.

For provisions relating to the right of redemption of the United States, see section 7425(d) and § 301.7425–4.

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example (1).* (i) Under the law of State M, upon entry of judgment, the judgment creditor obtains a statutory lien upon the real property of the judgment debtor, and certain procedures are provided by which the judgment creditor may execute by public sale upon such real property. These procedures provide, among other things, for notification by personal service or registered or certified mail to other lien creditors, if any, and publication of a notice of the sale in a local newspaper. After the expiration of a prescribed period of time after such notification and publication, the sheriff of the county where the real property is located may sell the property at public sale. After payment of the amount bid at the public sale, the sheriff issues to the purchaser a deed to the real property, and the interests of junior lienors in the property are divested.

(ii) For purposes of this section, such an execution sale is a nonjudicial sale described in section 7425(b) because the sale is made pursuant to a statutory lien on the property sold. The date of sale, for purposes of computing a period of time determined with reference to the date of sale, is the date on which the public sale is held because junior liens on the real property are divested directly as a result of the public sale. This result obtains even though the junior liens are legally divested on a later date when the sheriff issues the deed.

*Example (2).* (i) Under the law of State N, mortgages on real property may contain a power of sale which authorizes the mortgagee, upon breach by the mortgagor of one of the conditions of the mortgage, to have the mortgaged property sold at public sale. This public sale must be preceded by notice by advertisement in a local newspaper, and the time, place, description of the property, and other terms of the sale must be specified. The purchaser at such a public sale obtains a title to the real property which is not subject to a right of redemption by the mortgagor and which divests the interests of the junior lienors in the property.

(ii) For purposes of this section, a sale pursuant to such a power of sale is a nonjudicial sale described in section 7425(b) because the sale is made pursuant to the mortgage instrument which created a lien on the property sold. The date of the sale, for purposes of computing a period of time determined with reference to the date of sale, is the date of the public sale because junior liens on the property are divested directly as a result of the public sale.

*Example (3).* Assume the same facts as in example (2) except that the purchaser at the public sale obtains a title which is defeasible by the exercise of a right of redemption in the mortgagor. The purchaser's title divests the interests of junior lienors in the property as of the time of public sale. The interests of junior lienors in the property revive if the mortgagor exercises his right of redemption. The date of the sale, for purposes of computing a period of time determined with reference to the date of sale, is the date of the public sale because junior liens on the property are divested directly as a result of the public sale although such junior liens may be revived by a subsequent redemption by the mortgagor.

*Example (4).* (i) Under the law of State O, upon breach by a mortgagor of real property of one of the conditions of the mortgage, the mortgagee may foreclose the mortgage by securing possession of the property by one of several procedures provided by statute. These procedures are generally referred to as "strict foreclosure." In order for a foreclosure to be effective under these procedures, a certificate attesting the fact of entry must be recorded with the proper registrar of deeds within 30 days after the mortgagee enters the property. During the one-year period following the date on which the certificate of entry is recorded, the mortgagor or a junior lienor may redeem the property by paying the mortgagee the amount of the mortgage obligation. If, during such one-year period the property is not redeemed and the mortgagee's possession is continued, the interests of the mortgagor and the junior lienors in the property are divested as of the date such one-year period expires.

(ii) For purposes of this section, such a foreclosure procedure is a nonjudicial sale described in section 7425(b) because it results in the divestment of the mortgagor's interest in the property by operation of law pursuant to the mortgage which created a lien on the property. In addition, because there is no public or private sale which directly results in the divestment of junior liens on the property, the date of sale, for purposes of computing a period of time determined with reference to the date of sale, is the date on which the one-year period following the recording of the certificate of entry expires.

*Example (5).* The law of State P contains a procedure which permits a county to collect a delinquent tax assessment with respect to real property by the means of a tax sale of the property. First, a notice of a public auction with respect to the tax assessment on the real property is published in a local newspaper. At the public auction, the purchaser, upon payment of the delinquent taxes and interest, obtains from the county tax collector a tax certificate with respect to the real property. Because the obtaining of this tax certificate does not directly result in the divestment of either the owner's title or junior liens with respect to the property, the public auction is not a nonjudicial sale described in section 7425(b). At any time before a tax deed with respect to the property is issued by the clerk of the county court, the owner or any holder of a lien or other interest with respect to the property may obtain the tax certificate by paying the holder of the tax certificate the amount of the taxes, interest, and costs. After a date which is two years after the date on which the tax assessment became delinquent, the holder of the tax certificate may request the clerk of the county court to have the property advertised for sale. After advertisement of the sale, the clerk of the county court conducts a public sale of the real property and the purchaser obtains a tax deed. The interests of all junior lienors in the property are divested and the property is not subject to a right of redemption under the law of State P. For purposes of this section, this public sale is considered to be a nonjudicial sale described in section 7425(b) because the sale is made pursuant to a statutory lien on the property sold. The date of the sale, for purposes of computing a period of time determined with reference to the date of sale, is the date on which the public sale is held at which the purchaser obtains a tax deed as this sale directly results in the divestment of junior liens on the property.

*Example (6).* The law of State Q contains a provision which permits a county to collect a delinquent tax assessment with respect to real property by the means of a tax sale of the property. After public notice is given, a "tax sale" of the real property is conducted. Upon payment of the delinquent taxes and interest, a purchaser obtains a tax certificate with respect to the real property. If there is no purchaser at the tax sale, the property is deemed to be bid in by the State. Because the obtaining of this tax certificate by a purchaser or State Q does not directly result in the divestment of either the owner's title or junior liens with respect to the property, the tax sale is not a nonjudicial sale described in section 7425(b). Following the tax sale, there is a three year period during which any person having an interest in the property may redeem the property by paying the holder of the tax certificate the amount of taxes, interest, and costs. Unless redeemed, the holder of the tax certificate may obtain an absolute title at the expiration of the period of redemption provided he serves a notice of the expiration of the redemption period upon the owner at least 60 days prior to the date of expiration. Because there is no public or private sale which directly results in the divestment of junior liens on the property, the date of sale, for purposes of computing a period of time determined with reference to the date of sale, is the date on which the holder of the tax certificate obtains absolute title.

**§ 301.7425–3 Discharge of liens; special rules.**

(a) *Notice of sale requirements*—(1) *In general.* Except in the case of the sale of perishable goods described in paragraph (c) of this section, a notice (as described in paragraph (d) of this section) of a nonjudicial sale shall be given, in writing by registered or certified mail or by personal service, not less than 25 days prior to the date of sale (determined under the provisions of paragraph (b) of § 301.7425–2), to the district director (marked for the attention of the chief, special procedures staff) for the internal revenue district in which the sale is to be conducted. Thus, under this section, a notice of sale is not effective if it is given to a district director other than the district director for the internal revenue district in which the sale is to be conducted. The provisions of sections 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where the last day falls on Saturday, Sunday, or legal holiday) apply in the case of notices required to be made under this paragraph.

(2) *Postponement of scheduled sale*—(i) *Where notice of sale is given.* In the event that notice of a sale is given in accordance with subparagraph (1) of this paragraph with respect to a scheduled sale which is postponed to a later time or date, the seller of the property is required to give notice of the postponement to the district director in the same manner as is required under local law with respect to other secured creditors. For example, assume that in State M local law requires that in the event of a postponement of a scheduled foreclosure sale of real property, an oral announcement of the postponement at the place and time of the scheduled sale constitutes sufficient notice to secured creditors of the postponement. Accordingly, if at the place and time of a scheduled sale in State M an oral announcement of the

postponement is made, the Internal Revenue Service is considered to have notice of the postponement for the purpose of this subparagraph.

(ii) *Where notice of sale is not given.* In the event that—

(A) Notice of a nonjudicial sale would not be required under subparagraph (1) of this paragraph if the sale were held on the originally scheduled date.

(B) Because of a postponement of the scheduled sale, more than 30 days elapse between the originally scheduled date of the sale and the date of the sale, and

(C) A notice of lien with respect to the property to be sold is filed more than 30 days before the date of the sale, notice of the sale is required to be given to the district director in accordance with the provisions of paragraph (a) (1) of this section. In any case in which notice of sale is required to be given with respect to a scheduled sale, and notice of the sale is not given, any postponement of the scheduled sale does not affect the rights of the United States under section 7425 (b).

(iii) *Examples.* The provisions of subdivision (ii) of this subparagraph may be illustrated by the following examples:

*Example (1).* A nonjudicial sale of Blackacre, belonging to A, a delinquent taxpayer, is scheduled for December 2, 1968. As no notice of lien is filed applicable to Blackacre more than 30 days before December 2, 1968, no notice of sale is given to the district director. On December 2, 1968, the sale of Blackacre is postponed until January 15, 1969. A notice of lien with respect to Blackacre is properly filed on January 2, 1969. The sale of Blackacre is held on January 15, 1969. Even though more than 30 days elapsed between the originally scheduled date of the sale (December 2, 1968) and the date of the sale (January 15, 1969), no notice of sale is required to be given to the district director because the notice of lien was not filed more than 30 days before the date of the sale.

*Example (2).* Assume the same facts as in example (1) except that a notice of lien is filed on November 29, 1968 in accordance with section 6323. Because more than 30 days elapsed between the originally scheduled date of the sale and the date of the sale, and the notice of lien is filed (on November 29, 1968) more than 30 days before the date of the sale (January 15, 1969), notice of the sale, in accordance with the provisions of subparagraph (1) of this paragraph, is required to be given to the district director.

*Example (3).* A nonjudicial sale of Whiteacre, belonging to B, a delinquent taxpayer, is scheduled for December 2, 1968. A notice of lien applicable to Whiteacre is filed on November 12, 1968 in accordance with section 6323. As the notice of lien was not filed more than 30 days before December 2, 1968, no notice of sale is given to the district director. On December 2, 1968, the sale of Whiteacre is postponed until December 20, 1968. The sale of Whiteacre is held on December 20, 1968. Even though more than 30 days elapsed between the date notice of lien was filed (November 12, 1968) and the date of the sale (December 20, 1968), no notice of sale is required to be given to the district director because not more than 30 days elapsed between the date of the originally scheduled sale (December 2, 1968) and the date the sale was actually held (December 20, 1968).

(b) *Consent to sale*—(1) *In general.* Notwithstanding the notice of sale provisions of paragraph (a) of this section, a nonjudicial sale of property shall discharge or divest the property of the lien or title of the United States if the district director for the internal revenue district in which the sale occurs consents to the sale of the property free of the lien or title. Pursuant to section 7425 (c) (2), where adequate protection is afforded the lien or title of the United States, a district director may, in his discretion, consent with respect to the sale of property in appropriate cases. Such consent shall be effective only if given in writing and shall be subject to such limitations and conditions as the district director may require. However, a district director may not consent to a sale of property under this section after the date of sale, as determined under paragraph (b) of § 301.7425–2. For provisions relating to the authority of the district director to release a lien or discharge property subject to a tax lien, see section 6325 and the regulations thereunder.

(2) *Application for consent.* Any person desiring a district director's consent to sell property free of a tax lien or a title derived from the enforcement of a tax lien of the United States in the property shall submit to the district director for the internal revenue district in which the sale is to occur a written application, in triplicate, declaring that it is made under penalties of perjury, and requesting that such consent be given. The application shall contain the information required in the case of a notice of sale, as set forth in paragraph (d) (1) of this section, and, in addition, shall contain a statement of the reasons why the consent is desired.

(c) *Sale of perishable goods*—(1) *In general.* A notice (as described in paragraph (d) of this section) of a nonjudicial sale of perishable goods (as defined in subparagraph (2) of this paragraph) shall be given in writing, by registered or certified mail or delivered by personal service, at any time before the sale, to the district director (marked for the attention of the chief, special procedures staff) for the internal revenue district in which the sale is to be conducted. Thus, under this section, a notice of sale is not effective if it is given to a district director other than the district director for the internal revenue district in which the sale is to be conducted. If a notice of a nonjudicial sale is timely given in the manner described in this paragraph, the nonjudicial sale shall discharge or divest the tax lien, or a title derived from the enforcement of a tax lien, of the United States in the property. The provisions of sections 7502 (relating to timely mainling treated as timely filing) and 7503 (relating to time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday) apply in the case of notices required to be made under this paragraph. The seller of the perishable goods shall hold the proceeds (exclusive of costs) of the sale as a fund, for not less than 30 days after the date of the sale, subject to the liens and claims of the United States, in the same manner and with the same priority as the liens and claims of the United States had with respect to the property sold. If the seller fails to hold the proceeds of the sale in accordance with the provisions of this paragraph and if the district director asserts a claim to the proceeds within 30 days after the date of sale, the seller shall be personally liable to the United States for an amount equal to the value of the interest of the United States in the fund. However, even if the proceeds of the sale are not so held by the seller, but all the other provisions of this paragraph are satisfied, the buyer of the property at the sale takes the property free of the liens and claims of the United States. In the event of a postponement of the scheduled sale of perishable goods, the seller is not required to notify the district director of the postponement. For provisions relating to the authority of the district director to release a lien or discharge property subject to a tax lien, see section 6325 and the regulations thereunder.

(2) *Definition of perishable goods.* For the purpose of this paragraph, the term "perishable goods" means any tangible personal property which, in the reasonable view of the person selling the property, is liable to perish or become greatly reduced in price or value by keeping, or cannot be kept without great expense.

(d) *Content of notice of sale*—(1) *In general.* With respect to a notice of sale described in paragraph (a) or (c) of this section, the notice will be considered adequate if it contains the information described in paragraph (d) (1) (i), (ii), (iii), and (iv) of this section.

(i) The name and address of the person submitting the notice of sale;

(ii) A copy of each Notice of Federal Tax Lien (Form 668) affecting the property to be sold, or the following information as shown on each such Notice of Federal Tax Lien—

(A) The internal revenue district named thereon,

(B) The name and address of the taxpayer, and

(C) The date and place of filing of the notice;

(iii) With respect to the property to be sold, the following information—

(A) A detailed description, including location, of the property affected by the notice (in the case of real property, the street address, city, and State and the legal description contained in the title or deed to the property and, if available, a copy of the abstract of title),

(B) The date, time, place, and terms of the proposed sale of the property, and

(C) In the case of a sale of perishable property described in paragraph (c) of this section, a statement of the reasons why the property is believed to be perishable; and

(iv) The approximate amount of the principal obligation, including interest, secured by the lien sought to be enforced and a description of the other expenses (such as legal expenses, selling costs, etc.) which may be charged against the sale proceeds.

(2) *Inadequate notice.* Except as otherwise provided in this subparagraph, a notice of sale described in paragraph (a) of this section which does not contain the information described in paragraph (d)(1) of this paragraph shall be considered inadequate by a district director. If a district director determines that the notice is inadequate, he will give written notification of the items of information which are inadequate to the person who submitted the notice. A notice of sale which does not contain the name and address of the person submitting such notice shall be considered to be inadequate for all purposes without notification of any specific inadequacy. In any case where a notice of sale, given after [a date to be specified in the Treasury decision adopting final regulations under this section], does not contain the information required under paragraph (d)(1)(ii) of this section with respect to a Notice of Federal Tax Lien, the district director may give written notification of such omission without specification of any other inadequacy and such notice of sale shall be considered inadequate for all purposes. In the event the district director gives notification that the notice of sale is inadequate, a notice complying with the provisions of this section (including the requirement that the notice be given not less than 25 days prior to the sale in the case of a notice described in paragraph (a) of this section) must be given. However, in accordance with the provisions of paragraph (b)(1) of this section, in such a case the district director may, in his discretion, consent to the sale of the property free of the lien or title of the United States even though notice of the sale is given less than 25 days prior to the sale. In any case where the person who submitted a timely notice which indicates his name and address does not receive, more than 5 days prior to the date of the sale, written notification from the district director that the notice is inadequate, the notice shall be considered adequate for purposes of this section.

(3) *Acknowledgment of notice.* If a notice of sale described in paragraph (a) or (c) of this section is submitted in duplicate to the district director with a written request that receipt of the notice be acknowledged and returned to the person giving the notice, this request will be honored by the district director. The acknowledgement by the district director will indicate the date and time of the receipt of the notice.

(4) *Disclosure of adequacy of notice.* The district director for the internal revenue district in which the sale was held or is to be held is authorized to disclose, to any person who has a proper interest, whether an adequate notice of sale was given under paragraph (d)(1) of this section. Any person desiring this information should submit to the district director a written request which clearly describes the property sold or to be sold, identifies the applicable notice of lien, gives the reasons for requesting the information, and states the name and address of the person making the request.

**§ 301.7425–4 Discharge of liens; redemption by United States.**

(a) *Right to redeem*—(1) *In general.* In the case of a nonjudicial sale of real property to satisfy a lien prior to the tax lien or a title derived from the enforcement of a tax lien, the district director may redeem the property within the redemption period (as described in paragraph (a)(2) of this section). The right of redemption of the United States exists under section 7425(d) even though the district director has consented to the sale under section 7425(c)(2) and § 301.7425–3(b). For purposes of this section, the term "nonjudicial sale" shall have the same meaning as used in paragraph (a) of § 301.7425–2.

(2) *Redemption period.* For purposes of this section, the redemption period shall be—

(i) The period beginning with the date of the sale (as determined under paragraph (b) of § 301.7425–2) and ending with the 120th day after such date, or

(ii) The period for redemption of real property allowable, with respect to other secured creditors, under the local law of the place where the real property is located, whichever expires later. Whichever period is applicable, section 7425 and this section shall govern the amount to be paid and the procedure to be followed.

(3) *Limitations.* In the event a sale does not ultimately discharge the property from the tax lien (whether by reason of local law or the provisions of section 7425(b)), the provisions of this section do not apply because the tax lien will continue to attach to the property after the sale. In a case in which the Internal Revenue Service is not entitled to a notice of sale under section 7425(b) and § 301.7425–3, the United States does not have a right of redemption under section 7425(d). However, in such a case, if a tax lien has attached to the property at the time of sale, the United States has the same right of redemption, if any, which is afforded to any secured creditor under the local law of the place in which the property is situated.

(b) *Amount to be paid*—(1) *In general.* In any case in which a district director exercises the right to redeem real property, the amount to be paid is the sum of the following amounts—

(i) The actual amount paid for the property (as determined under paragraph (b)(2) of this section) being redeemed (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent legally satisfied by reason of the sale);

(ii) Interest on the amount paid (described in paragraph (b)(1)(i) of this section) at the sale by the purchaser of the real property computed at the rate of 6 percent per annum for the period from the date of the sale (as determined under paragraph (b) of § 301.7425–2) to the date of redemption;

(iii) The amount, if any, equal to the excess of (A) the expenses necessarily incurred to maintain such property (as determined under paragraph (b)(3) of this section) by the purchaser (and his successor in interest, if any) over (B) the income from such property realized by the purchaser (and his successor in interest, if any) plus a reasonable rental value of such property (to the extent the property is used by or with the consent of the purchaser or his successor in interest or is rented at less than its reasonable rental value); and

(iv) With respect to a redemption made after [a date to be specified in the Treasury decision adopting final regulations under this section], the amount, if any, of a payment made by the purchaser or his successor in interest after the foreclosure sale to a holder of a senior lien (to the extent provided under paragraph (b)(4) of this section).

(2) *Actual amount paid.* (i) The actual amount paid for property by a purchaser, other than the holder of the lien being foreclosed, is the amount paid by him at the sale. For purposes of this subdivision, the amount paid by the purchaser at the sale includes deferred payments upon the bid price. The actual amount paid does not include costs and expenses incurred prior to the foreclosure sale by the purchaser except to the extent such expenses are included in the amount bid and paid for the property. For example, the actual amount paid does not normally include the expenses of the purchaser such as title searches, professional fees, or interest on debt incurred to obtain funds to purchase the property.

(ii) In the case of a purchaser who is the holder of the lien being foreclosed, the actual amount paid is the sum of (A) the amount of the obligation secured by such lien to the extent legally satisfied by reason of the sale and (B) any additional amount bid and paid at the sale. For purposes of this section, a purchaser who acquires title as a result of a nonjudicial foreclosure sale is treated as the holder of the lien being foreclosed if a lien (or any interest reserved, created, or conveyed as security for the payment of a debt or fulfillment of other obligation) held by him is partially or fully satisfied by reason of the foreclosure sale. For example, a person whose title is derived from a tax deed issued under local law shall be treated as a purchaser who is the holder of the lien foreclosed in a case where a tax certificate, evidencing a lien on the property arising from the payment of property taxes, ripens into title. The amount paid by a purchaser at the sale includes deferred payments upon any portion of the bid price which is in excess of the amount of the lien being foreclosed. The actual amount paid does not include costs and expenses incurred prior to the foreclosure sale by the purchaser except to the extent such expenses are included in the amount of the lien being foreclosed which is legally satisfied by reason of the sale or in the amount bid and paid at

the sale. Where the lien being foreclosed attaches to other property not subject to the foreclosure sale, the amount legally satisfied by reason of the sale does not include the amount of such lien that attaches to the other property. However, for purposes of the preceding sentence, the amount of the lien that attaches to the other property shall be considered to be equal to the amount by which the value of the other property exceeds the amount of any other senior lien on that property. Where, after the sale, the holder of the lien being foreclosed has the right to the unpaid balance of the amount due him, the amount legally satisfied by reason of the sale does not include the amount of such lien to the extent a deficiency judgment may be obtained therefor. However, for purposes of the preceding sentence, an amount, with respect to which the holder of the lien being foreclosed would otherwise have a right to a deficiency judgment, shall be considered to be legally satisfied by reason of the foreclosure sale to the extent that the holder has waived his right to a deficiency judgment prior to the foreclosure sale. For this purpose, the waiver must be in writing and legally binding upon the foreclosing lienholder as of the time the sale is concluded. If, prior to the foreclosure, payments have been made by the foreclosing lienholder to a holder of a superior lien, the payments are included in the actual amount paid to the extent they give rise to an interest which is legally satisfied by reason of the foreclosure sale.

(3) *Excess expenses incurred by purchaser.* (i) Expenses necessarily incurred in connection with the property after the foreclosure sale and before redemption by the United States are taken into account in determining if there are excess expenses payable under paragraph (b)(1)(iii) of this section. Expenses incurred by the purchaser prior to the foreclosure sale are not considered under this subparagraph. (See paragraph (b)(2)(ii) of this section for circumstances under which such expenses may be included in the amount to be paid.) Expenses necessarily incurred in connection with the property include, for example, rental agent commissions, repair and maintenance expenses, utilities expenses, legal fees incurred after the foreclosure sale and prior to redemption in defending the title acquired through the foreclosure sale, and a proportionate amount of casualty insurance premiums and ad valorem taxes. Improvements made to the property are not considered as an expense unless the amounts incurred for such improvements are necessarily incurred to maintain the property.

(ii) At any time prior to the expiration of the redemption period applicable under paragraph (a)(2) of this section, the district director may, by certified or registered mail or hand delivery, request a written itemized statement of the amount claimed by the purchaser or his successor in interest to be payable under paragraph (b)(1)(iii) of this section. Unless the purchaser or his successor in interest furnishes the written itemized statement within 15 days after the request is made by the district director, it shall be presumed that no amount is payable for expenses in excess of income and the Internal Revenue Service shall tender only the amount otherwise payable under paragraph (b)(1) of this section. If a purchaser or his successor in interest has failed to furnish the written itemized statement within 15 days after the request therefor is made by the district director, or there is a disagreement as to the amount properly payable under paragraph (b)(1)(iii) of this section, a payment for excess expenses shall be made after the redemption within a reasonable time following the verification by the district director of a written itemized statement submitted by the purchaser or his successor in interest or the resolution of the disagreement as to the amount properly payable for excess expenses.

(4) *Payments made by purchaser or his successor in interest to a senior lienor.* (i) The amount to be paid upon a redemption by the United States made after [a date to be specified in the Treasury decision adopting final regulations under this section], shall include the amount of a payment made by the purchaser or his successor in interest to a holder of a senior lien to the extent a request for the reimbursement thereof (made in accordance with paragraph (b)(4)(ii) of this section) is approved as provided under paragraph (b)(4)(iii) of this section. This paragraph applies only to a payment made after the foreclosure sale and before the redemption to a holder of a lien that was, immediately prior to the foreclosure sale, superior to the lien foreclosed. A payment of principal or interest to a senior lienor shall be taken into account. Generally, the portion, if any, of a payment which is to be held in escrow for the payment of an expense, such as hazard insurance or real property taxes, is not considered under this paragraph. However, a paymnt by the escrow agent of a real property tax or special assessment lien, which was senior to the lien foreclosed, shall be considered to be a payment made by the purchaser or his successor in interest for purposes of this paragraph. With respect to real property taxes assessed after the foreclosure sale, see paragraph (b)(3)(i) of this section, relating to excess expenses incurred by the purchaser.

(ii) Before the expiration of the redemption period applicable under paragraph (a)(2) of this section, the district director shall, in any case where a redemption is contemplated, send notice to the purchaser (or his successor in interest of record) by certified or registered mail or hand delivery of his right under this subparagraph to request reimbursement (payable in the event the right to redeem under section 7425(d) is exercised) for a payment made to a senior lienor. No later than 15 days after the notice from the district director is sent, the request for reimbursement shall be mailed or delivered to the office specified in such notice and shall consist of—

(A) A written itemized statement, signed by the claimant, of the amount claimed with respect to a payment made to a senior lienor, together with the supporting evidence requested in the notice from the district director, and

(B) A waiver or other document that will be effective upon redemption by the United States to discharge the property from, or transfer to the United States, any interest in or lien on the property that may arise under local law with respect to the payment made to a senior lienor.

Upon a showing of reasonable cause, a district director may, in his discretion and at any time before the expiration of the applicable period for redemption, grant an extension for a reasonable period of time to submit, amend, or supplement a request for reimbursement. Unless a request for reimbursement is timely submitted (determined with regard to any extension of time granted), no amount shall be payable to the purchaser or his successor in interest on account of a payment made to a senior lienor if the right to redeem under section 7425(d) is exercised. A waiver or other document submitted pursuant to this subdivision shall be treated as effective only to the extent of the amount included in the redemption price under this paragraph. If the right to redeem is not exercised or a request for reimbursement is withdrawn, the district director shall, by certified or registered mail or hand delivery, return to the purchaser or his successor any waiver or other document submitted pursuant to this subdivision as soon as is practicable.

(iii) A request for reimbursement submitted in accordance with paragraph (b)(4)(ii) of this section shall be considered to be approved for the total amount claimed by the purchaser, and payable in the event the right to redeem is exercised, unless the district director sends notice to the claimant, by certified or registered mail or hand delivery, of the denial of the amount claimed within 30 days after receipt of the request or 15 days before expiration of the applicable period for redemption, whichever is later. The notification of denial shall state the grounds for denial. If such notice of denial is given, the request for reimbursement for a payment made to a senior lienor shall be treated as having been withdrawn by the purchaser or his successor and the Internal Revenue Service shall tender only the amount otherwise payable under paragraph (b)(1) of this section. If a request for reimbursement is treated as having been withdrawn under the preceding sentence, payment for amounts described in this subparagraph may, in the discretion of the district director, be made after the redemption upon the resolution of the disagreement as to the amount properly payable under paragraph (b)(1)(iv) of this section.

(5) *Examples.* The provisions of paragraph (b)(1)(i) of this section may be illustrated by the following examples:

*Example* (1). A, a delinquent taxpayer, owns Blackacre located in State X upon which B holds a mortgage. After the mortgage is properly recorded, a notice of tax lien is filed under section 6323(f) which is applicable to Blackacre. Subsequently, A defaults on the mortgage and B forecloses on the mortgage which has an outstanding obligation in the amount of $100,000. At the foreclosure sale, B bids $50,000 and obtains title to Blackacre as a result of the sale. At the time of the foreclosure sale, Blackacre has a fair market value of $75,000. Under the laws of State X, the mortgage obligation is fully satisfied by operation of the foreclosure sale per se and the mortgagee cannot obtain a deficiency judgment. Under paragraph (b)(1)(i) of this section, the district director must pay $100,000 in order to redeem Blackacre.

*Example* (2). Assume the same facts as in example (1) except that under the laws of State X, the amount bid is the amount of the obligation legally satisfied as a result of the foreclosure sale, and in the case in which the amount of the obligation exceeds the amount bid, the mortgagee has the right to a judgment for the deficiency computed as the difference between the amount of the obligation and the amount bid. B does not waive, prior to the foreclosure sale, his right to a deficiency judgment. In such a case, the district director must, under paragraph (b)(1)(i) of this section, pay $50,000 in order to redeem Blackacre, whether or not B seeks a judgment for the deficiency.

*Example* (3). C, a delinquent taxpayer, owns Greenacre located in State Y upon which D holds a first mortgage and E holds a second mortgage. After the mortgages are properly recorded, a notice of tax lien is filed under section 6323(f) which is applicable to Greenacre. Subsequently, C defaults on both mortgages and E pays $5,000 to D, which is the portion of D's obligation which is in default. The second mortgage held by E is an outstanding obligation in the amount of $100,000. Under the laws of State Y, E may treat the amount paid to D as an addition to his second mortgage upon foreclosure by him. E forecloses upon the security interest held by him. At the foreclosure sale, E bids $50,000 and obtains title to Greenacre subject to D's mortgage as a result of the foreclosure sale. Under the laws of State Y, the mortgage obligation legally satisfied is the amount bid and E has the right to a judgment for a deficiency in the amount of $55,000 ($100,000 plus $5,000 less $50,000). In such a case, the district director must, under paragraph (b)(1)(i) of this section, pay $50,000 in order to redeem Greenacre, whether or not E seeks a judgment for the deficiency.

*Example* (4). The law of State Z contains a procedure which permits a county to collect a delinquent tax assessment with respect to real property by the means of a "tax sale" of the property. Pursuant to this procedure, a public auction is conducted on January 15, 1970, to collect the delinquent property taxes assessed against Whiteacre, which is owned by F. At the auction, a bid of $1,000 (representing the tax, costs, and interest due at the time of the auction) is made by G. Subsequently, G pays the amount bid to the county and obtains a tax certificate with respect to Whiteacre. Under this tax sale procedure, the obtaining of the tax certificate does not directly result in the divestment of either F's title or any junior liens on Whiteacre. On January 15, 1973, the period under this tax sale procedure during which F could have redeemed Whiteacre expires. Further, more than 30 days before January 15, 1973, a notice of tax lien affecting Whiteacre is filed under section 6323(f) with respect to F's delinquent Federal income taxes. Under the state tax sale procedure, the amount which would be required to be paid by F to G on January 15, 1973, to redeem Whiteacre is $1,350 (the $1,000 amount bid, interest of $300, and costs of $50). However, Whiteacre is not redeemed by F under the state procedure and, on January 16, 1973, G obtains a tax deed to Whiteacre. Under the law of State Z, the issuance of the tax deed results in the divestment of F's title and junior liens on Whiteacre. Thus, under § 301.7425-2(b), the date of sale is January 16, 1973, for purposes of section 7425(b). The amount legally satisfied by reason of the sale is the amount G is entitled to receive, immediately prior to the expiration of the period for redemption under the law of State Z, if Whiteacre were redeemed at such time. Thus, the district director must, under paragraph (b)(1)(i) of this section pay $1,350 in order to redeem Whiteacre.

(c) *Certificate of redemption*—(1) *In general.* If a district director exercises the right of redemption of the United States described in paragraph (a) of this section, he shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to the redeemed property in the name of the United States. If no such officer has been designated by local law or if the officer designated by local law fails to issue the necessary documents, the district director is authorized to issue a certificate of redemption for the property redeemed by the United States.

(2) *Filing.* The district director shall, without delay, cause either the documents issued by the local officer or the certificate of redemption executed by the district director to be filed with the local office where certificates of redemption are generally filed. If a certificate of redemption is issued by the district director and if the State in which the real property redeemed by the United States is situated has no office with which certificates of redemption may be filed, the district director shall file the certificate of redemption in the office of the clerk of the United States district court for the judicial district in which the redeemed property is situated.

(3) *Effect of certificate of redemption.* A certificate of redemption executed pursuant to paragraph (c)(1) of this section shall constitute prima facie evidence of the regularity of the redemption. When a certificate of redemption is recorded, it shall transfer to the United States all the rights, title, and interest in and to the redeemed property acquired by the person, from whom the district director redeemed the property, by virtue of the sale of the property. Therefore, if under local law the purchaser takes title free of liens junior to the lien of the foreclosing lienholder, the United States takes title free of such junior liens upon redemption of the property. If a certificate of redemption has been erroneously prepared and filed because the redemption was not effective, the district director shall issue a document revoking such certificate of redemption and such document shall be conclusively binding upon the United States against a purchaser of the property or a holder of a lien upon the property.

(4) *Application for release of right of redemption.* Upon application of a party with a proper interest in the real property sold in a nonjudicial sale described in section 7425(b) and § 301.7425-2 which real property is subject to the right of redemption of the United States described in this section, the district director may, in his discretion, release the right of redemption with respect to the property. The application for the release shall be submitted in writing to a district director and shall contain such information as the district director may require. If the district director determines that the right of redemption of the United States is without value, no amount shall be required to be paid with respect to the release of the right of redemption.

[FR Doc.75-13185 Filed 5-19-75;8:45 am]

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### [ 50 CFR Part 17 ]

### SEA TURTLES

### Proposed "Threatened" Status

The Director, United States Fish and Wildlife Service, and the Director, National Marine Fisheries Service, hereby issue a notice of proposed rulemaking that would determine the green sea turtle (*Chelonia mydas*), the loggerhead sea turtle (*Caretta caretta*), and the Pacific ridley sea turtle (*Lepidochelys olivacea*), to be threatened species [as defined in the Endangered Species Act of 1973 (16 U.S.C. 1531–1543)] in 50 CFR 17.32 and establish appropriate protective regulations in 50 CFR 17.32 and in 50 CFR Part 227 (Subpart C) (published elsewhere in this issue, see FR Doc. 75–13188, *infra*) to provide for the conservation of such species.

BACKGROUND

On April 23, 1974, Dr. F. Wayne King, Director of Conservation and Environmental Education for the New York Zoological Society, petitioned the Department of the Interior to list the green sea turtle as an "endangered" species, and to list the loggerhead sea turtle and the Pacific ridley sea turtle as "threatened" species. This petition, and supporting data, were examined by the Fish and Wildlife Service and the National Marine Fisheries Service who determined that sufficient evidence existed to warrant a review of the status of these species; a notice to that effect was placed in the FEDERAL REGISTER on August 16, 1974 (39 FR 29605–29607). The Governors of States in which one or more of these species are resident, and the Governors of Puerto Rico, the Virgin Islands, Guam, and American Samoa, and the High Commissioner of the Trust Territory of the Pacific Islands, were notified of the review and were requested to supply data relative to the status of the species. As a result of this review, the Director of the Fish and Wildlife Service and the Director of the National Marine Fisheries Service find that there are

sufficient data to warrant a proposed rulemaking that the green sea turtle, the loggerhead sea turtle, and the Pacific ridley sea turtle are "threatened" species.

On August 15, 1974, Mariculture, Ltd., P.O. Box 645, Grand Cayman Island, British West Indies, a business involved in the raising and marketing of captive green sea turtles, petitioned the Secretary of the Interior and the Secretary of Commerce to list the green sea turtle as a "threatened" species, but to exempt specimens bred or raised in captivity from this classification. This petition was considered in the overall review of sea turtles.

The Endangered Species Act of 1973 [16 U.S.C. 1533(a)(1)] states that the Secretary of the Interior or the Secretary of Commerce may determine a species to be an endangered species or a threatened species because of any of five factors. These factors, and their applications to the green, loggerhead, and Pacific ridley sea turtles are as follows:

(1) *Present or threatened destruction, modification, or curtailment of habitat or range*—(a) *Green sea turtle.* This species has a circumglobal distribution in the tropics, but has been greatly reduced in numbers and distribution, especially in the Caribbean Sea, Gulf of Mexico, and parts of the Pacific Ocean. Development of coastal areas for industry and tourism, within the species range, is progressively destroying nesting sites.

(b) *Loggerhead sea turtle.* Coastal development is resulting in a decline in numbers and distribution.

(c) *Pacific ridley sea turtle.* Apparently, there has been little recent change in overall distribution, but certain rookeries have been eliminated, and suitable habitat along coastlines is decreasing because of human development.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes*—(a) *Green sea turtle.* This species is probably the most commercially valuable reptile in the world and one of the most extensively utilized.

Its meat, eggs, and calipee (cartilage used in soup) have been eaten for centuries, and in recent years its skin and oil have found increased use in industry. An international market in turtle products now exists, with the United States being among the largest consumers. Heavy egg harvests continue, especially in southeast Asia, and sometimes nearly all clutches on a nesting beach are taken. This intensive exploitation has been causing a steady decline in numbers throughout much of the world.

(b) *Loggerhead sea turtle.* While not subject to the same heavy hunting pressure as the green sea turtle, loggerhead eggs are intensively harvested, and some turtles are killed for meat or sport.

(c) *Pacific ridley sea turtle.* This species seldom is taken commercially for meat, but egg harvesting is intensive along the coasts of Central America and Southeast Asia. Egg collecting and disturbance of nests were the main causes of a great reduction of turtles in Sri Lanka.

A recent rise in the commercial take of turtles in Mexico was stimulated by the development of a market for turtle leather, partly as a substitute for alligator hides. Large numbers of hides and finished products have been either sold in the United States or transshipped through the United States to Europe or Asia.

(3) *Disease and predation*—(a) *Green sea turtle.* Disease or predation are not presently known to constitute a major threat to the species, but these factors could develop into serious problems if populations become more restricted in distribution and numbers.

(b) *Loggerhead sea turtle.* Raccoons prey heavily on eggs in nests along the coasts of the southeastern United States. This problem was intensified because of man's elimination of cougars and other natural predators of raccoons.

(c) *Pacific ridley sea turtle.* Disease and predation are not presently known to constitute a major threat to the species, but these could develop into serious problems if populations become more restricted in distribution and numbers.

(4) *The inadequacy of existing regulatory mechanisms*—(a) *Green sea turtle.* Present laws and enforcement measures are not adequate with regard to exploitation and importation of turtles and turtle products. The United States and Europe continue to serve as major outlets for the world market, even though populations are declining. In some areas turtles are protected on nesting sites, but are subject to unregulated hunting at sea.

(b) *Loggerhead sea turtle.* Although there is legal protection along the coasts of the United States and Australia, some other countries permit the commercial taking of turtles and eggs. The lack of restrictions on importing loggerhead sea turtles into the United States encourages this exploitation.

(c) *Pacific ridley sea turtle.* Importation of turtle products by the United States may be encouraging excessive exploitation in Mexico.

(5) *Other natural or manmade factors affecting its existence*—(a) *Green sea turtle.* Commercial fishermen accidentally catch and drown green sea turtles in nets. Much of the incidental catch is by fishermen trawling for shrimp.

(b) *Loggerhead sea turtle.* Many of these turtles are accidentally caught and killed by trawl fishermen. Along some coastlines bright city or highway lights confuse hatchlings, and attract them inland where they die.

(c) *Pacific ridley sea turtle.* Accidental catching also may be a problem for this species in some areas.

Factors 1, 2, and 4 are considered the major reasons for the decline of these species.

### Description of the Proposal

The proposed listing would add the three sea turtles—the green sea turtle, the loggerhead sea turtle, and the Pacific ridley sea turtle—to the threatened wildlife list.

The proposal also lists all the activities which are prohibited in regard to these species. These include taking, importing, exporting, interstate transportation in the course of a commercial activity, and interstate sale. However, the prohibitions on interstate transportation and sale will not apply until after 1 year from the date of publication of these proposed regulations.

There would also be a series of exceptions to the prohibitions, including mariculture operations and economic hardship. Specifically, the exceptions are as follows:

(1) Permits for scientific purposes, or enhancement of propagation or survival could be issued on the same basis as they are for endangered species under Fish and Wildlife Service regulations, except that the mandatory 30-day public review period would not apply;

(2) Injured, dead, or stranded specimens could be salvaged or disposed of by Federal or State officials;

(3) Incidental catch of sea turtles during fishing or research activities conducted at sea would be exempted, provided that the fishing or research are not taking place in areas of substantial breeding or feeding, and that the sea turtles are immediately returned to the sea;

(4) An exception, under controls, would be authorized for mariculture, for two years, if there is a periodic showing of significant progress, deemed sufficient by both the Fish and Wildlife Service and the National Marine Fisheries Service, towards raising the turtles in captivity from a completely self-sustaining stock; after the second year the exception would be continued only if the sea turtles are being raised in captivity from a completely self-sustaining stock;

(5) Live specimens or products held as of the date of the proposal would be exempted from the prohibitions, provided they were not held in the course of a commercial activity; and

(6) Permits would be available for economic hardship, on the same basis as they are for endangered species under Fish and Wildlife Service regulations.

While we recognize that there is some subsistence taking of these species for food purposes by persons subject to the jurisdiction of the United States, these regulations do not allow for such taking. It is believed that in no case should taking for food purposes be allowed on or near nesting beaches. Although there may be a limited subsistence taking in other areas for food purposes, we do not believe it to be a dominant factor in maintaining life, as there are alternative food sources from species other than those that are believed to be threatened with extinction.

At a later time, a description of certain breeding and feeding areas of these species of sea turtles will be proposed in the FEDERAL REGISTER to be designated as critical habitat.

PERMIT REGULATIONS

Several of the exceptions referred to above allow the issuance of permits. Although these three sea turtles are proposed as threatened species, and not endangered species, certain permits for their use would be issued under the rules and procedures proposed by the Fish and Wildlife Service for endangered species. It is felt that this will simplify permit administration, and will make permit procedures simpler and more uniform for the public.

Simultaneously with this proposal, the Fish and Wildlife Service has proposed amendments to §§ 17.22 and 17.23, to revise and update those sections. With these amendments, the permit regulations of the Fish and Wildlife Service will be appropriate for endangered species, and for threatened species of sea turtles under these regulations. Permit applications must be submitted to the Fish and Wildlife Service, under its regulations. Processing of applications and issuing of permits will be carried out jointly by the Fish and Wildlife Service and the National Marine Fisheries Service. This will simplify permit processing for the public, while assuring adequate review of all applications, for the benefit of the wildlife resource.

PUBLIC COMMENTS SOLICITED

The Directors of the Fish and Wildlife Service and the National Marine Fisheries Service, intend that finally adopted rules be as responsive as possible to the conservation of sea turtles. They therefore desire to obtain the comments and suggestions of the public, other concerned State and Federal Governmental agencies and private interest groups on these proposed rules.

During this comment period, the Services will consult, in cooperation with the Secretary of State, with other nations within whose territories these turtles occur in the wild or whose citizens harvest them upon the high seas. Those views will be considered prior to publication of final regulations.

Final promulgation of sea turtle regulations will take into consideration the comments received by the Directors. Such comments and any additional information received, may lead the Directors to adopt final regulations that differ from this proposal. The Fish and Wildlife Service and the National Marine Fisheries Service have under preparation an environmental assessment concerning this matter.

SUBMITTAL OF WRITTEN COMMENTS

Written comments, views, and objections may be made, preferably in triplicate, to the Director (FWS/LE), Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 19183, Washington, D.C. 20036, on or before July 18, 1975. Final regulations will be promulgated as soon as possible after the 60-day comment period required by the Endangered Species Act of 1973. If any person feels that he may be adversely affected by the proposed regulations, he may file objections thereto and request a public hearing thereon on or before July 3, 1975. Comments received will be available for public inspection during normal business hours at the Fish and Wildlife Service Office in Suite 600, 1612 K Street, N.W., Washington, D.C.

This notice of proposed rulemaking is issued under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543).

ROBERT W. SCHONING,
*Director,*
*National Marine Fisheries Service.*

MAY 15, 1975.

LYNN A. GREENWALT,
*Director,*
*U.S. Fish and Wildlife Service.*

Accordingly, it is proposed to amend Subpart D, Threatened Wildlife, in Subchapter B, Chapter I of Title 50, Code of Federal Regulations by adding a new paragraph (e) to § 17.32, reading as follows:

**§ 17.32 Threatened Wildlife List.**

| Common name | Scientific name | Range | Portion of range where threatened |
|---|---|---|---|
| • • • • • • • | | | |
| (e) Reptiles: | | | |
| (1) Green sea turtle | *Chelonia mydas* (including species *C. agassizi* Boucourt). | Circumglobal | Entire range. |
| (2) Loggerhead sea turtle | *Caretta caretta* | do | Do. |
| (3) Pacific ridley sea turtle | *Lepidochelys olivacea* | do | Do. |

(i) *Prohibitions.* The following prohibitions apply to *Chelonia mydas* (including *C. agassizi* Boucourt), *Caretta caretta*, and *Lepidocheyls olivacea*. Except as provided in paragraph (e)(3)(ii) of this section, it is unlawful for any person subject to the jurisdiction of the United States to:

(A) Import any such species into, or export any such species from, the United States;

(B) Take any such species within the United States or the territorial sea of the United States;

(C) Take any such species upon the high seas;

(D) Possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of prohibitions in paragraph (e)(3)(i) (B) and (C) of this section;

(E) Deliver, receive, carry, transport or ship in foreign commerce by any means whatsoever and in the course of a commercial activity, or sell or offer for sale in foreign commerce, any such species; and

(F) After May 20, 1976, deliver, receive, carry, transport, or ship in interstate commerce by any means whatsoever and in the course of a commercial activity, or sell or offer for sale in interstate commerce, any such species.

(ii) *Exceptions.* The following exceptions apply to *Chelonia mydas* (including *C. agassizi* Boucourt), *Caretta caretta*, and *Lepidochelys olivacea*, listed above.

(A) *Scientific purposes, enhancement of propagation or survival.* The Director and the Director of the National Marine Fisheries Service may jointly process applications and issue permits for activities which would otherwise be prohibited regarding such wildlife, for scientific purposes or to enhance the propagation or survival of such species. The requirements of section 10(a) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)) regarding permits for endangered species shall apply to applications for permits under this provision as if such wildlife were classified "endangered," but in no case shall the requirements of section 10(c) of the Act apply to such permits. Application shall be made in accordance with Part 13 of this subchapter, and the requirements of § 17.22. The duration of permits under this provision shall be designated on the face of the permit.

(B) *Injured, dead or stranded specimens.* In the case of such wildlife found injured, dead, or stranded in the wild, any officer or employee of the Service, of the National Marine Fisheries Service, of the U.S. Coast Guard, or any officer or employee of a State government may, in the course of official duty, take such wildlife for rehabilitation, return to its environment or other appropriate action, including collection for scientific research. Wherever possible, live specimens shall be returned to their aquatic environment as soon as practicable. Every such action shall be reported in writing to the Directors within six months from the occurrence, and such reports may be cumulative for the six month period. Reports shall be mailed to the Director (FWS/SE), U.S. Fish and Wildlife Service, Washington, D.C., and shall contain the following information:

(*1*) Name and official position of the official or employee involved;

(*2*) Description of the specimen(s) involved;

(*3*) Date and location of disposal;

(*4*) Circumstances requiring the action;

(*5*) Method of disposal;

(*6*) Disposition of the specimen(s), including cases where the turtle(s) has been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and

(*7*) Such other information as the Directors may require.

(C) *Incidental catch.* The incidental catch of such wildlife during fishing or research activities conducted at sea shall not be prohibited provided:

(*1*) The specimen was caught by fishing gear incidental to fishing effort or research not directed toward such species; and

(2) The person responsible for the fishing gear or vessel was fishing in an area of substantial breeding or feeding of any such wildlife; and

(3) Any such wildlife which is caught is immediately returned to its aquatic environment whether dead or alive, with due care to minimize injuries to live specimens.

(D) *Mariculture.* The Director and the Director of the National Marine Fisheries Service may jointly issue permits for mariculture operations. For a period of two years from the effective date of these regulations, any person may apply for a permit to conduct any of the activities otherwise prohibited in § 17.32(e)(3)(i) regarding such wildlife, provided that such wildlife is taken for or derived from a captive population in the course of mariculture operations. After two years from the effective date of these regulations permits may be issued or renewed only if the applicant or permittee can demonstrate to the satisfaction of the Directors, that such wildlife is derived from a closed-cycle farming operation consisting of a captive-bred population which is completely self-sustaining and independent of wild stocks.

(*1*) Applications shall be made, and permits shall be issued, in accordance with Part 13 of this Title 50, except that all applications will be reviewed and all permits issued jointly by the Director and the Director of the National Marine Fisheries Service. The information requirements of § 17.22(a) shall apply to permits issued under this provision, except that in addition to the information required in that section, the applicant shall also present complete information demonstrating the following points:

(*i*) that during the first two years such wildlife will be either

(*A*) derived from a captive-bred population that is completely self-sustaining and independent of wild stocks, or (*B*) taken for or derived from a captive population that is demonstrably in the process of becoming a captive breeding population that is completely self-sustaining and independent of wild stocks, but is temporarily sustained in part by the addition of turtles or eggs taken in the wild, the taking of which is demonstrably not a major threat to wild stocks;

(*ii*) That the applicant or the applicant's supplier has an accurate system of record keeping showing the origin and numbers of such wildlife taken for addition to the captive population, and showing all subsequent transactions with such wildlife;

(*iii*) That the applicant or the applicant's supplier is prepared to institute a system of marking or other identification of any such wildlife transferred from the propagating facility. The markings or other identification must be capable of remaining on the wildlife, in any form, until after retail sale or export from the United States;

(*iv*) That if any of the applicant's facilities, or the facilities of any supplier of the applicant or the area of collection of such wildlife, are located outside the jurisdiction of the United States, the applicant has made suitable arrangements for the inspection visits referred to in § 13.47, including quarters, and any necessary permission of the government of the jurisdiction in which such facilities or area are located; and

(*v*) That the applicant or the applicant's supplier has submitted with the application a complete listing or inventory of all specimens held by him as of the date of the application. This listing or inventory shall be certified by the applicant to be a true and correct statement and subject to the penalties for false statements under section 1001, Title 18, United States Code.

(*2*) In addition to the conditions for permits issued under § 17.22(c), any permits issued under this provision will be subject to the following conditions:

(*i*) That the permittee or the permittee's supplier mark or otherwise identify all such wildlife transferred in any way from the propagating facility, and that the mark or other identification remain on the wildlife until after the retail sale or export from the United States of such wildlife;

(*ii*) That the permittee provide proof, when requested by either Director, of the origin of such wildlife held in his rearing and propagating facilities or the facilities of his supplier; such proof may be in the form of the invitation of observers appointed by either Director, at the permittee's expense, to any taking of such wildlife;

(*iii*) That the permit shall terminate automatically at the end of two years from the effective date of these regulations and thereafter at annual intervals, unless the permittee has demonstrated to the satisfaction of the Directors that for each succeeding one-year period the wildlife to be covered by the permit will be derived from a captive-bred population which is completely self-sustaining and independent of wild stocks; and

(*iv*) That if such wildlife involved in the mariculture operation is taken outside the jurisdiction of the United States, the government of the country in which the taking occurs sends a certificate to the Directors stating that (*A*) such wildlife is legally protected from over-exploitation in that country and (*B*) the taking of such wildlife in that country will not be detrimental to the survival of the species in the wild; in the event that such certification is unobtainable, the Directors may accept such other certification as they deem sufficient.

(E) *Wildlife held in captivity or a controlled environment.* The prohibitions in § 17.32(e)(3)(i) shall not apply to any such wildlife held in captivity or a controlled environment on the date of the Federal Register notice proposing to add such wildlife to the threatened wildlife list, provided that the person claiming such exemption can show by documentary evidence to the satisfaction of the Directors, that the specimen was held in captivity or in a controlled environment on the required date, and was not being held in the course of a commercial activity. Such documentary evidence may include bills of sale or inventory or other records which are certified therein.

(F) *Economic hardship.* The Directors may issue permits to import or export such wildlife in order to prevent undue economic hardship. Applications shall be made and permits shall be issued in accordance with Part 13 of this title, and the provisions of § 17.23, except that all applications will be reviewed and all permits will be issued jointly by the Director and the Director of the National Marine Fisheries Service. In addition, the requirements of section 10(b) of the Endangered Species Act of 1973 (16 U.S.C. 1539(b)) regarding hardship exemptions shall apply to applications for hardship exemptions under this provision as if such wildlife were classified "endangered." The tenure of any economic hardship permit issued for such wildlife under this provision will be for one year from the effective date of these regulations. No economic hardship permit will be granted which will result in the killing of sea turtles.

[FR Doc.75-13189 Filed 5-19-75;8:45 am]

---

## [ 50 CFR Part 17 ]

## ENDANGERED AND THREATENED WILDLIFE

### Proposed Amendments To Permit Provisions

In January 1974, the United States Fish and Wildlife Service promulgated regulations completely revising Subchapter B of Chapter I of Title 50. These regulations became effective January 4, 1974, through publication in the FEDERAL REGISTER (39 FR 1158). Included was a new Part 17, now entitled "Endangered and Threatened Wildlife."

It has recently become apparent that there are a number of conflicts between Part 17 and the Endangered Species Act of 1973 [hereinafter "the Act"]. First of all, Part 17 was originally issued under authority of the Endangered Species Conservation Act of 1969, and consequently regulates only the importation of endangered species. The Act regulates many activities in addition to importation, but Part 17 has not been revised to reflect this.

Secondly, § 17.21 of Part 17 apparently implies that the Act's restrictions on importation apply only to the endangered species listed in § 17.11 of Part 17 ("foreign"), and not to the species listed in § 17.12 ("native"). This implication is in direct conflict with section 4(c)(3) of the Act (16 U.S.C. 1533(c)(3)). That section clearly indicates that the Act's importation restrictions apply to all species listed as endangered, including those listed in § 17.12. Nevertheless, the public, relying on § 17.21, has imported without permit several endangered species listed in § 17.12.

Finally, Part 17, as presently written, states that permits may be obtained to

authorize the importation of endangered species for zoological and educational purposes. The Act, unlike the Endangered Species Conservation Act of 1969, does not authorize zoological or educational permits. However, it is apparent that a number of persons, relying on Part 17, may take or purchase endangered species overseas, with the idea of importing, transporting, and selling such species under authority of zoological or educational permits.

*Description of the amendment.* The amendment changes § 17.21 by listing specifically all the activities prohibited by the Act for endangered species. These include, among other things, import, export, interstate shipment or receipt in the course of a commercial activity, and taking.

The list of the prohibitions in § 17.21 contains a reference to the species listed in both §§ 17.11 and 17.12, in order to make it clear that all the prohibitions apply equally to what are still termed in the regulations "native" endangered species as well as "foreign" endangered species. The FEDERAL REGISTER rulemaking of January 9, 1974, (39 FR 1441) stated that the two lists in §§ 17.11 and 17.12 together were what were referred to as "endangered species." It was intended that this statement would be understood to mean that since the prohibitions in section 9 of the Act all applied to "endangered species," they therefore applied to all species listed in §§ 17.11 and 17.12. It has become apparent that this meaning has not been clear to the public.

The amendment also revises the permit provisions in §§ 17.22 and 17.23, to clarify the types of permits available under the Act, and the terms and conditions of their issuance. Primarily, the amendment to § 17.22 avoids the misleading effect of the present section, by referring specifically to the types of permits available under section 10(a) of the Act. That section authorizes permits for scientific research, or for purposes which will enhance the propogation or the survival of the species. This is a more restrictive permit provision than under the previous act, which authorized permits for "zoological" and "educational" purposes, as well as those described above. The informational requirements, the issuance criteria, and the special terms and conditions have been modified to reflect the permits which are now authorized under the Act.

*Public comments solicited.* The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies and private interest on these proposed rules.

Final promulgation of these regulations will take into consideration the comments received by the Director. Such comments and any additional information received, may lead the Director to adopt final regulations that differ from this proposal.

Submittal of written comments. Written comments, views, and objections may be made, preferably in triplicate, to the Director (FWS/LE), Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 19813, Washington, D.C. 20036, on or before July 21, 1975. Final regulations will be promulgated as soon as possible after the 60-day comment period required by the Endangered Species Act of 1973. If any person feels that he may be adversely affected by the proposed regulations, he may file objections thereto and request a public hearing thereon on or before June 19, 1975. Comments received will be available for public inspection during normal business hours at the Fish and Wildlife Service Office in Suite 600, 1612 K Street NW., Washington, D.C.

This notice of proposed rulemaking is issued under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543).

LYNN A. GREENWALT,
*Director, U.S. Fish and Wildlife Service.*

MAY 9, 1975.

Accordingly, it is hereby proposed to amend part 17, subchapter B, chapter I of title 50, Code of Federal Regulations, as follows:

1. Revise § 17.21 to read:

**§ 17.21 General prohibitions.**

Except as permitted in §§ 17.22 or 17.23 of this part, no person shall:

(a) Import into the United States any species listed as endangered in §§ 17.11 or 17.12 of this part;

(b) Export from the United States any species listed as endangered in §§ 17.11 or 17.12 of this part;

(c) Take within the United States any species listed as endangered in §§ 17.11 or 17.12 of this part;

(d) Take within the territorial sea of the United States any species listed as endangered in §§ 17.11 or 17.12 of this part;

(e) Take upon the high seas any species listed as endangered in §§ 17.11 or 17.12 of this part;

(f) Possess, sell, deliver, carry, transport, or ship any species (1) listed as endangered in §§ 17.11 or 17.12 of this part, and (2) taken in violation of paragraphs (c) through (e) of this section;

(g) In the course of a commercial activity, deliver, receive, carry, transport, or ship, in interstate or foreign commerce, any species listed as endangered in §§ 17.11 or 17.12 of this part;

(h) Sell or offer for sale, in interstate or foreign commerce, any species listed as endangered in §§ 17.11 or 17.12 of this part;

(i) Attempt to commit, cause to be committed, or solicit another to commit, any act covered in paragraphs (a) through (h) of this section.

2. Revise § 17.22 to read:

**§ 17.22 Permits for scientific purposes, or for the enhancement of propagation or survival.**

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.21, in accordance with the issuance criteria of this section, for scientific research or for enhancing the propagation or survival of endangered wildlife.

(a) *Application requirements.* Applications for permits under this section must be submitted to the Director by the person who wishes to engage in the activity prohibited by § 17.21. Each application must contain the general information and certification required by § 13.12(a) of this subchapter, plus all of the following information:

(1) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce, etc.);

(2) A statement as to whether, at the time of application, the wildlife sought to be covered by the permit (i) is still in the wild, (ii) has already been removed from the wild, or (iii) was born in captivity;

(3) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife;

(4) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by the permit was raised in captivity, the country and place where such wildlife was born;

(5) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained;

(6) If the applicant seeks to have live wildlife covered by the permit,

(i) A complete description, including photographs or diagrams, of the area and facilities where such wildlife will be housed and cared for;

(ii) A brief resume of the technical expertise of the persons who will care for such wildlife, including any experience the applicant or his personnel have had in raising, caring for, and propagating similar wildlife, or any closely related wildlife;

(iii) A statement of the applicant's willingness to participate in a cooperative breeding program, and to maintain or contribute data to a studbook; and

(iv) A detailed description of the type, size and construction of all containers into which such wildlife will be placed during transportation or temporary storage, if any, and of the arrangements for feeding, watering and otherwise caring for such wildlife during that period;

(v) For the 5 years preceding the date of this application provide a detailed description of all mortalities involving the species covered in the application (or any other wildlife of the same genus or family by the applicant), including the causes of such mortalities and the steps taken to avoid or decrease such mortalities.

(7) Copies of the contracts and agreements pursuant to which the activities sought to be authorized by the permit will be carried out; such copies must identify all persons who will engage in the activities sought to be authorized, and must also give the dates for such activities; and

(8) A full statement of the reasons why the applicant is justified in obtaining the permit, including:

(i) The details of the activities sought to be authorized by the permit;

(ii) The details of how such activities will be carried out;

(iii) The relationship of such activities to scientific objectives or to objectives enhancing the propagation or survival of the wildlife sought to be covered by the permit; and

(iv) The planned disposition of such wildlife upon termination of the activities sought to be authorized.

(b) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making his decision, the Director shall consider the following factors:

(1) Whether the purpose for which the permit is requested is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(2) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit;

(3) Whether the permit, if issued, would in any way, directly or indirectly, conflict with any known program intended to enhance the survival probabilities of the population from which the wildlife sought to be covered by the permit was or would be removed;

(4) Whether the purpose for which the permit is requested would be likely to reduce the threat of extinction facing the species of wildlife sought to be covered by the permit;

(5) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(6) Whether the expertise, facilities or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application.

(c) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this section shall be subject to the following special conditions:

(1) In addition to any reporting requirements contained in the permit itself, the permittee shall also submit to the Director a written report of his activities pursuant to the permit. Such report must be postmarked or actually delivered no later than 10 days after completion of the activity.

(2) The death or escape of all living wildlife covered by the permit shall be immediately reported to the Service's Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036.

(3) The carcass of any dead wildlife covered by the permit shall be stored in a manner which will preserve its use as a scientific specimen.

(d) *Duration of permits.* The duration of permits issued under this section shall be designated on the face of the permit.

3. Revise § 17.23 to read:

**§ 17.23 Economic hardship permits.**

Upon receipt of a complete application, the Director, in order to prevent undue economic hardship, may issue, in accordance with the issuance criteria of this section, a permit authorizing any activity otherwise prohibited by § 17.21 of this Part.

(a) *Application requirements.* Applications for permits under this section must be submitted to the Director by the person allegedly suffering undue economic hardship because his desired activity is prohibited by § 17.21. Each application must contain the general information and certification required by § 13.12(a) of this subchapter, plus the following additional information:

(1) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce, etc.)

(2) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife;

(3) If the wildlife sought to be covered by the permit will be transported or taken, the methods and locations of such transportation or taking;

(4) If the wildlife sought to be covered by the permit will be imported or exported, the date and designated port of entry for such importation or exportation;

(5) If the applicant seeks to have live wildlife covered by the permit:

(i) A complete description, including photographs or diagrams, of the area and facilities where such wildlife will be housed and cared for;

(ii) A brief resume of the technical expertise of the persons who will care for such wildlife, including any experience the applicant or his personnel have had in raising, caring for, and propagating similar wildlife, or any closely related wildlife;

(iii) A statement of the applicant's willingness to participate in a cooperative breeding program, and to maintain or contribute data to a studbook; and

(iv) A detailed description of the type, size, and construction of all containers into which such wildlife will be placed during transportation or temporary storage, if any, and of the arrangements for feeding, watering, and otherwise caring for such wildlife during that period;

(6) The purpose of the activity sought to be authorized by the permit;

(7) The possibxle legal, economic or susbsistence alternatives to the activity sought to be authorized by the permit;

(8) A full statement, accompanied by copies of all relevant contracts and correspondence, showing the applicant's involvement with the wildlife sought to be covered by the permit (as well as his involvement with similar wildlife) including, where applicable, that portion of applicant's income derived from the taking of such wildlife, or the subsistence use of such wildlife, during the calendar year immediately preceding either the notice in the FEDERAL REGISTER of review of the status of the species or of the proposal to list such wildlife as endangered; whichever is earliest;

(9) Where applicable, proof of a contract or other binding legal obligation which:

(i) Deals specifically with the wildlife sought to be covered by the permit;

(ii) became binding prior to the date when the notice of a review of the status of the species or the notice of proposed rulemaking proposing to list such wildlife as endangered was published in the FEDERAL REGISTER, whichever is earlier; and

(iii) Will cause monetary loss of a given dollar amount if the permit sought under this section is not granted.

(b) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued under any of the three categories of economic hardship, as defined in section 10(b)(2) of the Endangered Species Act of 1973 [16 U.S.C. 1539(b)(2)]. In making his decision, the Director shall consider the following factors:

(1) Whether the purpose for which the permit is being requested is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(2) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the Permit;

(3) The economic, legal, subsistence, or other alternatives or relief available to the applicant;

(4) The amount of evidence that the applicant was in fact party to a contract or other binding legal obligation which:

(i) Deals specifically with the wildlife sought to be covered by the permits; and

(ii) Became binding prior to the date when the notice of proposed rulemaking proposing to list such wildlife as endangered was published in the FEDERAL REGISTER.

(5) The severity of economic hardship which the contract or other binding legal obligation referred to in paragraph (b)(4) of this section would cause if the permit were denied; and

(6) Where applicable, the portion of the applicant's income which would be lost if the permit were denied, and its relationship to the balance of his income; and

(7) Where applicable, the nature and extent of subsistence taking generally by the applicant;

(8) The likelihood that the applicant can reasonably carry out his desired activity within 1 year from the date when the notice either to review the status of such wildlife or to list such wildlife as endangered sought to be covered by the permit was published in the FEDERAL REGISTER, whichever was earlier.

(c) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this section shall be subject to the following special conditions:

(1) In addition to any reporting requirements contained in the permit itself, the permittee shall also submit to the Director a written report of his activities pursuant to the permit. Such report must be postmarked or actually delivered no later than 10 days after completion of the activity.

(2) The death or escape of all living wildlife covered by the permit shall be immediately reported to the Service's Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036.

(3) The carcass of any dead wildlife covered by the permit shall be stored in a manner which will preserve its use as a scientific specimen.

(d) *Duration of permits.* The duration of permits issued under this section shall be designated on the face of the permit, but no permit issued under this section shall ever be valid for more than 1 year from the date when the notice either to review the status of such wildlife or to list as endangered the wildlife covered by such permit was published in the FEDERAL REGISTER, whichever is earlier.

[FR Doc.75-13259 Filed 5-19-75;8:45 am]

---

[ 50 CFR Part 20 ]

## MIGRATORY BIRDS

### Proposed Rule Making

*Correction*

In FR Doc. 75-12078, appearing at page 20090 in the issue for Thursday, May 8, 1975, the following changes should be made.

On page 20091, in the third column, paragraph 16:

1. The eleventh line should read "clapper rails may be taken during the"

2. In the fifteenth line the word now reading "kings" should be changed to read "king" and

3. In the sixteenth line the word now reading "Staes" should be changed to read "States"

---

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[ 7 CFR Part 915 ]

## AVOCADOS GROWN IN SOUTH FLORIDA

### Proposed Limitation of Handling

Consideration is being given to the following proposal, as hereinafter set forth, which would limit the handling of fresh avocados grown in South Florida by establishing minimum quality and maturity requirements, pursuant to § 915.51 *Issuance of regulations*, which were recommended by the Avocado Administrative Committee, established pursuant to the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. The proposed regulation would establish U.S. No. 3 as the minimum grade and would prescribe minimum weights or diameters by specified dates as the maturity requirements for handling of designated varieties of avocados, effective on and after June 9, 1975. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

All persons who desire to submit written data, views, or arguments in connection with the proposal should file the same in quadruplicate with the Hearing Clerk, Room 112A, U.S. Department of Agriculture, Washington, D.C. 20250, not later than May 26, 1975. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

A reasonable determination as to the quality and maturity of avocados must await the development of the crop and adequate information thereon was not available to the Avocado Administrative Committee until April 24, 1975, on which date an open meeting was held after giving due notice thereof to consider the need for and the extent of regulation of shipments of such avocados. Interested persons were afforded an opportunity to submit information and views at this meeting. In view of this, and the need for making the regulation effective on June 9, 1975, to prevent shipment of immature avocados in the interest of producers and consumers, preliminary notice beyond that herein provided is impractical.

The recommendations of the Avocado Administrative Committee reflect its appraisal of the avocado crop and current and prospective market conditions. Shipments of avocados are expected to begin on or about June 9, 1975. The committee has considered and recommended the quality and maturity requirements, including shipping periods, for the designated varieties and types of avocados, to prevent the handling of immature and other undesirable quality fruit. Such recommendation is designed to recognize the differences in the consumer demand within and outside the production area and to provide the trade and consumers with an adequate supply of mature avocados of a satisfactory quality commensurate with crop conditions in the interest of producers and consumers pursuant to the declared policy of the act.

Such proposal reads as follows:

§ 915.317 **Avocado Regulation 17.**

(a) *Order.* (1) During the period June 9, 1975, through April 30, 1976, no handler shall handle any avocados unless such avocados grade at least U.S. No. 3 grade: *Provided*, That avocados which fail to meet the requirements of such grade may be handled within the production area, if such avocados meet all other applicable requirements of this section and are handled in containers other than the containers prescribed in § 915.305, as amended (7 CFR Part 915), for the handling of avocados between the production area and any point outside thereof;

(2) On and after the effective time of this regulation, except as otherwise provided in paragraphs (a) (11) and (12) of this section, no avocados of the varieties listed in Column 1 of the following Table I shall be handled prior to the date listed for the respective variety in Column 2 of such table, and thereafter each such variety shall be handled only in conformance with paragraphs (a) (3), (4), (5), (6), (7), (8), (9), and (10) of this section.

TABLE I

| Variety (1) | Date (2) | Minimum weight or diameter (3) | Date (4) | Minimum weight or diameter (5) | Date (6) | Minimum weight or diameter (7) | Date (8) |
|---|---|---|---|---|---|---|---|
| Kosel | June 9, 1975 | 15 oz, 3 4/16 in | June 23, 1975 | 13 oz, 3 1/16 in | July 21, 1975 | | |
| Fuchs | June 23, 1975 | 14 oz, 3 3/16 in | July 7, 1975 | 12 oz, 3 0/16 in | do | 10 oz, 2 15/16 in | Aug. 11, 1975 |
| K-5 | June 30, 1975 | 18 oz, 3 4/16 in | July 14, 1975 | 14 oz, 3 3/16 in | July 28, 1975 | | |
| Dr. DuFuls No. 2 | June 23, 1975 | 16 oz, 3 2/16 in | July 7, 1975 | 14 oz, 3 1/16 in | July 21, 1975 | | |
| Hardee | July 7, 1975 | 16 oz, 3 2/16 in | July 14, 1975 | 14 oz, 2 15/16 in | Aug. 4, 1975 | | |
| Pollock | do | 18 oz, 3 1/16 in | July 21, 1975 | 16 oz, 3 2/16 in | do | | |
| Simmonds | do | 16 oz, 3 2/16 in | do | 14 oz, 3 1/16 in | do | | |
| Nadir | do | 14 oz, 3 1/16 in | July 14, 1975 | 12 oz, 3 1/16 in | July 21, 1975 | 10 oz, 2 15/16 in | Aug. 4, 1975 |
| Katherine | do | 16 oz | July 21, 1975 | 14 oz | Aug. 4, 1975 | | |
| West Indian seedling | do | 18 oz | Aug. 4, 1975 | 16 oz | Sept. 8, 1975 | 14 oz | Oct. 6, 1975 |
| Halle | do | 20 oz | July 28, 1975 | 14 oz | Aug. 18, 1975 | | |
| Dawn | July 21, 1975 | 12 oz, 3 1/16 in | Aug. 4, 1975 | 10 oz, 3 0/16 in | do | | |
| Peterson | July 28, 1975 | 14 oz, 3 2/16 in | Aug. 11, 1975 | 10 oz, 3 1/16 in | Aug. 25, 1975 | 8 oz, 2 15/16 in | Sept. 8, 1975 |
| Gretchen | Aug. 4, 1975 | 14 oz | Aug. 18, 1975 | 12 oz | Sept. 1, 1975 | | |
| Trapp | Aug. 18, 1975 | 14 oz, 3 0/16 in | Sept. 1, 1975 | 12 oz, 3 1/16 in | Sept. 15, 1975 | | |
| Waldin | do | 16 oz, 3 0/16 in | do | 14 oz, 3 1/16 in | do | 12 oz, 3 1/16 in | Sept. 29, 1975 |
| Ruehle | July 21, 1975 | 18 oz, 3 1/16 in | July 28, 1975 | 16 oz, 3 0/16 in | Aug. 4, 1975 | 14 oz, 3 1/16 in | Sept. 1, 1975 |
| Pinelli | Aug. 4, 1975 | 18 oz, 3 2/16 in | Aug. 18, 1975 | 16 oz, 3 0/16 in | Sept. 1, 1975 | | |
| Mignel | do | 22 oz, 3 2/16 in | do | 20 oz, 3 2/16 in | do | 18 oz, 3 0/16 in | Sept. 15, 1975 |
| Webb 2 | July 21, 1975 | 18 oz | Aug. 4, 1975 | 16 oz | Aug. 18, 1975 | | |
| Nesbitt | Aug. 4, 1975 | 22 oz, 3 2/16 in | Aug. 18, 1975 | 18 oz, 3 1/16 in | Aug. 25, 1975 | 16 oz, 3 1/16 in | Do. |
| Beta | Aug. 18, 1975 | 18 oz | Aug. 25, 1975 | 16 oz | Sept. 15, 1975 | | |
| K-9 | do | 16 oz | Sept. 8, 1975 | | | | |
| Tower 2 | do | 14 oz | Sept. 1, 1975 | 12 oz | Sept. 29, 1975 | | |
| Shula | do | 22 oz | Sept. 8, 1975 | | | | |
| Tonnage | Sept. 1, 1975 | 14 oz, 3 1/16 in | do | 12 oz, 3 0/16 in | Sept. 15, 1975 | 10 oz, 2 13/16 in | Sept. 22, 1975 |
| Fairchild | do | 16 oz, 3 0/16 in | Sept. 15, 1975 | 14 oz, 3 1/16 in | Sept. 29, 1975 | 12 oz, 3 1/16 in | Oct. 6, 1975 |
| Nirody | do | 18 oz, 3 1/16 in | do | 16 oz, 3 1/16 in | do | | |
| Black Prince | Sept. 15, 1975 | 23 oz | Sept. 29, 1975 | 16 oz | Oct. 20, 1975 | | |
| Catalina | do | 24 oz | Sept. 22, 1975 | 22 oz | Oct. 6, 1975 | | |
| Guatemalan Seedling | Sept. 22, 1975 | 15 oz | Oct. 20, 1975 | 13 oz | Dec. 22, 1975 | | |
| Blair | Sept. 15, 1975 | 16 oz, 3 2/16 in | Sept. 29, 1975 | 14 oz | Oct. 20, 1975 | | |
| Collinson | Sept. 29, 1975 | 16 oz, 3 0/16 in | Oct. 27, 1975 | | | | |
| Chica | do | 12 oz, 3 1/16 in | Oct. 13, 1975 | 10 oz, 3 1/16 in | Oct. 27, 1975 | | |
| Rue | do | 30 oz, 4 1/16 in | Oct. 6, 1975 | 24 oz, 3 1/16 in | Oct. 20, 1975 | 18 oz, 3 0/16 in | Nov. 3, 1975 |
| Booth 5 | Oct. 6, 1975 | 16 oz, 3 1/16 in | Oct. 27, 1975 | | | | |
| Hickson | do | 15 oz, 3 0/16 in | Oct. 20, 1975 | 12 oz, 3 1/16 in | Oct. 27, 1975 | | |
| Simpson | do | 16 oz, 3 0/16 in | Oct. 27, 1975 | | | | |
| Vaca | do | 16 oz, 3 0/16 in | do | | | | |
| Sherman | do | 16 oz | Oct. 20, 1975 | 14 oz | Nov. 3, 1975 | 10 oz | Nov. 24, 1975 |
| Marcus | do | 32 oz | Nov. 17, 1975 | | | | |
| Booth 10 | Oct. 13, 1975 | 16 oz, 3 0/16 in | Nov. 10, 1975 | | | | |
| Booth 7 | Sept. 29, 1975 | 18 oz, 3 1/16 in | Oct. 13, 1975 | 16 oz, 3 0/16 in | Oct. 27, 1975 | 14 oz, 3 0/16 in | Nov. 10, 1975 |
| Avon | Oct. 13, 1975 | 15 oz, 3 1/16 in | Nov. 3, 1975 | | | | |
| Booth 11 | do | 16 oz, 3 1/16 in | do | | | | |
| Leona | do | 18 oz, 3 0/16 in | Oct. 27, 1975 | | | | |
| Winslowson | do | 18 oz, 3 1/16 in | Nov. 3, 1975 | | | | |
| Nelson | do | 14 oz, 3 0/16 in | Oct. 27, 1975 | 12 oz, 3 0/16 in | Nov. 10, 1975 | 10 oz, 3 0/16 in | Dec. 1, 1975 |
| Hall | do | 20 oz, 3 1/16 in | do | 20 oz, 3 0/16 in | do | | |
| Lula | Oct. 20, 1975 | 18 oz, 3 1/16 in | Nov. 3, 1975 | 14 oz, 3 0/16 in | Nov. 17, 1975 | | |
| Choquette | do | 24 oz, 4 1/16 in | do | 20 oz, 3 1/16 in | Nov. 24, 1975 | | |
| Monroe | Nov. 17, 1975 | 24 oz, 4 1/16 in | Dec. 1, 1975 | 20 oz, 3 1/16 in | Dec. 15, 1975 | | |
| Herman | Oct. 20, 1975 | 16 oz, 3 0/16 in | Nov. 3, 1975 | 14 oz, 3 0/16 in | Nov. 17, 1975 | | |
| Murphy | do | 16 oz | do | 14 oz | do | 11 oz | Dec. 8, 1975. |
| Ajax (B-7-B) | Oct. 27, 1975 | 18 oz, 3 1/16 in | Nov. 17, 1975 | | | | |
| Booth 1 | Nov. 24, 1975 | 16 oz, 3 1/16 in | Dec. 15, 1975 | | | | |
| Booth 3 | Oct. 27, 1975 | 16 oz, 3 0/16 in | Nov. 17, 1975 | | | | |
| Taylor | do | 14 oz, 3 0/16 in | Nov. 10, 1975 | 12 oz, 3 0/16 in | Nov. 24, 1975 | | |
| Dunedin | Nov. 10, 1975 | 16 oz, 3 0/16 in | Nov. 24, 1975 | 14 oz, 3 0/16 in | Dec. 8, 1975 | 10 oz, 3 0/16 in | Dec. 29, 1975. |
| Byars | Nov. 17, 1975 | 16 oz, 3 1/16 in | Dec. 8, 1975 | | | | |
| Linda | do | 18 oz, 3 1/16 in | do | | | | |
| Nabal | do | 14 oz, 3 0/16 in | do | | | | |
| Zio | Dec. 1, 1975 | 12 oz | Dec. 15, 1975 | 10 oz | Dec. 29, 1975 | | |
| Wagner | Dec. 8, 1975 | 12 oz, 3 0/16 in | Dec. 22, 1975 | 10 oz, 3 1/16 in | Jan. 5, 1976 | | |
| Maya | Dec. 29, 1975 | 13 oz | Jan. 12, 1976 | 11 oz | Jan. 26, 1976 | | |
| Brookslate | Jan. 12, 1976 | 14 oz | Jan. 26, 1976 | 12 oz | Feb. 9, 1976 | 10 oz | Feb. 23, 1976. |
| Schmidt | Jan. 19, 1976 | | | | | | |
| Itzamna | Feb. 16, 1976 | | | | | | |

(3) From the date listed for the respective variety in Column 2 of Table I to the date listed for the respective variety in Column 4 of such table, no handler shall handle any avocados of such variety unless the individual fruit weighs at least the ounces specified for the respective variety in Column 3 of such table or is of at least the diameter specified for such variety in said Column 3;

(4) From the date listed for the respective variety in Column 4 of Table I to the date listed for the respective variety in Column 6 of such table, no handler shall handle any avocados of such variety unless the individual fruit weighs at least the ounces specified for the respective variety in Column 5 of such table or is of at least the diameter specified for such variety in said Column 5;

(5) From the date listed for the respective variety in Column 6 of Table I to the date listed for the respective variety in Column 8 of such table, no handler shall handle any avocados of such variety unless the individual fruit weighs at least the ounces specified for the respective variety in Column 7 of such table or is of at least the diameter specified for such variety in said Column 7;

(6) No handler shall handle during the period June 16, 1975, through July 21, 1975, any Arue variety avocados unless the individual fruit in each lot of such avocados weighs at least 14 ounces, or is at least 3 3/16 inches in diameter;

(7) No handler shall handle (i) prior to August 25, 1975, any Lisa variety avocados, (ii) during the period August 25, 1975, through August 31, 1975, any Lisa variety avocados unless the individual fruit in each lot of such avocados weighs at least 12 ounces, (iii) during the period September 1, 1975, through September 7, 1975, any Lisa variety avocados unless the individual fruit in each lot of such avocados weighs at leasts 11 ounces, (iv) during the period September 8, 1975, through September 14, 1975, any Lisa variety avocados unless the individual fruit in each lot of such avocados weighs at least 10 ounces, (v) during the period September 15, 1975, through September 22, 1975, any Lisa variety avocados unless the individual fruit in each lot of such avocados weighs at least 9 ounces;

(8) No handler shall handle (i) prior to September 15, 1975, any Booth 8 variety avocados, (ii) during the period September 15, 1975, through October 5,

1975, any Booth 8 variety avocados unless the individual fruit in each lot of such avocados weighs at least 16 ounces, or is at least 3 9/16 inches in diameter, or (iii) during the period October 6, 1975, through October 19, 1975, any Booth 8 variety avocados unless the individual fruit in each lot of such avocados weighs at least 14 ounces, or is at least 3 9/16 inches in dameter, or (iv) during the period October 20, 1975, through November 2, 1975, any Booth 8 variety avocados unless the individual fruit in each lot of such avocados weighs at least 12 ounces, or is at least 3 9/16 inches in diameter, or (v) during the period November 3, 1975, through November 17, 1975, any Booth 8 variety avocados unless the individual fruit in each lot of such avocados weighs at least 10 ounces or is at least 3 9/16 inches in diameter.

(9) Except as otherwise provided in paragraphs (a) (11) and (12) of this section, varieties of the West Indian type of avocados not listed in Table I shall not be handled except in accordance with the following terms and conditions:

(i) Such avocados shall not be handled prior to July 7, 1975.

(ii) From July 7, 1975, through August 3, 1975, the individual fruit in each lot of such avocados shall weigh at least 18 ounces.

(iii) From August 4, 1975, through September 7, 1975, the individual fruit in each lot of such avocados shall weigh at least 16 ounces.

(iv) From September 8, 1975, through October 5, 1975, the individual fruit in each lot of such avocados shall weigh at least 14 ounces.

(10) Except as otherwise provided in paragraphs (a) (11) and (12) of this paragraph, varieties of avocados not covered by paragraphs (a) (2) through (9) hereof shall not be handled except in accordance with the following terms and conditions:

(i) Such avocados shall not be handled prior to September 22, 1975.

(ii) From September 22, 1975, through October 19, 1975, the individual fruit in each lot of such avocados shall weigh at least 15 ounces.

(iii) From October 20, 1975, through December 21, 1975, the individual fruit in each lot of such avocados shall weigh at least 13 ounces.

(11) Notwithstanding the provisions of paragraphs (a) (2) through (10) hereof regarding the minimum weight or diameter for individual fruit, up to 10 percent, by count, of the individual fruit contained in each lot may weigh less than the minimum specified weight and be less than the minimum specified diameter: *Provided*, That such avocados weigh not more than two ounces less than the applicable specified weight for the particular variety as prescribed in Columns 3, 5, or 7 of Table I in (a) (2) of this section or in paragraphs (a) (6), (7), (8), (9), and (10). Such tolerances shall be on a lot basis, but not to exceed double such tolerances shall be permitted for an individual container in a lot.

(12) The provisions of paragraphs (a) (2) through (11) of this section shall not apply to any variety, except the Linda variety, of avocados which, when mature, normally change color to any shade of red or purple and any portion of the skin of the individual fruit has changed to the color for that fruit when mature.

(b) Terms used in the amended marketing agreement and order, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order; the term "diameter" shall mean the greatest dimension measured at right angles to a line from the stem to the blossom end of the fruit; and the terms "U.S. No. 3" shall have the same meaning as set forth in the United States Standards for Florida Avocados (7 CFR 51.3050–51.3069).

(c) The provisions of this regulation shall become effective June 9, 1975.

Dated: May 13, 1975.

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

[FR Doc.75–13008 Filed 5–19–75;8:45 am]

---

## Animal and Plant Health Inspection Service

## [ 9 CFR Parts 303, 381 ]

## PUBLIC HEARING

On April 8, 1975, there appeared in the FEDERAL REGISTER (40 FR 15906–15907) a notice that the Animal and Plant Health Inspection Service is considering amendments to the Federal Meat and Poultry Inspection Regulations concerned with sales by exempt retail stores in designated States. The amendments, if implemented, would permit retail stores exempted from Federal inspection in designated States to sell in intrastate commerce certain prepackaged inspected meat and poultry products in normal retail quantities to nonhousehold consumers without affecting percentage and annual dollar sales limitations provided in § 303.1(d)(2)(iii) and § 381.10(d)(2)(iii) of the regulations.

Comments and views expressed to the Department on the proposed amendments to the regulations indicate they have widespread interest, and it appears there are vastly differing opinions on the desirability of their provisions and effects on products and consumers if implemented.

The Department has concluded, therefore, that these circumstances require that information and data to the fullest extent on the subject matter be available for review prior to decisions being made on the nature of the final regulations. To foster the assembly of such information, the Department has scheduled a public hearing to consider the proposed amendments. The hearing will be held before a representative of USDA on July 9, 1975, beginning at 10:00 a.m., in the Jefferson Auditorium, South Building, U.S. Department of Agriculture, Independence Avenue between 12th and 14th Streets, Washington, D.C. 20250. At the hearing, a representative of the Animal and Plant Health Inspection Service will present a statement explaining the purpose and basis of the proposal. Any interested person may appear and be heard either in person or by attorney. Also, any interested person or his attorney will be afforded an opportunity to ask relevant questions concerning the proposal.

Any interested person who desires to submit written data, views, or arguments on the proposal may do so by filing the same in duplicate, on or before July 9, 1975, with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, with the presiding officer at the hearing, or if the material is deemed to be confidential, with the Inspection Standards and Regulations Staff, Scientific and Technical Services, Meat and Poultry Inspection Program, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, on or before July 9, 1975. All written submissions made pursuant to this notice will be made available for public inspection in the office of the Hearing Clerk during regular business hours unless the person making the submission requests that it be held confidential. A determination by the Administrator will be made whether a proper showing in support of the request has been made on the grounds that disclosure of the material submitted could adversely affect any person by disclosing information in the nature of trade secrets or commercial or financial information obtained from any person and privileged or confidential. If it is determined that a proper showing has been made in support of the request, the material will be held confidential; otherwise, notice will be given of denial of such a request and an opportunity afforded for withdrawal of the submission. Requests for confidential treatment will be held confidential as provided in 7 CFR 1.27(c).

After consideration of all information presented at the hearing and submitted pursuant to this notice and the notice of April 8, 1975, and any other information available to the Department, a determination will be made as to whether the regulations will be amended as proposed.

Done at Washington, D.C., on May 15, 1975.

HARRY C. MUSSMAN,
*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc.75–13215 Filed 5–19–75;8:45 am]

---

# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## [ 50 CFR Part 227 ]

## SEA TURTLES

## Proposed "Threatened" Status

The Director, National Marine Fisheries Service, and the Director, United States Fish and Wildlife Service, hereby issue a notice of proposed rulemaking

that would determine the green sea turtle (*Chelonia mydas*), the loggerhead sea turtle (*Caretta caretta*), and the Pacific ridley sea turtle (*Lepidochelys olivacea*), to be threatened species [as defined in the Endangered Species Act of 1973 (16 U.S.C. 1531–1543)] in 50 CFR 17.32 (published elsewhere in this issue, see FR Doc. 75–13189, *supra*) and establish appropriate protective regulations in 50 CFR 17.32 and in 50 CFR Part 227 (Subpart C) to provide for the conservation of such species.

BACKGROUND

On April 23, 1974, Dr. F. Wayne King, Director of Conservation and Environmental Education for the New York Zoological Society, petitioned the Department of the Interior to list the green sea turtle as an "endangered" species, and to list the loggerhead sea turtle and the Pacific ridley sea turtle as "threatened" species. This petition, and supporting data, were examined by the Fish and Wildlife Service and the National Marine Fisheries Service who determined that sufficient evidence existed to warrant a review of the status of these species; a notice to that effect was placed in the FEDERAL REGISTER on August 16, 1974 (39 FR 29605–29607). The Governors of States in which one or more of these species are resident, and the Governors of Puerto Rico, the Virgin Islands, Guam, and American Samoa, and the High Commissioner of the Trust Territory of the Pacific Islands, were notified of the review and were requested to supply data relative to the status of the species. As a result of this review, the Director of the Fish and Wildlife Service and the Director of the National Marine Fisheries Service find that there are sufficient data to warrant a proposed rulemaking that the green sea turtle, the loggerhead sea turtle, and the Pacific ridley sea turtle are "threatened" species.

On August 15, 1974, Mariculture, Ltd., P.O. Box 645, Grand Cayman Island, British West Indies, a business involved in the raising and marketing of captive green sea turtles, petitioned the Secretary of the Interior and the Secretary of Commerce to list the green sea turtle as a "threatened" species, but to exempt specimens bred or raised in captivity from this classification. This petition was considered in the overall review of sea turtles.

The Endangered Species Act of 1973 [16 U.S.C. 1533(a)(1)] states that the Secretary of the Interior or the Secretary of Commerce may determine a species to be an endangered species or a threatened species because of any of five factors. These factors, and their applications to the green, loggerhead, and Pacific ridley sea turtles are as follow:

(1) *Present or threatened destruction, modification, or curtailment of habitat or range*—(a) *Green sea turtle.* This species has a circumglobal distribution in the tropics, but has been greatly reduced in numbers and distribution, especially in the Caribbean Sea, Gulf of Mexico, and parts of the Pacific Ocean. Development of coastal areas for industry and tourism, within the species range, is progressively destroying nesting sites.

(b) *Loggerhead sea turtle.* Coastal development is resulting in a decline in numbers and distribution.

(c) *Pacific ridley sea turtle.* Apparently, there has been little recent change in overall distribution, but certain rookeries have been eliminated, and suitable habitat along coastlines is decreasing because of human development.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes*—(a) *Green sea turtle.* This species is probably the most commercially valuable reptile in the world and one of the most extensively utilized.

Its meat, eggs, and calipee (cartilage used in soup) have been eaten for centuries, and in recent years its skin and oil have found increased use in industry. An international market in turtle products now exists, with the United States being among the largest consumers. Heavy egg harvests continue, especially in southeast Asia, and sometimes nearly all clutches on a nesting beach are taken. This intensive exploitation has been causing a steady decline in numbers throughout much of the world.

(b) *Loggerhead sea turtle.* While not subject to the same heavy hunting pressure as the green sea turtle, loggerhead eggs are intensively harvested, and some turtles are killed for meat or sport.

(c) *Pacific ridley sea turtle.* This species seldom is taken commerically for meat, but egg harvesting is intensive along the coasts of Central America and Southeast Asia. Egg collecting and disturbance of nests were the main causes of a great reduction of turtles in Sri Lanka.

A recent rise in the commercial take of turtles in Mexico was stimulated by the development of a market for turtle leather, partly as a substitute for alligator hides. Large numbers of hides and finished products have been either sold in the United States or transshipped through the United States to Europe or Asia.

(3) *Disease and predation*—(a) *Green sea turtle.* Disease or predation are not presently known to constitute a major threat to the species, but these factors could develop into serious problems if populations become more restricted in distribution and numbers.

(b) *Loggerhead sea turtle.* Raccoons prey heavily on eggs in nests along the coasts of the southeastern United States. This problem was intensified because of man's elimination of cougars and other natural predators of raccoons.

(c) *Pacific ridley sea turtle.* Disease and predation are not presently known to constitute a major threat to the species, but these could develop into serious problems if populations become more restricted in distribution and numbers.

(4) *The inadequacy of existing regulatory mechanisms*—(a) *Green sea turtle.* Present laws and enforcement measures are not adequate with regard to exploitation and importation of turtles and turtle products. The United States and Europe continue to serve as major outlets for the world market, even though populations are declining. In some areas turtles are protected on nesting sites, but are subject to unregulated hunting at sea.

(b) *Loggerhead sea turtle.* Although there is legal protection along the coasts of the United States and Australia, some other countries permit the commercial taking of turtles and eggs. The lack of restrictions on importing loggerhead sea turtles into the United States encourages this exploitation.

(c) *Pacific ridley sea turtle.* Importation of turtle products by the United States may be encouraging excessive exploitation in Mexico.

(5) *Other natural or manmade factors affecting its existence*—(a) *Green sea turtle.* Commercial fishermen accidentally catch and drown green sea turtles in nets. Much of the incidental catch is by fishermen trawling for shrimp.

(b) *Loggerhead sea turtle.* Many of these turtles are accidentally caught and killed by trawl fishermen. Along some coastlines bright city or highway lights confuse hatchlings, and attract them inland where they die.

(c) *Pacific ridley sea turtle.* Accidental catching also may be a problem for this species in some areas.

Factors 1, 2, and 4 are considered the major reasons for the decline of these species.

DESCRIPTION OF THE PROPOSAL

The proposed listing would add the three sea turtles—the green sea turtle, the loggerhead sea turtle, and the Pacific ridley sea turtle—to the threatened wildlife list.

The proposal also lists all the activities which are prohibited in regard to these species. These include taking, importing, exporting, interstate transportation in the course of a commercial activity, and interstate sale. However, the prohibitions on interstate transportation and sale will not apply until after 1 year from the date of publication of these proposed regulations.

There would also be a series of exceptions to the prohibitions, including mariculture operations and economic hardship. Specifically, the exceptions are as follows:

(1) Permits for scientific purposes, or enhancement of propagation or survival could be issued on the same basis as they are for endangered species under Fish and Wildlife Service regulations, except that the mandatory 30-day public review period would not apply;

(2) Injured, dead, or stranded specimens could be salvaged or disposed of by Federal or State officials;

(3) Incidental catch of sea turtles during fishing or research activities conducted at sea would be exempted, provided that the fishing or research are not taking place in areas of substantial breeding or feeding, and that the sea turtles are immediately returned to the sea;

(4) An exception, under controls, would be authorized for mariculture, for

two years, if there is a periodic showing of significant progress, deemed sufficient by both the Fish and Wildlife Service and the National Marine Fisheries Service, toward raising the turtles in captivity from a completely self-sustaining stock; after the second year the exception would be continued only if the sea turtles are being raised in captivity from a completely self-sustaining stock;

(5) Live specimens or products held as of the date of the proposal would be exempted from the prohibitions, provided they were not held in the course of a commercial activity; and

(6) Permits would be available for economic hardship, on the same basis as they are for endangered species under Fish and Wildlife Service regulations.

While we recognize that there is some subsistence taking of these species for food purposes by persons subject to the jurisdiction of the United States, these regulations do not allow for such taking. It is believed that in no case should taking for food purposes be allowed on or near nesting beaches. Although there may be a limited subsistence taking in other areas for food purposes, we do not believe it to be a dominant factor in maintaining life, as there are alternative food sources from species other than those that are beileved to be threatened with extinction.

At a later time, a description of certain breeding and feeding areas of these species of sea turtles will be proposed in the FEDERAL REGISTER to be designated as critical habitat.

PERMIT REGULATIONS

Several of the exceptions referred to above allow the issuance of permits. Although these three sea turtles are proposed as threatened species, and not endangered species, certain permits for their use would be issued under the rules and procedures proposed by the Fish and Wildlife Service for endangered species. It is felt that this will simplify permit administration, and will make permit procedures simpler and more uniform for the public.

Simultaneously with this proposal, the Fish and Wildlife Service has proposed amendments to §§ 17.22 and 17.23, to revise and update those sections. With these amendments, the permit regulations of the Fish and Wildlife Service will be appropriate for endangered species, and for threatened species of sea turtles under these regulations. Permit applications must be submitted to the Fish and Wildlife Service, under its regulations. Processing of applications and issuing of permits will be carried out jointly by the Fish and Wildlife Service and the National Marine Fisheries Service. This will simplify permit processing for the public, while assuring adequate review of all applications, for the benefit of the wildlife resource.

PUBLIC COMMENTS SOLICITED

The Directors of the Fish and Wildlife Service and the National Marine Fisheries Service, intend that finally adopted rules be as responsive as possible to the conservation of sea turtles. They therefore desire to obtain the comments and suggestions of the public, other concerned State and Federal Governmental agencies and private interest groups on these proposed rules.

During this comment period, the Services will consult, in cooperation with the Secretary of State, with other nations within whose territories these turtles occur in the wild or whose citizens harvest them upon the high seas. Those views will be considered prior to publication of final regulations.

Final promulgation of sea turtle regulations will take into consideration the comments received by the Directors. Such comments and any additional information received, may lead the Directors to adopt final regulations that differ from this proposal. The Fish and Wildlife Service and the National Marine Fisheries Service have under preparation an environmental assessment concerning this matter.

SUBMITTAL OF WRITTEN COMMENTS

Written comments, views, and objections may be made, preferably in triplicate, to the Director (FWS/LE), Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 19183, Washington, D.C. 20036, on or before July 18, 1975. Final regulations will be promulgated as soon as possible after the 60-day comment period required by the Endangered Species Act of 1973. If any person feels that he may be adversely affected by the proposed regulations, he may file objections thereto and request a public hearing thereon on or before July 3, 1975. Comments received will be available for public inspection during normal business hours at the Fish and Wildlife Service Office in Suite 600, 1612 K Street, N.W., Washington, D.C.

This notice of proposed rulemaking is issued under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543).

ROBERT W. SCHONING,
*Director, National Marine Fisheries Service.*

LYNN A. GREENWALT,
*Director, U.S. Fish and Wildlife Service.*

MAY 15, 1975.

Accordingly, it is proposed to add a new Subpart C, Green Sea Turtle (*Chelonia mydas*), Loggerhead Sea Turtle (*Caretta caretta*), and Pacific Ridley Sea Turtle (*Lepidochelys olivacea*), in Part 227, Threatened Species—Fish, (proposed 39 FR 14777–14778), Chapter II of Title 50, Code of Federal Regulations, as follows:

**Subpart C—Green Sea Turtle (Chelonia mydas), Loggerhead Sea Turtle (Caretta caretta), and Pacific Ridley Sea Turtle (Lepidochelys olivacea)**

Sec.
227.21 Prohibitions.
227.22 Exceptions to the prohibitions.

Authority: Endangered Species Act of 1973, Pub. L. 93-205 (16 U.S.C. 1531 et seq.) (the Act).

**Subpart C—Green Sea Turtle (Chelonia mydas), Loggerhead Sea Turtle (Caretta caretta), and Pacific Ridley Sea Turtle (Lepidochelys olivacea)**

**§ 227.21 Prohibitions.**

The following prohibitions apply to green sea turtles, *Chelonia mydas* (including *C. agassizi* Boucourt), loggerhead sea turtles, *Caretta caretta*, and Pacific ridley sea turtles *Lepidocheyls olivacea*. [For a listing of these sea turtles as threatened species, see § 17.32(e) (1), (2), and (3) of Chapter I of this title.] Except as provided in § 227.22 below, it is unlawful for any person subject to the jurisdiction of the United States to:

(a) Import any such species into, or export any such species from, the United States;

(b) Take any such species within the United States or the territorial sea of the United States;

(c) Take any such species upon the high seas;

(d) Possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation or prohibitions in paragraphs (b) and (c) of this section;

(e) Deliver, receive, carry, transport or ship in foreign commerce by any means whatsoever and in the course of a commercial activity, or sell or offer for sale in foreign commerce, any such species; and

(f) After one year from the date of publication of these proposed regulations, deliver, receive, carry, transport, or ship in interstate commerce by any means whatsoever and in the course of a commercial activity, or sell or offer for sale in interstate commerce, any such species.

**§ 227.22 Exceptions to the prohibitions.**

The following exceptions apply to the prohibitions, as set forth in § 227.21, governing sea turtle species *Chelonia mydas* (including *C. agassizi* Boucourt), *Caretta caretta*, and *Lepidochelys olivacea*.

(a) *Scientific purposes, enhancement of propagation or survival.* The Directors of the National Marine Fisheries Service and the Fish and Wildlife Service (hereinafter referred to as the "Directors") may jointly process applications and issue permits for activities which would otherwise be prohibited regarding such sea turtles, for scientific purposes or to enhance the propagation or survival of such species. The requirements of section 10(a) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)) regarding permits for endangered species shall apply to applications for permits under this provision as if such sea turtles were classified "endangered," but in no case shall the requirements of section 10(c) of the Act apply to such permits. Application shall be made in accordance with Part 13 of Subchapter B, Chapter I of this Title 50, and the requirements of § 17.22 of Subchapter B, Chapter I of this Title 50. The duration of permits under this provision shall be designated on the face of the permit.

(b) *Injured, dead or stranded specimens.* In the case of such sea turtles found injured, dead, or stranded in the wild, any officer or employee of the National Marine Fisheries Service, of the Fish and Wildlife Service, of the U.S. Coast Guard, or any officer or employee of a State government may, in the course of official duty, take such wildlife for rehabilitation, return to its environment or other appropriate action, including collection for scientific research. Wherever possible, live specimens shall be returned to their aquatic environment as soon as practicable. Every such action shall be reported in writing to the Directors within six months from the occurrence, and such reports may be cumulative for the six month period. Reports shall be mailed to the Director (FSW/SE), U.S. Fish and Wildlife Service, Washington, D.C., and shall contain the following information:

(1) Name and official position of the official or employee involved;

(2) Description of the specimen(s) involved;

(3) Date and location of disposal;

(4) Circumstances requiring the action;

(5) Method of disposal;

(6) Disposition of the specimen(s), including cases where the turtle(s) has been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and

(7) Such other information as the Directors may require.

(c) *Incidental catch.* The incidental catch of such sea turtles during fishing or research activities conducted at sea shall not be prohibited provided:

(1) The specimen was caught by fishing gear incidental to fishing effort or research not directed toward such species; and

(2) The person responsible for the fishing gear or vessel was fishing in an area of substantial breeding or feeding of any such wildlife; and

(3) Any such wildlife which is caught is immediately returned to its aquatic environment whether dead or alive, with due care to minimize injuries to live specimens.

(d) *Mariculture.* The Directors may jointly issue permits for mariculture operations. For a period of two years from the effective date of these regulations, any person may apply for a permit to conduct any of the activities otherwise prohibited in § 227.21 regarding such wildlife, provided that such wildlife is taken for or derived from a captive population in the course of mariculture operations. After two years from the effective date of these regulations permits may be issued or renewed only if the applicant or permittee can demonstrate to the satisfaction of the Directors, that such wildlife is derived from a closed-cycle farming operation consisting of a captive-bred population which is completely self-sustaining and independent of wild stocks. Applications shall be made, and permits shall be issued, in accordance with Part 13 of Subchapter B, Chapter I of this Title 50, except that all applications will be reviewed and all permits issued jointly by the Directors.

(1) The information requirements of § 17.22(a) of Subchapter B, Chapter I of this Title 50, shall apply to permits issued under this provision, except that in addition to the information required in that section, the applicant shall also present complete information demonstrating the following points:

(i) That during the first two years such wildlife will be either (A) derived from a captive-bred population that is completely self-sustaining and independent of wild stocks, or (B) taken for or derived from a captive population that is demonstrably in the process of becoming a captive breeding population that is completely self-sustaining and independent of wild stocks, but is temporarily sustained in part by the addition of turtles or eggs taken in the wild, the taking of which is demonstrably not a major threat to wild stocks;

(ii) That the applicant or the applicant's supplier has an accurate system of record keeping showing the origin and numbers of such wildlife taken for addition to the captive population, and showing all subsequent transactions with such wildlife;

(iii) That the applicant or the applicant's supplier is prepared to institute a system of marking or other identification of any such wildlife transferred from the propagating facility. The markings or other identification must be capable of remaining on the wildlife, in any form, until after retail sale or export from the United States;

(iv) That if any of the applicant's facilities, or the facilities of any supplier of the applicant or the area of collection of such wildlife, are located outside the jurisdiction of the United States, the applicant has made suitable arrangements for the inspection visits referred to in § 13.47 of Subchapter B, Chapter I of this Title 50, including quarters, and any necessary permission of the government of the jurisdiction in which such facilities or area are located; and

(v) That the applicant or the applicant's supplier has submitted with the application a complete listing or inventory of all specimens held by him as of the date of the application. This listing or inventory shall be certified by the applicant to be a true and correct statement and subject to the penalties for false statements under the penalties for false statements under section 1001, title 18, United States Code.

(2) In addition to the conditions for permits issued under § 17.22(c) of Subchapter B, Chapter I of this Title 50, any permits issued under this provision will be subject to the following conditions:

(i) That the permittee or the permittee's supplier mark or otherwise identify all such wildlife transferred in any way from the propagating facility, and that the mark or other identification remain on the wildlife until after the retail sale or export from the United States of such wildlife;

(ii) That the permittee provide proof, when requested by either the Director of the National Marine Fisheries Service or the Director of the Fish and Wildlife Service, of the origin of such wildlife held in his rearing and propagating facilities or the facilities of his supplier; such proof may be in the form of the invitation of observers appointed by either the Director of the National Marine Fisheries Service or the Director of the Fish and Wildlife Service, at the permittee's expense, to any taking of such wildlife;

(iii) That the permit shall terminate automatically at the end of two years from the effective date of these regulations and thereafter at annual intervals, unless the permittee has demonstrated to the satisfaction of the Directors that for each succeeding one-year period the wildlife to be covered by the permit will be derived from a captive-bred population which is completely self-sustaining and independent of wild stocks; and

(iv) That if such wildlife involved in the mariculture operation is taken outside the jurisdiction of the United States, the government of the country in which the taking occurs sends a certificate to the Directors stating that (A) such wildlife is legally protected from over-exploitation in that country and (B) the taking of such wildlife in that country will not be detrimental to the survival of the species in the wild; in the event that such certification is unobtainable, the Directors may accept such other certification as they deem sufficient.

(e) *Wildlife held in captivity or a controlled environment.* The prohibitions in § 227.21 shall not apply to any such wildlife held in captivity or a controlled environment on the date of the FEDERAL REGISTER notice proposing to add such wildlife to the threatened wildlife list, *provided*, That the person claiming such exemption can show by documentary evidence to the satisfaction of the Directors, that the specimen was held in captivity or in a controlled environment on the required date, and was not being held in the course of a commercial activity. Such documentary evidence may include bills of sale or inventory or other records which are certified therein.

(f) *Economic hardship.* The Directors may issue permits to import or export such wildlife in order to prevent undue economic hardship. Applications shall be made and permits shall be issued in accordance with Part 13, Subchapter B, Chapter I of this Title 50, and the provisions of § 17.23 of Subchapter B, Chapter I of this Title 50, except that all applications will be reviewed and all permits will be issued jointly by the Directors. In addition, the requirements of section 10(b) of the Endangered Species Act of 1973 (16 U.S.C. 1539(b)) regarding hardship exemptions shall apply to applications for hardship exemptions under this provision as if such wildlife were classified "endangered." The tenure of any economic hardship exemption permit issued for such wildlife under this provision will be for one year from the effective date of these regulations. No economic hardship permit will be granted

which will result in the killing of sea turtles.

[FR Doc.75-13188 Filed 5-19-75;8:45 am]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Social Security Administration

### [ 20 CFR Part 416 ]

[Regulation No. 16]

### SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

### Representation of Parties

ADMINISTRATIVE REVIEW OF ACTION WITH RESPECT TO ATTORNEY FEES

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 553), that the amendment to the regulations set forth in tentative form is proposed by the Commissioner of Social Security with the approval of the Secretary of Health, Education, and Welfare. The proposed amendment provides for administrative review of actions with respect to attorney fees subsequent to the expiration of the time limitation for requesting such review.

At present, Regulations No. 16 precludes any administrative review of a fee determination upon failure on the part of either the representative or the claimant to request such review within the prescribed 30-day time limit under any circumstances. The proposed amendment would make the provision in Regulations No. 16 conform exactly to the provision of Regulations No. 4, which permits review upon a requestor's showing of good cause for not filing the request timely and includes examples of what constitutes "good cause".

Prior to the final adoption of the proposed amendment to the regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare, Social Security Administration, P.O. Box 1585, Baltimore, Maryland 21203, on or before June 19, 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 amendment is issued under the authority of sections 1102 and 1631(d) of the Social Security Act; 49 Stat. 647, as amended, and 86 Stat. 1476; 42 U.S.C. 1302 and 1383(d).

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

Dated: May 5, 1975.

J. B. CARDWELL,
*Commissioner of Social Security.*

Approved: May 15, 1975.

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

It is proposed to amend Part 416 of title 20 as follows:

Section 416.1510 of Chapter III of Title 20 of the Code of Federal Regulations is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

**§ 416.1510 Fee for services performed for an individual before the Administration.**

* * * * *

(d) *Administrative review of fee authorization.* (1) *Request timely filed.* Administrative review of a fee authorization will be granted if either the representative or the claimant files a written request for such review at an office of the Social Security Administration within 30 days after the date of the notice of the fee authorization. The party requesting the review shall send a copy of the request to the other party. An authorized official of the Social Security Administration who did not participate in the fee authorization in question will review the authorization. Written notice of the decision made on the administrative review shall be mailed to the representative and the claimant at their last known addresses.

(2) *Request not timely filed.* Where the representative or the claimant files a request for administrative review, in accordance with paragraph (d)(1) of this section, but more than 30 days after the date of the notice of the fee authorization, the person making the request shall state in writing the reasons why it was not filed within the 30-day period. The Social Security Administration will grant the review only if it determines that there was good cause for not filing the request timely. For purposes of this section, "good cause" is defined as any circumstance or event which would prevent the representative or the claimant from filing the request for review within such 30-day period or would impede his efforts to do so. Examples of such circumstances include the following:

(i) The representative or claimant was seriously ill or had a physical or mental impairment and such illness prevented him from contacting the Social Security Administration in person or in writing;

(ii) There was a death or serious illness in the individual's family;

(iii) Pertinent records were destroyed by fire or other accidental cause;

(iv) The representative or claimant was furnished incorrect or incomplete information by the Social Security Administration about his right to request review;

(v) The individual failed to receive timely notice of the fee authorization;

(vi) The individual transmitted the request to another government agency in good faith within such 30-day period and the request did not reach the Social Security Administration until after such period had expired.

(e) *Payment of fees.* The Social Security Administration assumes no responsibility for the payment of a fee for services rendered for an individual in any proceeding under title XVI of the Act before the Social Security Administration (see § 416.1525).

[FR Doc.75-13217 Filed 5-19-75;8:45 am]

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### [ 14 CFR Part 75 ]

[Airspace Docket No. 75-EA-23]

### JET ROUTES AND AREA HIGH ROUTES

### Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 75 of the Federal Aviation Regulations that would: 1. realign J-150 and J-174 between Hampton, N.Y., and Hyannis, Mass.; 2. realign J-808R between waypoint Patty and waypoint Whale; 3. realign J-809R between waypoint Patty and waypoint Daves.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received on or before June 19, 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.

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the ICAO International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of and Annex 11 to the Convention on International

Civil Aviation, which pertain to the establishment of air navigation facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to insure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The airspace action proposed in this docket would:

1. Realign Jet Routes J-150/J-174 between Hampton, N.Y., and Hyannis, Mass., via the INT of Hampton 069°T(082°M) and Hyannis 237°T(252°M) radials.
2. Realign Area High Route J-808R between waypoint Patty and waypoint Whale via waypoint Nantucket, Mass.
3. Realign Area High Route J-809R between waypoint Patty and waypoint Daves via waypoint Nantucket, Mass.

Realignment of the combined J-150/J-174 route between Hampton and Hyannis, as proposed, would provide adequate separation from J-55/J-121 to permit simultaneous operation on these routes northeast of Hampton. Realignment of J-808R and J-809R as proposed would provide a more orderly transition of the North Atlantic overseas traffic in the New York Center's area, reduce Boston and New York Center coordination and reduce fuel consumption.

This amendment is proposed under the authority of sec. 307(a) and 1110 of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1510), Executive Order 10854 (24 FR 9565) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on May 14, 1975.

F. L. CUNNINGHAM,
*Acting Chief, Airspace and Air Traffic Rules Division.*

[FR Doc.75-13151 Filed 5-19-75;8:45 am]

## ENVIRONMENTAL PROTECTION AGENCY

[ 40 CFR Parts 2, 60, 61, 79, 125, 167, 180 ]

[FRL 363-7]

### PUBLIC INFORMATION

#### Proposed Rulemaking

The Environmental Protection Agency (EPA) is considering promulgation of regulations to prescribe rules for the handling of purported trade secrets and other possibly confidential business information in EPA's possession. One purpose of the regulation is to state clearly and explicitly the substantive rules which EPA will apply, so that both submitters of such information and those who request that it be made available to the public will be better aware of EPA policy. EPA also desires to establish procedures that will allow more expeditious processing of determinations, and to foster awareness on the part of submitters of information of the method for claiming entitlement to confidentiality and the type of substantiation EPA will require before determining that information is entitled to confidential treatment.

Interested persons may participate in this proposed rulemaking by submitting written data, views or arguments to the Office of General Counsel (EG-334), Environmental Protection Agency, Washington, D.C. 20460. Each person submitting a comment should include his name and address, a reference to this notice, and reasons to support his comment. Comments received on or before July 7, 1975, will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons between the hours of 9 a.m. and 4:30 p.m. on working days in Room 221, Waterside Mall West Tower, 401 M St., SW., Washington, D.C. The proposal may be changed in light of the comments received. No hearing is contemplated.

It is proposed to establish a new subpart B in part 2 of Title 40, Code of Federal Regulations, to contain all substantive EPA regulations governing the treatment of business information alleged to be entitled to confidential treatment. A number of existing regulations (some of which contain substantive rules, others of which are merely cross-references) in various parts of chapter I of Title 40 would be revoked or revised to conform to the new subpart. The prior regulation on the subject, at 40 CFR 2.107a, was superseded by the revisions published in 40 FR 10460, March 6, 1975.

*Relationship to subpart A.* One of the purposes of the proposed subpart B is to supplement the provisions of the Agency's general regulations concerning the handling of requests for records (subpart A of part 2 of Title 40, Code of Federal Regulations, 40 FR 10460). Subpart B would come into play when EPA received a request for records containing business information, and would establish special supplemental procedures designed to allow EPA to ascertain whether a business has asserted (or wishes to assert) a business confidentiality claim, and to determine the validity of any such claim. (Subpart A contains no provisions expressly requiring the consultation of non-Government persons who may have a protectible interest in the disclosure or nondisclosure of information concerning them. Although consultation may be necessary from case to case for reasons other than those with which subpart B is concerned (for instance, where personal privacy rights are concerned), the need for a detailed procedure is especially acute with regard to the large volume of business information in EPA's possession.

*Policy pending final promulgation of subpart B.* In responding to requests for information under 5 U.S.C. 552, EPA will follow the procedures of subpart A and, where business information is requested, will follow the general approach outlined in the proposed subpart B until a final version of subpart B is promulgated. However, pending final promulgation, EPA will not rely on those provisions of the proposed subpart B that would establish new, affirmative requirements on businesses which desire that EPA not release information concerning those businesses.

Thus, proposed § 2.203, which deals with requirements for timely assertion of a claim of entitlement to confidential treatment and the consequences of failure to mark information at the time it is submitted, will not be relied upon to justify disclosure of information over the objections of a business. Nor will EPA change its present practice of holding information which it has determined is not entitled to confidential treatment for a period of 30 days after the business has been informed of the determination, despite proposed § 2.205(f) (which would normally allow a business 10 days to institute an action in court, failing which the information would be released).

However, EPA will require substantiation of a business confidentiality claim by the business in question, and will require that substantiation be furnished speedily so that the issuance of initial and appeal determinations may be accomplished within the periods allowed by the Freedom of Information Act, as amended, 5 U.S.C. 552. The substantive criteria for determining the entitlement of information to confidential treatment which are proposed in subpart B will be used by EPA in its determinations prior to promulgation of a final regulation. In addition, disclosure of information to parties in connection with a proceeding in the circumstances described in proposed § 2.301 through § 2.304 and to authorized representatives under proposed § 2.301, § 2.302 and § 2.304, will be handled in accordance with those proposed sections pending their final promulgation.

*Background; need for regulatory guidance.* EPA possessses, and will continue to acquire, a great deal of information generated by businesses. Some of this information is regarded as very sensitive by the businesses which it concerns. Private financial data such as production costs, data concerning proposed new products, vendor and customers lists and

contractual arrangements, secret manufacturing processes and formulas, proposals for expansion and contraction of production, and details of personnel arrangements are among the types of data which EPA collects for use in various programs.

Members of the public may be greatly interested in obtaining release of some of the business information EPA possesses. Businesses and public interest groups, for example, sometimes assert that they need such information in connection with litigation challenging EPA actions. Under 5 U.C.S. 552, commonly known as the Freedom of Information Act, a request for agency records by any member of the public must be honored unless the Government can demonstrate the applicability of a statutory exemption to the disclosure requirement. Although the identity of a requestor or his reason for requesting the information is usually irrelevant to the issue of whether release is required, EPA has noted that requests for information concerning a business sometimes come from a competitor of that business.

EPA itself has various interests relating to the treatment of business information. In the first place, EPA needs access to business information in order to make informed decisions under the various laws EPA is charged with implementing. Although some of these laws empower EPA to require submission of information, much time and effort would be required to actually compel production of information through court actions. Moreover, some extremely useful information is not subject to compulsory production, and may only be obtained voluntarily. EPA is therefore vitally interested in encouraging businesses to submit information on a voluntary basis. But businesses will cooperate in the submission of information only if they believe EPA will fairly evaluate confidentiality claims and withhold from public disclosure information which qualifies for confidential treatment.

EPA also desires that the public understand the basis of its decisions and policies and have the fullest possible appreciation of the facts which lead to Agency actions. EPA wishes to cooperate to the fullest possible extent with efforts of members of the public to become more fully informed. In particular, EPA is committed to the encouragement of public participation in its rulemaking and adjudicatory proceedings, and access to information is often a prerequisite to effective public participation.

Finally, EPA is aware that on the one hand, its officers and employees may be criminally punished under 18 U.S.C. 1905 for the wrongful disclosure of certain information received in confidence, and that on the other hand, disciplinary proceedings may be brought against any of its officers or employees who are found to have arbitrarily and capriciously withheld information requested under 5 U.S.C. 552. These possibilities suggest the need for issuance by EPA of guidance to employees whose duties require them to decide whether to release information.

Given these varied and often conflicting interests in the treatment of business information, it thus often occurs that when a member of the public has requested release of an item of information, the business which the information concerns alleges that ruinous consequences would be caused by its release. The Federal agency must then decide whether to deny the request for the information in order to increase the likelihood of a continued flow of similar information to the agency and to protect the interests of the business, or to grant the request in order that the public might better appreciate and understand the situation the information concerns.

To help resolve such questions, some basic principles are necessary. In the proposed regulation, some basic ideas are: (1) It is the responsibility of a business which makes a confidentiality claim to substantiate that claim, and EPA's responsibility to afford a reasonable opportunity for such substantiation.

(2) If the business does show that the information is entitled to confidential treatment, EPA should not release the information by exercising discretion it may possess to release it.

(3) Where Congress has indicated in a statute that otherwise-confidential information may be made available to the public in connection with proceedings conducted by the Agency, EPA should construe that authorization broadly to foster the usefulness of such proceedings by facilitating the presentation of various viewpoints.

(4) Disclosure to the public of allegedly confidential information is an irreversible act. When there is substantial doubt about the propriety of release, the Agency should act in a manner which would preserve the issues for possible judicial resolution, rather than in a manner which would not only moot the matter from a judicial standpoint but also expose agency officers and employees to possible criminal prosecution under 18 U.S.C. 1905.

*Summary of procedural provisions.* If a request for disclosure of business information were received under 5 U.S.C. 552, or if for any other reason an EPA office desired to know whether business information was entitled to confidential treatment, it would first ascertain whether a prior controlling determination on the matter had been made. If no such determination existed, the office would ascertain whether the information was covered by a business confidentiality claim. (Where no claim was apparent from examining the document in question, but the office saw a substantial likelihood of entitlement to confidential treatment, inquiry would be made of the business, at which time a claim could be asserted. However, no such inquiry would be required where the information had previously been made publicly available, nor where the business had previously waived or withdrawn its claim or had declined a specific opportunity to assert a claim covering the information.) Information not covered by a claim would be made available to the public.

Information covered by a claim would be the subject of further inquiry. If the EPA office determined that confidential treatment of the information was precluded, the business would be so notified and the business would have an opportunity, before release of the information, to seek judicial review. If, on the other hand, the EPA office concluded that the information might be entitled to confidential treatment, it would afford the business a period of time in which the business could substantiate its claim by furnishing EPA data necessary for a final determination. An EPA legal office would consider any substantiation received and make such other inquiries as it found necessary, and would issue a final determination. If the legal office's determination were adverse to the business, the business would be afforded a period during which it might seek judicial review of the Agency's decision. If no judicial order barring release were obtained during that period, the information would be available to the public.

Once EPA finally determined that business information is entitled to confidential treatment, EPA would not normally exercise any discretion it might possess to release the information.

Information received by EPA after 60 days after the effective date of the new subpart B, but not accompanied when received by a business confidentiality claim, would be determined not to be entitled to confidential treatment unless the business were able to show that the failure to attach a confidentiality claim to the information at the time of submission was due to circumstances beyond the control of the business. (Once again, a business would be afforded a period to obtain judicial review of such a determination.)

*Determinations in response to requests under the Freedom of Information Act.* 5 U.S.C. 552, as recently amended, allows 10 working days from receipt of a request for information until issuance of an initial determination granting or denying the request. No provision was made in the statute for extending the 10-day period in order to obtain the comments of the business which has asserted a confidentiality claim. Such comments normally could not be requested, generated and furnished within the 10 days allowed for an initial determination. While it would be possible to issue confidentiality determinations under a procedure which was begun as soon as business information was first received by EPA, rather than waiting until the time a particular item of information was requested under 5 U.S.C. 552, this would in many cases be extremely inefficient, because of the likelihood that no occasion for disclosing the information would ever arise. EPA therefore expects that in many cases where information covered by a confidentiality claim is requested under 5 U.S.C. 552, it will be necessary to issue an initial determination responding to that request before the comments of the affected business have been received or evaluated.

Such a determination will state in substance that the information may be entitled to confidential treatment, that the views of the affected business are being solicited, that a final determination will be issued after passage of a comment period, and that accordingly the request is initially denied. When such an initial denial is issued, EPA will continue the process of determining whether the information is ultimately entitled to confidential treatment.

Twenty working days are allowed by 5 U.S.C. 552 for the processing of an appeal from an initial denial of a request for information. EPA has tentatively determined that a period of 15 calendar days from the date of receipt by a business of a request for comments is a reasonable period for the business to furnish comments and substantiating data concerning its claim. In some cases the comments may not be received by EPA in time to allow an evaluation and determination on the merits of whether the information is entitled to confidential treatment within the 20-day appeal period. (Once again, the statute does not grant an agency the right to an extension in order to obtain comments of interested persons outside the Government.) In such a case, EPA will seek from the requestor approval of an extension. If such an extension is not agreed to, EPA will deny the request if there remains a substantial question of entitlement of the information to confidential treatment, in order to preserve the question for possible judicial review. When it is necessary to issue such a denial of an appeal, EPA will continue its determination process and shall issue a determination on the merits as soon as possible.

Initial determinations would be issued by the various EPA offices having custody of the requested information. Final determinations would be made by the EPA legal office which services the office having custody of the information (either the various offices of EPA Regional Counsel or the Office of General Counsel).

*Judicial review of determinations denying entitlement to confidential treatment.* The proposed regulation contains a provision (§ 2.205(f)) which would afford a business a waiting period after an EPA determination that information is not entitled to confidential treatment, during which the information would not be released and during which the business could seek judicial review of the EPA determination. The proposed provision was suggested by recent cases and by recently enacted statutes. *Sears, Roebuck & Co.* v. *General Services Administration*, C.A. No. 2149-73 (D.D.C., Sept. 10, 1974), *aff'd on other grounds*, C.A. 74-1946 (D.C. Cir., Dec. 9, 1974), holds that the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*, confer jurisdiction on Federal district courts to review the proposed release of information by a Federal agency, upon complaint of an aggrieved business. In order to allow a business the time necessary to institute such an action, the proposed regulation would provide that when EPA denied a business confidentiality claim the information would not be released for a period of 10 calendar days after notice to the business of the Agency determination. If such an action were commenced within the 10 days, the information would not be released until the passage of 30 days after notice to the business of the determination. If within that 30-day period a court had ordered EPA not to release the information, the information would be held in confidence by EPA until such an order no longer applied.

Two recently-enacted statutes furnish further precedent for the principle of delaying release after the determination is made. Section 10 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended in 1972, 7 U.S.C. 136(h), requires that whenever EPA determines that information covered by a confidentiality claim is not entitled to confidential treatment, it shall not be released until the passage of 30 days after notice of the determination is furnished to the submitter, during which time an action for a declaratory judgment may be commenced. Section 1445 (d) of the Safe Drinking Water Act, Pub. Law 93-523, Dec. 16, 1974, 88 Stat. 1660, 42 U.S.C. 330f et seq., provides that information covered by a confidentiality claim but found by EPA not to be entitled to confidential treatment shall not be released until the passage of 30 days after notice of the determination is furnished, unless the public health or safety requires earlier release. (The latter Act does not contain express language concerning judicial review, but no other purpose for the 30-day delay is apparent.)

5 U.S.C. 552(a)(6)(c), as amended, requires that records be made promptly available once a determination has been made to comply with a request for their release. EPA believes that the 10-day and 30-day waiting periods are in accord with this requirement. The 10-day and 30-day deadlines are designed to encourage prompt and diligent pursuit of any available judicial remedies, and to protect the interests of any person who may have requested release of the information. (The 10-day requirement would not be imposed where a statute, such as FIFRA or the Safe Drinking Water Act, prescribes a longer waiting period; and under FIFRA, the mere commencement of an action to obtain a declaratory judgment would suffice to delay release of information to which section 10 of FIFRA applies.)

EPA believes that the failure of a business to seek or obtain judicial relief within the time allowed under the proposed regulation would substantially diminish the force of a subsequent allegation that an EPA employee's release of the information violated 18 U.S.C. 1905.

*Advance confidentiality determinations.* In some cases an EPA office may desire to obtain, but lack the authority to compel production of, information held by a business, which the business will furnish only if EPA first assures the business that the information is entitled to confidential treatment. A procedure for determining whether such treatment is justified would be useful, and would seem to require a decision by a part of EPA which is unlikely to have an ongoing substantive interest in the information (such as a legal office). If the information were determined to be entitled to confidential treatment, it could be passed on to interested EPA offices; if it were not, it could be returned to the business.

Although such a determination might not require examination of the information itself (the submission could in some cases include of a description of the information, e.g., sales figures for a certain company for a certain year), it might be necessary in other cases to conduct an examination of the information itself, and in those cases a problem could arise. A legal office would possess information which EPA would not otherwise have, for the sole purpose of making a confidentiality determination. If a request under 5 U.S.C. 552 is made for the information while the legal office holds it under such circumstances, and if the information would not be entitled to confidential treatment if it had been received by EPA under other circumstances, must it be disclosed? If disclosure is required, the rationale underlying the advance confidentiality determination process is weakened, perhaps fatally, for disclosure is precisely what the business was attempting to avoid. But if there is a basis for withholding the information under such circumstances, it must be either that the information is not within the category of "agency records" (documents that are not agency records need not be disclosed under 5 U.S.C. 552), or that it constitutes an agency record which is exempt from disclosure under 5 U.S.C. 552 (b)(4) because of the particular circumstance of EPA's acquisition of it. EPA does not know whether such information would be held to constitute agency records, and believes that under such circumstances it would be improper to return all copies of the information in the face of a pending request under 5 U.S.C. 552. Under the regulation EPA would deny the request, citing 5 U.S.C. 552(b)(4), and would retain in the EPA legal office a copy of the information solely in order that judicial resolution of the issue might be obtained.

*Summary of substantive criteria.* In order for EPA to determine that information is entitled to confidential treatment for reasons of business confidentiality, the proposed regulation would require a business to show to EPA's satisfaction that the information is in fact confidential in the hands of the business, that the confidentiality claim is reasonable in view both of the interests and practices of other businesses, that no statute requires disclosure, and that disclosure would be likely either to cause substantial harm to the competitive position of the business or to affect adversely EPA's ability to obtain information. (These criteria would be modified in certain respects with regard to information

obtained under various statutes which authorize EPA to require production of information; the modifications are discussed separately below.)

The proposed regulation would not define "trade secret" as opposed to other "commercial or financial information obtained from a person and privileged or confidential," despite the use of those phrases in 5 U.S.C. 552(b)(4). Rather, the proposed regulation would entitle "business information" to confidential treatment "for reasons of business confidentiality," upon a showing that the criteria just mentioned had been satisfied. It is not believed that any useful purpose would be served by attempting to state definitions of the two statutory phrases. Whether or not they were defined, the inquiry would still have to focus on the nature of the information, the practices of the particular business and of other businesses, the effects of disclosure, and special statutory disclosure provisions.

*Special rules mandated by various statutes.* Sections 2.301 through 2.309 of the proposed regulation would modify the basic rules of §§ 2.200–2.210 to provide special rules which would apply to various categories of information gathered under a number of statutes which authorize EPA to compel production of certain information and also contain specific guidance concerning the disclosure or confidentiality of such information.

(1) *The Clean Air Act.* Section 2.201 would provide special rules to govern the treatment of information obtained under Sections 114, 208, and 307(a) of the Clean Air Act, 42 U.S.C. 1857c–9, 1857f–6, and 1857h–5(a).

One significant provision of each of these Clean Air Act sections is the requirement that "emission data" be made available to the public, despite any claim of confidentiality. The Clean Air Act does not define "emission data"; § 2.301 (a)(2) would supply a definition, which would exclude from its coverage information pertaining to the emissions of certain devices of a strictly research nature; such data could, upon a proper showing, qualify for confidential treatment. EPA would appreciate comments on the definition and on the "research device" exclusion.

Another important provision of the Clean Air Act is the language in sections 114 and 208 which requires the information gathered thereunder be available to the public unless its disclosure would divulge "methods or processes entitled to protection as trade secrets," and the similar language in section 307 concerning divulgence of "trade secrets or secret processes." EPA has given considerable attention to the question of whether the quoted phrases were intended to restrict confidential treatment to only such information as would disclose details of manufacturing methods or physical or chemical processes carried on by a business, or whether instead the phrase is a term of art encompassing other types of data which in many cases businesses regard as confidential, such as operating costs, profits and losses, details of transactions with others, plans for capital investment, marketing information, proposed new products, input and output rates, and similar information. In the proposed rule, the latter approach would be taken. EPA has noted that the meager legislative history concerning these provisions (like that concerning the similar language in section 308 of the Federal Water Pollution Control Act (FWPCA)) tends to indicate that Congress contemplated confidential treatment of all "trade secrets" or "proprietary data" except emission data. EPA has not been able to conclude that Congress intended either the Clean Air Act or the FWPCA to compel automatic disclosure of the vast amount of closely-held business information, production of which EPA may require under those statutes. Certainly the legislative histories give no indication that the drafters considered this possibility. Moreover, it is not apparent how automatic public availability of this information would further the overall purposes of either Act. (When such information is relevant to a matter in controversy in a proceeding under either Act, it could be made available, as explained below.) Finally, many businesses would oppose EPA requests for information if they knew that EPA would immediately make it available to the public; this could seriously hamper EPA programs by requiring diversion of the Agency's resources to time-consuming and expensive efforts to compel the firms to provide the information, by use of court process. EPA is especially interested in comments on this issue.

The third significant change from the basic rules would implement the provision of all three cited sections of the Clean Air Act which authorizes EPA to release information (despite allegations of business confidentiality) when the information is "relevant to any proceeding under" the Clean Air Act. (Similar language appears in the FWPCA, the Noise Control Act of 1972, the Safe Drinking Water Act.) "Proceeding" is not defined in the Clean Air Act, and the proposed regulation would adopt the definition used in the Administrative Procedure Act, 5 U.S.C. 551(12), which includes all rulemaking, adjudication and licensing proceedings. Under the proposed regulations, if any person entitled to participate in a proceeding (other than an EPA employee) requested disclosure of information and showed that the disclosure was required to avoid significant impairment to his ability to present evidence on a significant matter which is (or is likely to be) in controversy in the proceeding, the information could be made available to him, subject to certain safeguards. The EPA Office directly concerned with the proceeding could also release information in connection with a proceeding if it determined that the public interest would be served thereby. A reasonable period for comment by the affected business would be afforded prior to the determination to disclose, and prior to actual disclosure the business would be afforded an opportunity to obtain judicial review of the proposed disclosure.

Finally, each of the three Clean Air Act sections authorizes the Administrator to disclose information (despite allegations of business confidentiality) to "other officers, employees or authorized representatives of the United States" concerned with carrying out the provisions of the Clean Air Act. EPA regards authorized representatives as including persons who are not officers or employees of the United States. Authority to release information to "authorized representatives" would, however, be limited under the proposed regulation to releases to other Federal, interstate, State and local government units with duties or responsibilities under the Clean Air Act or implementing regulations, and to persons under contract to EPA to perform work for EPA in connection with the Act or its implementing regulations. Such disclosure would be accompanied by notification of claims or determinations concerning the confidentiality of the information, and in the case of contractors would be conditioned upon a contractual agreement restricting further use or disclosure.

In considering the implementation of the confidentiality provisions of the Clean Air Act, one problem EPA has faced is defining the range of information to which a given statutory provision applies. Each of the Clean Air Act sections first authorizes EPA to require production of certain information and then specifies rules for treatment of the information obtained under the authority of the statute. For example, section 114 (a) authorizes EPA to require production of information from the owner or operator of any stationary emission source for certain stated purposes. Other sections of the Act allow EPA to issue an order for the production of section 114 information, violation of which is criminally punishable, and to seek injunctive relief to compel production of such information. But EPA normally is able to acquire information described by section 114(a) without resort to orders to injunctions. Sometimes a request for the information does not mention Section 114, yet is complied with, and sometimes the information is submitted even in the absence of a request by EPA.

Section 114(c) specifies special confidentiality rules for ". . . information obtained under subsection (a) . . ." of section 114. Should section 114(c) treatment be afforded only to information which was obtained under the compulsion of an order or injunction? Should it apply only to information requested by EPA, and if so, should it matter whether section 114 was cited in the request? EPA has determined that it would be impracticable and unfair to differentiate between similar items of information on the basis of whether or not certain procedural steps were followed in the acquisition process. Such differentiation would produce unlike treatment of like information, would discourage voluntary

compliance with requests for section 114 (a) information, and would tend for no good reason to increase the flow of paperwork. The proposed regulation would apply the special rules implementing section 114(c) to all information which was or could have been obtained under the authority of section 114(a). A similar approach would be taken under the proposed rules which would implement provisions of the FWPCA, the Noise Control Act of 1972, and the Safe Drinking Water Act.

(2) *The Federal Water Pollution Control Act (FWPCA).* The proposed regulation's § 2.302 would provide special rules to govern the treatment of information obtained under Section 308 of the FWPCA, 33 U.S. 1318. Section 308 provides EPA broad authority to obtain from the owner or operator of any point source of effluents any information "whenever required to carry out the objective of" the FWPCA. A definition of "effluent data," similar to that for "emission data" in § 2.301, would be established. Provisions concerning the section's coverage, the substantive criteria for withholding information, and release of information in connection with a proceeding or to authorized representatives also parallel those of § 2.301.

(3) *The Noise Control Act of 1972.* Proposed § 2.303 would provide special rules to govern the treatment of information obtained under Section 13 of the Noise Control Act of 1972, 42 U.S.C. 4912. The provisions of § 2.303 concerning coverage and the release of information in connection with a proceeding parallel those of § 2.301.

(4) *The Safe Drinking Water Act.* Proposed § 2.304 would provide special rules to govern the treatment of certain information obtained under the Safe Drinking Water Act, Pub. L. 93–523, Dec. 16, 1974, 88 Stat. 1660 (to be codified as 42 U.S.C. 300f et seq.). The coverage provisions of section 1445 of the Act are repeated. Special rules which would establish substantive criteria for withholding information and for release of information in connection with a proceeding or to authorized representatives parallel those of § 2.301.

(5) *The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).* Proposed § 2.307 would provide special rules to govern the treatment of certain information obtained from applicants under FIFRA, 7 U.S.C. 136 et seq. The coverage provision would specify that § 2.307, and not § 2.308 (which provides rules governing certain information submitted for the purpose of satisfying provisions of section 408 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(h), which concerns petitions for issuance of tolerances for pesticides on raw agricultural commodities) shall govern information submitted in connection with a petition for a tolerance but then incorporated into a FIFRA submission. This treatment accords with the EPA policy that when two statutes, each with rules governing the confidentiality of specific information, could be said to apply to the same item of information, the statute allowing greater public access to the information should be deemed to control.

Proposed § 2.307 would provide that information stating the methodology or results of tests concerning the safety, toxicity or efficacy of a pesticide which is or has been registered under the Act or for which a notice of application for registration has been published under section 3(c)(4) of the Act, 7 U.S.C. 136a(c)(3), or information stating the effects on humans of exposure to such a pesticide, shall be available to the public (subject to the judicial review provisions). EPA believes that as a matter of public policy, data concerning effects of such pesticides on humans cannot qualify for confidential treatment. And FIFRA and its legislative history evidence a strong Congressional intent that safety, toxicity and efficacy test data should be available for public inspection.

The section would provide for discretionary disclosure of information to other Federal agencies, and to physicians, pharmacists and other qualified persons, including EPA contractors, for certain limited purposes.

(6) *Section 408 of the Federal Food, Drug and Cosmetic Act (FDCA).* Proposed § 2.308 would provide special rules to govern information submitted to EPA by a petitioner solely in support of a petition for issuance of a pesticide chemical (or for an exemption from the tolerance requirement) under section 408(d) of the FDCA, 21 U.S.C. 346a(d).

Section 408(f) of the FDCA, 21 U.S.C. 346a(f), states that such information shall be treated in absolute confidence (no reference is made to the confidentiality of the information in the petitioner's hands prior to submission, to the nature or value of the information, or to such things as trade practices). This absolute protection does not even require the submitter to make confidentiality claim as a prerequisite.

The protection afforded by section 408 (f), although absolute, is of limited duration. As soon as a regulation is published establishing a tolerance (or an exemption from the requirement), section 408(f) ceases to apply and, unless some other statute specifically applies (FIFRA, for instance), release of the information is governed by 5 U.S.C. 552. In order to allow EPA to determine at one time the entitlement of such information to confidential treatment under all statutes that may apply, proposed § 2.308 would require a business to advance all its arguments concerning confidentiality upon EPA's solicitation of substantiation.

(7) *The Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA).* Proposed § 2.309 would provide special rules to govern information obtained by EPA as part of any application for, or in connection with, any permit for ocean disposal under the MPRSA, 33 U.S.C. 1401 et seq. Section 104(f) of the MPRSA, 33 U.S.C. 1414(f), is almost the opposite of section 408(f) of the FDCA, discussed above. It affirmatively requires that information be made available to the public, notwithstanding any confidentiality claim. The only problem lies in determining to which information the requirement applies. Information contained in a permit application should be easy to identify, but difficulties may be experienced in determining what information was received by EPA "in connection with any permit granted" under the MPRSA.

Where information is required by the MPRSA to be made available to the public, its entitlement under some other statute to confidential treatment would not, under the proposed regulation, override the MPRSA public availability requirement.

This notice or proposed rulemaking is issued under the authority of provisions of the Administrative Procedure Act, 5 U.S.C. 552, 553; sections 114, 208, 301 and 307 of the Clean Air Act, as amended, 42 U.S.C. 1857c–9, 1857f–6, 1857g, 1857h–5; sections 308 and 501 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1318, 1361; section 13 of the Noise Control Act of 1972, 42 U.S.C. 4912; sections 1445 and 1450 of the Safe Drinking Water Act, 42 U.S.C. 300j–4, 300j–9; sections 10, 12 and 25 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. 136h, 136j, 136v; section 408(f) of the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. 346a(f); and sections 104(f) and 108 of the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. 1414 (f), 1418.

It is therefore proposed to amend Chapter I of Title 40, Code of Federal Regulations, in the manner set forth below.

Dated: May 13, 1975.

RUSSELL E. TRAIN,
*Administrator.*

## PART 2—PUBLIC INFORMATION

1. By amending part 2 by adding a new subpart B and by making corresponding additions to the list of sections, as follows:

**Subpart B—Confidentiality of Business Information**

Sec.

## Subpart B—Confidentiality of Business Information

### § 2.201 Definitions.

For the purposes of this subpart:

(a) "Person" means an individual, partnership, corporation, association, or other public or private organization or legal entity, including Federal, State or local governmental bodies and agencies and their employees.

(b) "Business" means any person engaged in a business, trade, employment, calling or profession, whether or not all or any part of the net earnings derived from such engagement by such person inure (or may lawfully inure) to the benefit of any private shareholder or individual.

(c) "Business information" (sometimes referred to simply as "information") means any information which pertains to the interests of any business, which was developed or acquired by that business, and (except where the context otherwise requires) which is possessed by EPA in recorded form.

(d) "Affected business" means, with reference to an item of business information, a business on behalf of which an unwaived business confidentiality claim covering the information has been made, or a business which could be expected to make such a claim if it were aware that disclosure of the information to the public was proposed.

(e) "Reasons of business confidentiality" include the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information. "Reasons of business confidentiality" include any concept which authorizes a Federal agency to withhold business information under 5 U.S.C. 552(b)(4), and any concept which requires EPA to withhold information from the public for the benefit of a business under 18 U.S.C. 1905 or any of the various statutes cited in § 2.301 through § 2.309.

(f) Information which is "entitled to confidential treatment" is information which, for reasons of business confidentiality, will not be made available to the public or otherwise disclosed to any person not employed by EPA, except as expressly otherwise provided in this subpart. (Information which is not "entitled to confidential treatment" is not necessarily available to the public, because reasons other than business confidentiality may require or authorize EPA to withhold the information from the public.)

(g) Information which is "available to the public" is information in EPA's possession which EPA will furnish to any member of the public upon request and which EPA may make public, release or otherwise make available to any person whether or not its disclosure has been requested.

(h) "Business confidentiality claim" (or, simply, "claim") means a claim or allegation that business information is entitled to confidential treatment, or a request for a determination that such information is entitled to such treatment.

(i) "Voluntarily submitted information" means business information in EPA's possession—

(1) The submission of which EPA had no authority to require; and

(2) The submission of which was not prescribed by statute or regulation as a condition of obtaining some benefit or avoiding some disadvantage under a regulatory scheme of general applicability (for example, a permit, licensing, registration or certification program, but excluding programs concerned with the award and administration of grants or contracts).

(j) "Recorded" means written or otherwise registered in some form for preserving information, including such forms as drawings, photographs, videotape, sound recordings, punched cards, and computer tape or disk.

(k) "EPA" means the United States Environmental Protection Agency.

(l) "Administrator," "Regional Administrator," "General Counsel" and "Regional Counsel" mean the EPA officials so titled.

### § 2.202 Applicability of subpart; priority where provisions conflict.

(a) Sections 2.201 through 2.211 establish basic rules governing business confidentiality claims, the handling by EPA of business information which is or may be entitled to confidential treatment, and determinations by EPA of whether information is entitled to confidential treatment for reasons of business confidentiality.

(b) Various statutes (other than 5 U.S.C. 552) under which EPA operates contain special provisions concerning the entitlement to confidential treatment of information gathered under such statutes. Sections 2.301 through 2.309 prescribe special rules for treatment of certain categories of business information obtained under the various statutory provisions. Paragraph (b) of each of those sections should be consulted to determine whether any of those sections applies to the particular information in question.

(c) The basic rules of §§ 2.201 through 2.211 govern except to the extent that they are modified or supplanted by the special rules of §§ 2.301 through 2.309. In the event of a conflict between the provisions of the basic rules and those of a special rule which is applicable to the particular information in question, the provisions of the special rule shall govern.

(d) If two or more of the sections containing special rules apply to the particular information in question, and the applicable sections prescribe conflicting special rules for the treatment of the information, the rule which provides greater or wider availability to the public of the information shall govern.

(e) This subpart does not apply to questions concerning entitlement to confidential treatment of information which concerns an individual in his personal, as opposed to business, capacity.

### § 2.203 Business confidentiality claim to accompany information.

(a) Any business which causes or permits its business information to be submitted to EPA (whether directly by such business to EPA, or through or by some third person), or which submits its information to another person including state or local pollution control agencise, and firms under contract to EPA) with knowledge that such other person has a duty imposed by statute, regulation or contract to submit such information to EPA, and which desires that EPA shall afford confidential treatment to such information fo rreasons of business confidentiality, shall take all steps reasonably necessary to ensure that at the time the information is first received by EPA it is accompanied by a clear and prominent written (or otherwise suitably recorded) business confidentiality claim, consisting of a cover sheet, stamp, typed legend or other suitable form of notice on (or firmly attached to) each copy of the information received by EPA, employing language such as "trade secret," "confidential" or "proprietary." Where only one or more portions of a submission are claimed to be entitled to confidential treatment, each such portion shall be identified.

(b) If an EPA office acting under § 2.204, or an EPA legal office acting under § 2.205, finds that the information in question was first received by EPA after [60 days after the effective date of this subpart], but was not, when received by EPA, accompanied by a business confidentiality claim in accordance with paragraph (a) of this section, such office will determine that th information is not entitled to confidential treatment for reasons of business confidentiality unless the business which claims entitlement to

confidential treatment has shown to such office's satisfaction that circumstances beyond the control of the busines were responsible for the failure to comply with § 2.202.

**§ 2.204 Initial action by EPA office possessing information.**

(a) *Situations requiring action.* This section prescribes procedures to be used by EPA offices in making initial determinations of whether business information is entitled to confidential treatment for reasons of business confidentiality. Action shall be taken under this section whenever an EPA office learns that it is responsible for responding to a request under 5 U.S.C. 552 for the release of business information in its possession; in such a case, the office shall issue an initial determination within the period specified in § 2.112. This section's procedures shall also be followed when an EPA office desires to determine whether business information in its possession is entitled to confidential treatment, even though no request for release of the information has been received.

(b) *Previous confidentiality determinations.* The EPA office shall first attempt to ascertain whether there has been a previous, controlling determination of the question of the entitlement of the information to confidential treatment. For the purposes of this section, a controlling determination is: a final, unappealable order of a Federal court; a class determination (see § 2.207) or other determination by EPA under this subpart that the information is entitled to confidential treatment; or any determination under this subpart that the information is not entitled to confidential treatment, as to which determination no action to obtain judicial review is pending and as to which any period provided by a notice under § 2.205(f) for obtaining judicial review has expired.

(1) If a controlling determination states that the information is not entitled to confidential treatment, and if that determination was issued by a Federal court or was issued by EPA with notice under § 2.205(f) furnished to each affected business presently involved, then (subject to § 2.210) the information is available to the public, without need for further notice to the affected business, and the EPA office shall so inform any person whose request for the information is pending under 5 U.S.C. 552.

(2) If a controlling determination states that the information is entitled to confidential treatment, the EPA office shall furnish any person who has requested release of the information under 5 U.S.C. 552 an initial determination (see § 2.111 and § 2.113) that the information has previously been determined to be entitled to confidential treatment, and that the person's request is therefore denied. If the controlling determination is more than one year old, or if the EPA office questions the continuing validity of the determination, the EPA office shall also—

(A) Refer the matter to the appropriate EPA legal office, furnishing the data prescribed by paragraphs (f)(1) and (f)(2) of this section, a copy of the prior determination (or a reference to its date and subject, if a copy is unavailable), any information the office possesses concerning any relevant circumstances which may have changed since the date of the prior determination, and any opinion the office may have concerning the correctness of such determination; and

(B) Notify each affected business (by letter sent by certified mail, return receipt requested, or by personal delivery) that EPA is engaged in determining under this subpart whether the prior determination of entitlement to confidential treatment remains valid. The notice shall state the reason(s) why EPA is making a new determination, shall either identify the prior determination by date and subject or enclose a copy of it, and shall invite the affected business to furnish comments to the appropriate EPA legal office within 15 calendar days of the date of receipt of such notice. The notice shall state that the information may be made available to the public without further notice if comments are not received by EPA within the 15-day period (or such other period as is established in lieu thereof, see § 2.205(b)) and shall invite the affected business to state whether the business continues to assert a business confidentiality claim covering the information, whether any relevant circumstances have changed since the date of the determination, and the significance of any such changes.

(3) In all other cases, the EPA office shall take action under paragraph (c) of this section.

(c) *Determining whether a business confidentiality claim exists.* (1) Whenever action under this paragraph is required by paragraph (b)(3) of this section, the EPA office in possession of the information shall examine it to determine whether a written business confidentiality claim covering it is attached to it or is otherwise apparent. If such a claim is found to cover the information, action shall be taken under paragraph (d) of this section.

(2)(A) If the examination under paragraph (c)(1) of this section discloses no claim, but it is apparent to the EPA office that but for the absence of a claim there would be a substantial likelihood that the information would be entitled to confidential treatment, the EPA office shall inquire of each affected business to learn whether the business asserts a claim covering the information. However, no such inquiry need be made if the information has previously been made available to the public without restriction (e.g., by furnishing copies to persons on request, or by location of the information in a file which has been open to public examination); nor need inquiry be made of any business which has previously failed to assert a claim covering the information after EPA had afforded the business a specific opportunity to make such a claim, or which has otherwise waived or withdrawn its claim.

(B) If, as the result of an inquiry under paragraph (c)(2)(A) of this section, a claim is made covering information which was first received by EPA after [60 days after the effective date of this subpart], the EPA office shall further inquire why the information was not, when received by EPA, marked in accordance with § 2.203.

(C) A record shall be kept of the results of any inquiry under this paragraph (c)(2). If any business makes a claim covering the information, the EPA office shall take further action under paragraph (d) of this section.

(D) If a request for release of the information under 5 U.S.C. 552 is pending at the time inquiry is made under this paragraph (c)(2), the inquiry shall be made by telephone or equally prompt means.

(3) If, after examination under paragraph (c)(1) (and any inquiry required by paragraph (c)(2)) of this section, the EPA office knows of no claim covering the information, it shall be treated for purposes of this subpart as not entitled to confidential treatment. In such a case, unless reasons other than business confidentiality (see § 2.210) authorize withholding of the information, the EPA office shall furnish any person who has requested release of the information under 5 U.S.C. 552 a determination that the information will be released promptly.

(d) *Preliminary determination under substantive criteria.* Whenever action under this paragraph is required by paragraph (c)(1) or (c)(2)(C) of this section, the EPA office shall determine whether, under § 2.208 (or any other applicable substantive criteria in this subpart (and § 2.203 the information is (or may be) entitled to confidential treatment.

(1) If the information is (or may be) entitled to confidential treatment, the EPA office shall—

(A) Furnish to each affected business the notice and request for substantiating comments prescribed by paragraph (e) of this section;

(B) Furnish any person whose request for release of the information under 5 U.S.C. 552 is pending a determination (in accordance with § 2.113) that the information may be entitled to confidential treatment, that further inquiry by EPA into the matter is required before a final determination can be issued, that the request is therefore initially denied, and that after further inquiry a final determination will be issued by the EPA legal office; and

(C) Refer the matter to the appropriate EPA legal office, furnishing the data prescribed by paragraph (f) of this section.

(2) If the EPA office determines that the information is clearly not entitled to confidential treatment under the substantive criteria of this subpart, or is clearly not entitled to confidential treatment because the business inexcusably failed to comply with applicable requirements of § 2.203, the EPA office shall furnish each affected business the notice,

and take the other actions, required by § 2.205(f), including issuance of an initial determination (in accordance with subpart A and § 2.205(f)(5)) to any person whose request for the information is pending under 5 U.S.C. 552.

(e) *Notice to affected businesses soliciting comments on confidentiality claim.* Whenever required by paragraph (d)(1) of this section, the EPA office in possession of the information shall furnish each affected business (by letter sent by certified mail, return receipt requested, or by personal delivery) notice that EPA is engaged in determining under this subpart whether the information is entitled to confidential treatment. The notice shall include a statement of the statutory and regulatory provisions which govern (or may govern) disclosure, and an invitation to the business to furnish to the Regional Counsel or General Counsel (as appropriate) detailed comments substantiating the claim of entitlement to confidential treatment of the information within 15 calendar days of the date of receipt of such notice. The notice shall state that the information may be made available to the public without further notice if detailed comments responding to all applicable portions of the request for comments are not received by EPA within the 15-day period (or any approved extension, see § 2.205(b)). The notice shall invite comments from the business on the following specific matters (except to the extent that comment on any such matter is unnecessary, e.g., where a class determination under § 2.207(b)(2) has been issued):

(1) The portions of the information which are alleged to be entitled to confidential treatment, and what other allegedly confidential information, if any, would be divulged by disclosure of the information in question;

(2) The applicability of any special statutory or regulatory provisions (i.e., §§ 2.301 through 2.309 and statutes cited therein) which govern or may govern the treatment of the information;

(3) When and how the information was furnished to EPA;

(4) Whether a business confidentiality claim accompanied the information when it was furnished to EPA, and if not, why not;

(5) Measures taken by the business to protect the confidentiality of the information, and of similar information;

(6) Prior disclosures to others of the information, and the extent to which the information is known by others;

(7) The ease or difficulty of a competitor's obtaining the information;

(8) Practices of other businesses concerning their policies regarding confidentiality of similar information;

(9) How the information is used by the business, and why it is important to the business;

(10) Why possession of the information confers a competitive advantage over others;

(11) Adverse consequences to the business, financial and otherwise, that would result from disclosure of the information;

(12) Whether the information was voluntarily submitted to EPA (see § 2.201(i)), and if so, whether and how disclosure of the information would tend to lessen the availability of similar information to EPA; and

(13) The existence and applicability of any prior determinations by EPA or by other Federal agencies concerning the entitlement to confidential treatment of the information in question.

(f) *Referral to EPA legal office.* Whenever required by paragraph (d)(1) of this section, the EPA office taking action under this section shall furnish to the EPA legal office the following items:

(1) A copy of the information in question or (where the quantity or form of the information makes forwarding a copy of the information impractical) representative samples, a description of the information, or both;

(2) Any request for release of the information under 5 U.S.C. 552, any initial determination responding to such request, and associated materials;

(3) The referring office's categorization of the information under paragraphs (c) and (d) of this section;

(4) Any business confidentiality claim(s) covering the information, including when and how the claims were asserted;

(5) Any correspondence, memoranda of telephone conversations, prior determinations or pledges of confidentiality, or other written matter concerning confidentiality of the information;

(6) A description of the circumstances and date of EPA's acquisition of the information;

(7) Any statute which specifically authorized acquisition of the information or which may prescribe special rules for its treatment;

(8) A statement of why the information is or is not thought to constitute voluntarily submitted information (see § 2.201(i));

(9) Any information the EPA office may possess concerning the applicability of the pertinent substantive criteria of this subpart to the information in question, including any knowledge of the steps taken by the affected business to preserve the information's confidentiality, the ease or difficulty with which others could obtain the information, prior disclosures of the information, trade practices concerning confidentiality of the type of information in question, the harm that might be suffered by the affected business if the information were disclosed, and the likely effects of disclosure upon the receipt by EPA in the future of similar information;

(10) The name, address and telephone number of the EPA employee(s) most familiar with the information and its acquisition;

(11) The name, address and telephone number of each known affected business, and of its cognizant representative, if known; and

(12) Any other comments the office believes might be useful.

### § 2.205 Final confidentiality determination by EPA legal office.

(a) *Role of EPA legal office.* The appropriate EPA legal office (see paragraph (i) of this section) shall make the final determination of whether or not business information is entitled to confidential treatment, whenever a matter is referred to such office under § 2.204(b)(4) or § 2.204(d)(1). When release of the information has been requested under 5 U.S.C. 552, the EPA legal office's final determination shall serve as the determination on appeal from an initial determination adverse to the requestor, and applicable time limits for making such determinations shall be observed. If the legal office finds that it cannot properly determine within the time allowed by 5 U.S.C. 552(a)(6), it shall consider issuance of an extension notice in accordance with § 2.117, and, if necessary, may seek approval from the requestor of additional time for the determination. If available extensions do not provide sufficient time for a proper determination, the request shall be denied and the denial shall state that the determination process is continuing.

(b) *Period for comments by business.* Each business which has been furnished the notice and invitation to comment prescribed by § 2.204(b)(4)(B) or § 2.204(e) shall furnish the appropriate EPA legal office any comments the business desires to make in response to such invitation, in a manner which will ensure their receipt at the appropriate EPA installation within 15 calendar days of the date of receipt by the business of such notice, or within such other period for the furnishing of comments as is established under this section. The 15-day period may be extended if, during the 15-day period, an extension is requested by the business and approved by the EPA legal office. The 15-day period may be shortened if the business and the EPA legal office agree that the full 15-day period is unnecessary to protect the rights of each interested person, or if action is taken under paragraph (g) of this section. If comments are not received by the appropriate EPA installation within the 15-day period (or such other period as is established in lieu thereof), the EPA legal office shall make prompt inquiries to ensure that delay of the mails is not responsible. If delay of the mails is responsible, the legal office shall extend the period for comments by one day for each day of delay.

(c) *Failure to make timely comments; waiver or withdrawal of claim.* Failure by a business which has been invited to furnish comments to furnish such comments to EPA within the prescribed 15-day period (or such other period as is established in lieu thereof) for any reason other than delay of the mails shall constitute a waiver of the business's claim. Whenever the EPA legal office finds that all claims covering the information have been waived or otherwise withdrawn, it shall determine that the information is not entitled to confidential treatment. In such a case, subject to

§ 2.210, the information shall be available to the public, and the EPA legal office shall so inform any person who has requested release of the information under 5 U.S.C. 552.

(d) *Matters to be considered in making determination.* The EPA legal office shall consider all comments received within the 15-day period (or such other period as is established in lieu thereof), and shall consider such other evidence and views, and obtain such other comments, as appear necessary. The EPA legal office shall, after consideration of the procedural requirements and substantive criteria prescribed by this subpart, determine whether the information is entitled to confidential treatment.

(e) *Determination of entitlement to confidential treatment.* If the EPA legal office determines that the information is entitled to confidential treatment, EPA shall thereafter maintain the information in confidence, subject to § 2.209 and the other provisions of this subpart which authorize disclosure in specified circumstances, and the EPA legal office shall so inform each business on behalf of which an unwaived claim has been made. If any person has requested the release of the information under 5 U.C.S. 552, the EPA legal office shall furnish him a determination denying his request, which determination shall constitute the final determination by EPA on such request.

(f) *Determination of nonentitlement to confidential treatment; notice and waiting period.* (1) Notice of denial of a business confidentiality claim, in the form prescribed by paragraph (f) (2) of this section, shall be furnished—

(A) By the EPA office taking action under § 2.204, to each business on behalf of which a claim has been made, whenever § 2.204(b) (3) or § 2.204(d) (2) requires such notice; and

(B) By the EPA legal office acting under this section, to each business on behalf of which a claim has been made and which has furnished timely comments under paragraph (b) of this section, whenever the EPA legal office determines that the business has failed to satisfactorily explain any noncompliance with applicable requirements of § 2.203, or determines that comments submitted under § 2.205(b) consist merely of generalizations and conclusions or otherwise fail to satisfactorily substantiate the claim, or determines that the information is not entitled to confidential treatment under the applicable substantive criteria.

(2) The notice required by paragraph (f) (1) of this section shall be written, and shall be furnished by certified mail (return receipt requested) or by personal delivery. The notice shall state the basis for the determination, that it constitutes final agency action denying the business confidentiality claim made by or on behalf of the business, and that such final agency action may be subject to judicial review under chapter 7 of title 5, United States Code. The notice shall further state that unless EPA determines that the information is exempt from mandatory disclosure under 5 U.S.C. 552(b) for reasons other than business confidentiality and cannot or should not be made available to the public, the information will be made available to the public—

(A) 10 calendar days after the date of receipt by the business of the notice, unless within that 10-day period EPA has been notified that the business has commenced an action in a Federal court to obtain judicial review of the denial of the business confidentiality claim; or

(B) 30 calendar days after the date of receipt by the business of the notice, unless within that 30-day period a Federal court (in an action instituted within the prescribed 10-day period) has ordered EPA not to make the information available to the public.

(3) If the 10-day period referred to in paragraph (f) (2) (A) of this section passes without receipt by EPA of notice that an action to obtain judicial review of the denial of the business confidentiality claim has been instituted, the office which furnished notice to the business under paragraph (f) (1) of this section shall make prompt inquiries to ensure that delay of the mails is not responsible. If delay of the mails is found to be responsible, the 10-day period shall be appropriately extended and interested persons shall be notified of the extension. If delay of the mails is not responsible, the information shall be made available to the public unless EPA determines that it is exempt from mandatory disclosure for reasons other than business confidentiality and cannot or should not be made available to the public.

(4) If, within the 10-day period referred to in paragraph (f) (2) (A) of this section, EPA is notified of the institution of an action to obtain judicial review of the denial of the business confidentiality claim, the information shall not be made available to the public until the end of the 30-day period referred to in paragraph (f) (2) (B) of this section. If, within such 30-day period, a Federal court (in an action instituted within such 10-day period) orders EPA not to make the information available to the public, the information shall be afforded confidential treatment until such time as EPA is no longer required by court order to maintain the confidentiality of the information, at which time, subject to § 2.210, the information shall be made available to the public. If, within such 30-day period, no such order is issued, the information shall be made available to the public, subject to § 2.210.

(5) If any person has submitted a request under 5 U.S.C. 552 for release of information and that request is pending at the time a notice concerning that information is furnished by EPA under paragraph (f) (2) of this section, the office which furnished the notice shall at the same time furnish such person a determination under 5 U.S.C. 552 that the information will be released in accordance with the provisions of paragraphs (f) (3) and (4) of this section.

(g) *Emergency situations.* When the Regional Counsel or General Counsel finds that information on which he is acting under this section is relevant to a situation posing an imminent and substantial danger to public health or safety, he may prescribe and make known to interested persons such shorter comment period (paragraph (b) of this section), post-determination waiting period (paragraph (f) of this section), or both, as he finds necessary under the circumstances.

(h) *Effect of prior determinations.* If EPA receives a request under 5 U.S.C. 552 for information which has previously been determined by EPA to be entitled to confidential treatment for reasons of business confidentiality, or if an EPA office desires to make sueh information available to the public, the information shall, subject to § 2.210, be made available to the public if (and only if) the EPA legal office determines that confidential treatment is no longer warranted because of changes in the applicable law, newly-discovered facts, or the passage of time, or because the previous determination was clearly erroneous. The notice and comment procedure of § 2.204 (b) (3) (B) and paragraphs (b) through (d) of this section, and the determination and release procedures of paragraphs (e) through (g) of this section, shall be used in making determinations under this paragraph (h).

(i) *Responsibility of various EPA legal offices; delegation.* Unless the General Counsel otherwise directs, or this subpart otherwise specifically provides, determinations and actions required by this subpart to be made or taken by the appropriate EPA legal office shall be made or taken by the appropriate Regional Counsel whenever the EPA office taking action under § 2.204 reports to an EPA Regional Administrator, and by the General Counsel in all other cases. The Regional Counsel and General Counsel may delegate their responsibilities under this subpart to other attorneys employed on a full-time basis by EPA.

### § 2.206 Special procedure for advance confidentiality determinations.

(a) If an EPA office has requested that a business furnish EPA wilth business information which, if furnished, would be voluntarily submitted information (see § 2.201(i)), but the business refuses to submit the information for use by EPA unless EPA first determines that the information is entitled to congdential treatment, the EUA office may obtain an advance determination from the EPA legal office by—

(1) Arranging to have the business furnish directly to the appropriate EPA legal office a copy of the information (or, where feasible, a description of the information sufficient to allow a determiantion of entitlement to confidentiality to be made) with the business's comments responsive to paragraphs (e) (1), (e) (5) through (9), (e) (11) and (e) (12) of § 2.204; and

(2) Furnishing to the EPA legal office the data prescribed in paragraphs (e) (8) through (12) of § 2.204, with a request

for an advance determination under this section.

(b) If the EPA legal office determines that information described by paragraph (a) of this section is ont entitled to confidential treatment, it shall so inform the concerned EPA office and the business, stating the basis for the determination, and shall return to the business all copies of the information which it may have received from the business (except that if a request under 5 U.S.C. 552 for release of the information is received while the EPA legal office is in possession of the information, the legal office shall retain a copy of the information, but shall not disclosee it unless ordered by a Federal court to do so). The EPA legal office shall not disclose the information to any other EPA office and shall not use the information for any purpose except the determination under this section, unless otherwise directed by a Federal court.

(c) If the EPA legal office determines that information described by paragraph (a) of this section is entitled to confidential treatment, the information shall be forwarded to the concerned EPA office, and § 2.205(e) shall apply to the information.

### § 2.207 Class determinations.

(a) If, while making a determination under § 2.205 or § 2.206, the Regional Counsel or General Counsel finds that the business information under consideration is part of a class of similar information held (or from time to time obtained) by EPA, he shall consider issuing a determination concerning the entitlement or nonentitlement of all information in that class to confidential treatment. A class determination may be issued by the General Counsel (or by the Regional Counsel, after consultation with the General Counsel) if—

(1) It is anticipated that questions of entitlement to confidential treatment of information within the class will continue to arise; and

(2) With respect to all information within the class, there exists a common factual situation which is determinative of whether all such information meets one or more of the applicable substantive criteria for entitlement to confidential treatment.

(b) A class determination shall take one of the following forms:

(1) A determination that for all information within the class, there has been a satisfactory showing that all the applicable substantive criteria for entitlement to confidential treatment have been met, and that accordingly any information within the class is entitled to confidential treatment if it is covered by a business confidentiality claim;

(2) A determination that for all information within the class, there has been a satisfactory showing that one or more, but not all, of the applicable substantive criteria have been met, and that accordingly any information within the class is entitled to confidential treatment if it is covered by a claim and if a showing satisfactory to the EPA legal office is made concerning the remaining applicable substantive criteria; or

(3) A determination that none of the information within the class is entitled to confidential treatment, because it is impossible for any of the information in the class to meet one or more of the applicable substantive criteria.

(c) A class determination shall clearly define the class of information to which it pertains and the determinative factual situation upon which it is based.

### § 2.208 Substantive criteria for use in confidentiality determinations.

Except where a statute not cited in this subpart requires that business information be afforded confidential treatment (see § 2.210(b)), the EPA legal office acting under § 2.205 will determine that information is entitled to confidential treatment for reasons of business confidentiality if (and only if) it is not ineligible for such treatment under § 2.203, § 2.204 or § 2.205(c), and a detailed showing, by (or on behalf of) a business on behalf of which a business confidentiality claim has been made, satisfies the EPA legal office that—

(a) The business has taken reasonable measures to protect the confidentiality of the information;

(b) The information is not readily obtainable by others by legitimate means;

(c) The business confidentiality claim covering the information is not unreasonable in view of the nature of the information, the interests and normal practices of the business, and the practices of other businesses;

(d) No statute specifically requires disclosure of the informaton; and

(e) Either—

(1) There is a substantial likelihood that disclosure of the information would substantially harm the competitive position of the business; or

(2) The information is voluntarily submitted information (see § 2.201(i)), and there is a substantial likelihood that its disclosure by EPA would lessen the availability of information to EPA, to the detriment of EPA's ability to perform its functions.

### § 2.209 Disclosure of business information in special circumstances.

Notwithstanding the fact that information otherwise may be entitled to confidential treatment for reasons of business confidentiality, EPA may disclose any business information—

(a) If EPA has obtained the prior consent of each affected business to such disclosure;

(b) Upon a proper request, to either House of Congress, a committee of either House of Congress, or the Comptroller General (EPA will notify the requesting body of any prior business confidentiality claim covering the information, and of any prior EPA determination concerning entitlement to confidential treatment);

(c) Upon a proper request, and upon a showing that disclosure is required by law or authorized by 44 U.S.C. 3508, to another Federal agency (EPA will notify the requesting agency of any business confidentiality claim covering the information, and of any prior EPA determination concerning entitlement to confidential treatment); or

(d) If its disclosure is duly ordered by a Federal court.

### § 2.210 Nondisclosure for reasons other than business confidentiality or where disclosure is prohibited by statute.

(a) Whenever it is determined under any provision of this subpart that business information is not entitled to confidential treatment for reasons of business confidentiality, the information shall be available to the public on request unless EPA determines (under subpart A of this part) that the information is exempt from mandatory disclosure under 5 U.S.C. 552(b) for reasons other than business confidentiality and cannot or should not be made available to the public.

(b) Notwithstanding any other provision of this subpart, if business information is required to be given confidential treatment for reasons of business confidentiality under the provisions of any statute not cited in this subpart, the information shall be maintained in confidence by EPA. Questions concerning the applicability of this section shall be brought to the attention of an EPA legal office.

### § 2.211 EPA procedures to safeguard business information.

No EPA office or employee may disclose, or permit to be disclosed, any recorded business information in EPA's possession, except as authorized by this subpart. An EPA office or employee may disclose such information to another EPA office or employee that has an official interest in the information. Each EPA office or employee that holds such information shall take appropriate steps to guard against its unauthorized disclosure.

### §§ 2.212–2.300 [Reserved]

### § 2.301 Special rules governing certain information obtained under the Clean Air Act.

(a) *Definitions.* For the purposes of this section.

(1) "Act" means the Clean Air Act, as amended, 42 U.S.C. 1857 et seq.

(2) "Emission data" means, with reference to any prior, existing or contemplated source of emission of any substance into the air, information stating the experienced or predicted amount, frequency, concentration, temperature, velocity or nature of any emission from the source, or any combination of the foregoing; a description of the location or nature of the source sufficient to identify it and to distinguish it from other sources (including, when necessary for identification, a description of the device, installation or operation constituting the source); and any information necessary to determine the emissions which a standard or limitation permits a source to emit. However, "emission

data" does not include information concerning research, or the results of research, on any product, device or laboratory-scale installation (or component thereof) which was produced, installed and used only for research purposes, and which does not belong to a class of products, devices or installations which are, or which are definitely scheduled to be, made commercially available or used for other than research purposes.

(3) "Standard or limitation" means any emission standard or limitation established or proposed pursuant to the Act or pursuant to any regulation under the Act.

(4) "Proceeding" means any rulemaking, adjudication or licensing process conducted by EPA under the Act or under regulations which implement the Act, except for determinations under this subpart.

(5) "Manufacturer" has the meaning given it in section 214(1) of the Act, 42 U.S.C. 1857f–7(1).

(b) *Applicability.* (1) This section applies only to business information which was—

(A) Provided or obtained under section 114 of the Act, 42 U.S.C. 1857c–9, by the owner or operator of any stationary source, for the purpose (i) of developing or assisting in the development of any implementation plan under section 110 or 111(d) of the Act, 42 U.S.C. 1857c–5, 1957c–6(d), any standard of performance under section 111 of the Act, 42 U.S.C. 1857c–6, or any emission standard under section 112 of the Act, 42 U.S.C. 1857c–7, (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out section 119 or 303 of the Act, 42 U.S.C. 1857c–10, 1857h–1;

(B) Provided or obtained under section 208 of the Act, 42 U.S.C. 1857f–6, by any manufacturer, for the purpose of enabling the Administrator to determine whether such manufacturer has acted or is acting in compliance with the Act and regulations under the Act; or

(C) Provided in response to a subpoena for the production of papers, books or documents issued under the authority of section 307(a) of the Act, 42 U.S.C. 1857–5(a).

(2) Information will be deemed to have been provided under section 114 or 208 of the Act if it was provided in response to a request by EPA or its authorized representative (or by a state air pollution control agency) made for any of the purposes stated in either such section, or if its submission could have been required under either such section, regardless of: whether either such section was cited as authority in any request for the information; whether an order to provide such information was issued under section 113(a) of the Act, 42 U.S.C. 1857c–8(a); whether an action was brought under section 113(b) or 204 of the Act, 42 U.S.C. 1857c–8(b), 1857f–3; or whether the information was provided directly to EPA or through some third person.

(3) This section specifically does not apply to information obtained under section 115(j) or 211(b) of the Act, 42 U.S.C. 1857d(j), 1857f–6c(b).

(c) *Basic rules which apply without change.* Section 2.201 through § 2.205, § 2.207, § 2.209, and § 2.211 apply without change to information to which this section applies.

(d) *Special procedure for advance confidentiality determinations.* Section 2.206 does not apply to information to which this section applies, since by definition such information is not voluntarily submitted.

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 does not apply to information to which this section applies. The EPA legal office acting under § 2.205 will determine that such information is entitled to confidential treatment for reasons of business confidentiality if (and only if) it is not ineligible for such treatment under § 2.203, § 2.204 or § 2.205(c), and a detailed showing, by (or on behalf of) a business on behalf of which a business confidentiality claim has been made, satisfies the EPA legal office that—

(1) The business has taken reasonable measures to protect the confidentiality of the information;

(2) The information is not readily obtainable by others by legitimate means;

(3) The business confidentiality claim covering the information is reasonable in view of the nature of the information, the interests and normal practices of the business, and the practices of other businesses;

(4) There is a substantial likelihood that disclosure of the information would substantially harm the competitive position of the business; and

(5) The information is neither emission data (see § 2.301(a)(2)) nor a standard or limitation (see § 2.301(a)(3)).

(f) *Availability of information not entitled to confidential treatment.* Section 2.210 does not apply to information to which this section applies. Emission data, standards or limitations, and any other information provided under section 114 or 208 of the Act which is determined under this subpart not to be entitled to confidential treatment, shall be available to the public notwithstanding any other provision of this part. Emission data, standards or limitations, and any other information provided in response to a subpoena for the production of papers, books or documents issued under the authority of section 307(a) of the Act, which is determined under this subpart not to be entitled to confidential treatment, shall be available to the public, unless EPA determines that the information is exempt from mandatory disclosure under 5 U.S.C. 552(b) for reasons other than business confidentiality and cannot or should not be made available to the public.

(g) *Disclosure of information relevant to a proceeding.* (1) Under sections 114, 208 and 307 of the Act, any information to which this section applies may be released by EPA because of its relevance to a matter in controversy in a proceeding (as defined in § 2.301(a)(4)), whether or not the information would otherwise be entitled to confidential treatment under this subpart. Release of information because of its relevance to a matter in controversy in a proceeding shall be made only in accordance with this paragraph (g).

(2) The procedures of this paragraph (g) may be initiated by the EPA office which will present EPA's position at a hearing in the proceeding (or, if the proceeding will not or may not include a hearing at which an EPA position will be presented, the EPA office which has primary responsibility for the proceeding). Any person who is not employed by EPA and who is participating in the proceeding may also initiate the procedures of this paragraph (g) by furnishing to the EPA office mentioned in the preceding sentence a written request for release of information under this paragraph (g), which request shall include:

(A) A description of the information sought;

(B) Prominent mention of this paragraph (g) and of the particular proceeding involved;

(C) Any information necessary for a determination under paragraph (g)(6) of this section; and

(D) Any commitment the requestor may wish to make concerning limitations on further use or disclosure of the information.

(3) If information is available to the public under § 2.204(b) or § 2.204(c) without need for further notice to any affected business, any request for or proposed release of the information shall be treated in accordance with § 2.204 rather than this paragraph (g).

(4) If the information may not be made available to the public under § 2.204(b) or § 2.204(c) without further notice to one or more affected businesses, and if the EPA office mentioned in paragraph (g)(2) of this section finds that the information appears to be relevant to a matter which is or is likely to be in controversy in the proceeding, the EPA office shall furnish each such affected business a written notice (by certified mail, return receipt requested, or by personal delivery) stating that EPA is considering release of the information under this paragraph (g). The notice shall indicate which proceeding is involved, shall state which EPA office or other person suggested release of the information, and shall enclose a copy of any request made under paragraph (g)(2) of this section. The notice shall afford the business an opportunity to furnish the EPA office comments concerning objections to the proposed release and/or possible protective arrangements or commitments that should be a condition of release, and shall state a date (found by the EPA office to be reasonable in the circumstances) for receipt by the EPA office of such comments. The notice shall further state that if comments are not submitted in a timely manner in response

to such notice, any claim covering the information will be treated as waived or withdrawn and the information will thereafter be available to the public.

(5) Unless all proposals for release of the information under this paragraph (g) have been withdrawn, in any case where timely comments are received in response to the notice under paragraph (g)(4) of this section the EPA office shall forward all documents pertaining to the matter to the hearing officer who is presiding over the proceeding (or, if no hearing officer is presiding, to the Regional Counsel or General Counsel), with a statement by the head of the office concerning the relevance of the information in question to matters which are or are likely to be in controversy in the proceeding, and a statement of whether release of the information would serve the public interest.

(6) The hearing officer (or Regional Counsel or General Counsel) to whom such documents have been furnished shall determine that the information may be released under this paragraph (g) if (and only if) he finds that the information is relevant to a matter which is or is likely to be in controversy in the proceeding, and—

(i) The EPA office which forwarded the documents to him has determined that release of the information would serve the public interest; or

(ii) He finds that a person not employed by EPA and who is participating in the proceeding has satisfactorily shown that (A) with respect to a significant matter which is or is likely to be in controversy in the proceeding, the person's ability to participate effectively in the proceeding will be significantly impaired unless the information is released, and (B) the harm to any affected business which is not a party to the proceeding (and not a necessary party) that would result from the proposed release of the information is outweighed by the harm which would result to the requesting person and to the public interest if release were not made.

(7) Whenever it is determined under paragraph (g)(6) of this section that information may be released under this paragraph (g), the EPA office mentioned in paragraph (g)(2) of this section shall furnish each business which has furnished timely comments concerning such release a notice (by certified mail, return receipt requested, or by personal delivery). The notice shall enclose a copy of the determination. The notice shall state that the information will be released in accordance with the determination, ten calendar days after the date of receipt by the business of the notice (except that a hearing officer may prescribe such shorter waiting period in his determination as he finds necessary to avoid delay of a proceeding which either concerns a situation posing an imminent and substantial danger to public health or welfare or is required by statute to be completed by a certain date).

(8) The hearing officer, Regional Counsel or General Counsel who determines under this paragraph (g) that information may be released may condition such release on the making of such protective arrangements and commitments as he finds warranted. Release of information under this paragraph (g) shall not, of itself, affect the entitlement of information to confidential treatment under other provisions of this subpart.

(h) *Disclosure to authorized representatives of EPA.* (1) Under sections 114, 208 and 307 of the Act, any information to which this section applies may be disclosed to any authorized representative of the United States, notwithstanding any other provision of or determination under this subpart. Such disclosures shall be made only in accordance with this paragraph (h).

(2) Except as otherwise approved by the General Counsel in specific instances, information will be disclosed under this paragraph (h) only to—

(i) Federal, State, interstate or local governmental bodies which have duties or responsibilities under the Act or under regulations which implement the Act; or

(ii) Persons under contract to EPA to perform work for EPA in connection with the Act or regulations which implement the Act.

(3) Information will be disclosed under this paragraph (h) only when it appears to the EPA office in possession of the information that the potential recipient of the information requires it in order to carry out duties, responsibilities or contract work under the Act or under regulations which implement the Act.

(4) Any information disclosed under this paragraph (h) shall bear (or be accompanied by) a clear and prominent notice stating that the information is or may be entitled to confidential treatment for reasons of business confidentiality.

(5) No disclosure under this paragraph (h) shall be made to any person under contract to EPA unless the contractor has first agreed in the contract that the contractor and its employees will use the information only for the purpose of carrying out the contract with EPA and will refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and that the contractor will notify each of its employees having access to the information of such restrictions on use and disclosure of the information.

### § 2.302 Special rules governing certain information obtained under the Federal Water Pollution Control Act.

(a) *Definitions.* For the purposes of this section:

(1) "Act" means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) "Effluent data" means, with reference to any prior, existing or contemplated source of any pollutant (as that term is defined in section 502(6) of the Act, 33 U.S.C. 1362(6)), information stating the experienced or predicted amount, frequency, concentration, temperature, velocity or nature of any pollutant discharged from the source, or any combination of the foregoing; a description of the location or nature of the source sufficient to identify it and distinguish it from other sources (including, where necessary for identification, a description of the device, installation or operation constituting the source); and any information necessary to determine the emissions which a standard or limitation permits a source to emit. However, "effluent data" does not include information concerning research, or the results or research, on any product, device or laboratory-scale installation (or component thereof) which was produced, installed and used only for research purposes, and which does not belong to a class of products, devices or installations which are, or which are definitely scheduled to be, made commercially available or used for other than research purposes.

(3) "Standard or limitation" means any effluent limitation, or any toxic, pretreatment or new source performance standard established or proposed pursuant to the Act or pursuant to regulations under the Act, including limitations in a permit issued by EPA or by a State under section 402 of the Act, 33 U.S.C. 1342.

(4) "Proceeding" means any rulemaking, adjudication or licensing process conducted by EPA under the Act or under regulations which implement the Act, except for determinations under this subpart.

(b) *Applicability.* (1) This section applies only to information obtained or provided under section 308 of the Act, 33 U.S.C. 1318, by the owner or operator of any point source, for carrying out the objective of the Act.

(2) Information will be deemed to have been obtained or provided under section 308 of the Act if it was provided in response to a request by EPA (or a request by a state water pollution control agency) made for the purpose of carrying out the objective of the Act, or if its submission could have been required under section 308, regardless of whether section 308 was cited as authority for the request, whether an order to provide such information was issued under section 309(a)(3) of the Act, 33 U.S.C. 1319(a)(3), whether a civil action was brought under section 309(b) of the Act, 33 U.S.C. 1319(b), and whether the information was provided directly to EPA by the affected business or through some third person. This section does not apply to information obtained under sections 310(d), 312(g)(3) or 509(a) of the Act, 33 U.S.C. 1320(d), 1322(g)(3), 1369(a).

(c) *Basic rules which apply without change.* Section 2.201 through § 2.205, § 2.207, § 2.209 and § 2.211 apply without change to information to which this section applies.

(d) *Special procedure for advance confidentiality determinations.* Section 2.206 does not apply to information to which this section applies, since by definition such information is not voluntarily submitted.

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 does not apply to information to which this section applies. The EPA legal office acting under § 2.205 will determine that such information is entitled to confidential treatment for reasons of business confidentiality if (and only if) it is not ineligible for such treatment under § 2.203, § 2.204 or § 2.205(c), and a detailed showing, by (or on behalf of) a business on behalf of which a business confidentiality claim has been made, satisfies the EPA legal office that—

(1) The business has taken reasonable measures to protect the confidentiality of the information;

(2) The information is not readily obtainable by others by legitimate means;

(3) The business confidentiality claim covering the information is reasonable in view of the nature of the information, the interests and normal practices of the business, and the practices of other businesses;

(4) There is a substantial likelihood that disclosure of the information would substantially harm the competitive position of the business; and

(5) The information is neither effluent data (see § 2.302(a)(2)) nor a standard or limitation (see § 2.302(a)(3)).

(f) *Availability of information not entitled to confidential treatment.* Section 2.210 does not apply to information to which this section applies. Effluent data, standards or limitations, and any other information to which this section applies which is determined under this subpart not to be entitled to confidential treatment, shall be available to the public notwithstanding any other provision of this part.

(g) *Disclosure of information relevant to a proceeding.* Under section 308 of the Act, any information to which this section applies may be released by EPA because of its relevance to a matter in controversy in a proceeding (as defined in § 2.302(a)(4)), whether or not the information would otherwise be entitled to confidential treatment under this subpart. Release of information because of its relevance to a matter in controversy in a proceeding shall be made only in accordance with this paragraph (g). The provisions of § 2.301(g)(2) through § 2.301(g)(8) are incorporated by reference as paragraphs (g)(2) through (g)(8) of this section.

(h) *Disclosure to authorized representatives of EPA.* Under section 308 of the Act, any information to which this section applies may be disclosed to any authorized representative of the United States, notwithstanding any other provision of or determination under this subpart. Such disclosures shall be made only in accordance with this paragraph (h). The provisions of § 2.301(h)(2) through § 2.301(h)(5) are incorporated by reference as paragraphs (h)(2) through (h)(5) of this section. For the purposes of this paragraph (h), references in the incorporated paragraphs to "Act" shall be deemed to be references to "Act" as defined in paragraph (a)(1) of this section.

**§ 2.303 Special rules governing certain information obtained under the Noise Control Act of 1972.**

(a) *Definitions.* For the purposes of this section:

(1) "Act" means the Noise Control Act of 1972, 42 U.S.C. 4901 et seq.

(2) "Manufacturer" has the meaning given it in 42 U.S.C. 4902(6).

(3) "Product" has the meaning given it in 42 U.S.C. 4902(3).

(4) "Proceeding" means any rulemaking, adjudication or licensing process conducted by EPA under the Act or under regulations which implement the Act, except for any determination under this part.

(b) *Applicability.* This section applies only to information provided to or obtained by EPA under section 13 of the Act, 42 U.S.C. 4912, by or from any manufacturer of any product to which regulations under section 6 or 8 of the Act (42 U.S.C. 4905, 4907) apply. Information will be deemed to have been provided or obtained under section 13 of the Act if it was provided in response to a request by EPA made for the purpose of enabling EPA to determine whether the manufacturer has acted or is acting in compliance with the Act, or if its submission could have been required under section 13 of the Act, regardless of whether section 13 was cited as authority for the request, whether an order to provide such information was issued under section 11(d) of the Act, 42 U.S.C. 4910(d), and whether the information was provided directly to EPA by the manufacturer or through some third person.

(c) *Basic rules which apply without change.* Section 2.201 through § 2.205 and § 2.207 through § 2.211 apply without change to information to which this section applies.

(d) *Special procedure for advance confidentiality determinations.* Section 2.206 does not apply to information to which this section applies, since by definition such information is not voluntarily submitted.

(e) [Reserved.]

(f) [Reserved.]

(g) *Disclosure of information relevant to a proceeding.* Under section 13 of the Act, any information to which this section applies may be released by EPA because of its relevance to a matter in controversy in a proceeding (as defined in § 2.203(a)(4)), whether or not the information would otherwise be entitled to confidential treatment under this subpart. Release of information because of its relevance to a matter in controversy in a proceeding shall be made only in accordance with this paragraph (g). The provisions of § 2.301(g)(2) through § 2.301(g)(8) are incorporated by reference as paragraphs (g)(2) through (g)(8) of this section.

**§ 2.304 Special rules governing certain information obtained under the Safe Drinking Water Act.**

(a) *Definitions.* For the purposes of this section:

(1) "Act" means the Safe Drinking Water Act, Pub. L. 93-523 (Dec. 16, 1974), 88 Stat. 1660, 42 U.S.C. 300f et seq.

(2) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(3) "Proceeding" means any rulemaking, adjudication or licensing process conducted by EPA under the Act or under regulations which implement the Act, except for any determination under this part.

(b) *Applicability.* (1) This section applies only to information—

(A) Which was provided to or obtained by EPA pursuant to a requirement of a regulation which was issued by EPA under the Act for the purpose of—

(i) Assisting the Administrator in establishing regulations under the Act;

(ii) Determining whether the person providnig the information has acted or is acting in compliance with the Act; or

(iii) Administering any program of financial assistance under the Act; and

(B) Which was provided by a person—

(i) Who is a supplier of water, as defined in section 1401(5) of the Act, 42 U.S.C. 300f(5);

(ii) Who is or may be subject to a primary drinking water regulation under section 1412 of the Act, 42 U.S.C. 300g-1;

(iii) Who is or may be subject to an applicable underground injection control program, as defined in section 1422(d) of the Act, 42 U.S.C. 300h-1(d);

(iv) Who is or may be subject to the permit requirements of section 1424(b) of the Act, 42 U.S.C. 300h-3(b);

(v) Who is or may be subject to an order issued under section 1441(c) of the Act, 42 U.S.C. 300j(c); or

(vi) Who is a grantee, as defined in section 1445(e) of the Act, 42 U.S.C. 300j-4(e).

(2) This section applies to any information which is described by paragraph (b)(1) of this section if it was provided in response to a request by EPA or its authorized representative (or by a State agency administering any program under the Act) made for any purpose stated in paragraph (b)(1) of this section, or if its submission could have been required under section 1445 of the Act, 42 U.S.C. 300j-4, regardless of whether such section was cited in any request for the information, or whether the information was provided directly to EPA or through some third person.

(c) *Basic rules which apply without change.* Section 2.201 through § 2.205, § 2.207, § 2.209, and § 2.211 apply without change to information to which this section applies.

(d) *Special procedure for advance confidentiality determinations.* Section 2.206 does not apply to information to which this section applies, since by definition such information is not voluntarily submitted.

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 does not apply to information to which this section applies. The EPA legal office acting under § 2.205 will determine that such information is entitled to confidential treatment for reasons of business confidentiality if (and only if) it is not ineligible for such treatment under

§ 2.203, § 2.204 or § 2.205(c), and a detailed showing, by (or on behalf of) a business on behalf of which a business confidentiality claim has been made, satisfies the EPA legal office that—

(1) The business has taken reasonable measures to protect the confidentiality of the information;

(2) The information is not readily obtainable by others by legitimate means;

(3) The business confidentiality claim is reasonable in view of the nature of the information, the interests and normal practices of the business, and the practices of other businesses;

(4) There is a substantial likelihood that disclosure of the information would substantially harm the competitive position of the business; and

(5) The information does not deal with the existence, absence or level of contaminants in drinking water.

(f) *Nondisclosure for reasons other than business confidentiality.* Section 2.210 applies to information to which this section applies, except that notwithstanding any other provision of this part, any information to which this section applies and which deals with the existence, absence or level of contaminants in drinking water shall be available to the public.

(g) *Disclosure of information relevant to a proceeding.* Under section 1445 of the Act, any information to which this section applies may be released by EPA because of its relevance to a matter in controversy in a proceeding (as defined in § 2.304(a)(4)), whether or not the information would otherwise be entitled to confidential treatment under this subpart. Release of information because of its relevance to a matter in controversy in a proceeding shall be made only in accordance with this paragraph (g). The provisions of § 2.301(g)(2) through § 2.301(g)(8) are incorporated by reference as paragraphs (g)(2) through (g)(8) of this section.

(h) *Disclosure to authorized representatives of EPA.* Under section 1445 of the Act, any information to which this section applies may be disclosed to any authorized representative of the United States, notwithstanding any other provision of or determination under this subpart. Such disclosures shall be made only in accordance with this paragraph (h). The provisions of § 2.301(h)(2) through § 2.301(h)(5) are incorporated by reference as paragraphs (h)(2) through (h)(5) of this section. For the purposes of this paragraph (h), references in the incorporated paragraphs to "Act" shall be deemed to be references to "Act" as defined in paragraph (a)(1) of this section.

§ 2.305 [Reserved]

§ 2.306 [Reserved]

**§ 2.307 Special rules governing certain information obtained under the Federal Insecticide, Fungicide and Rodenticide Act.**

(a) *Definitions.* For the purposes of this section:

(1) "Act" means the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. 136 et seq., and its predecessor, 7 U.S.C. 135 et seq.

(2) "Applicant" means any person who has submitted to EPA (or to a predecessor agency with responsibility for administering the Act) a registration statement or application for registration under the Act of a pesticide or an establishment.

(3) "Registrant" means any person who has obtained registration under the Act of a pesticide or an establishment.

(b) *Applicability.* This section applies to all information submitted to EPA by an applicant or registrant for the purpose of satisfying some requirement or condition of the Act or of regulations which implement the Act, including information originally submitted to EPA for some other purpose but incorporated by the applicant or registrant into a submission in order to satisfy some requirement or condition of the Act or of regulations which implement the Act. This section does not apply to information supplied to EPA by a petitioner in support of a petition for a tolerance under 21 U.S.C. 346a(d), unless the information is also described by the first sentence of this paragraph.

(c) *Basic rules which apply without change.* Section 2.201 through § 2.203, § 2.207, § 2.209, § 2.210 and § 2.211 apply without change to information to which this section applies.

(d) *Initial action by EPA office possessing information.* Section 2.204 applies to information to which this section applies, except as provided in paragraph (e) of this section with regard to changes to § 2.205(f) and § 2.205(i).

(e) *Final confidentiality determination by EPA legal office.* Section 2.205 applies to information to which this section applies, except that—

(1) Notwithstanding § 2.205(i), the General Counsel, rather than the Regional Counsel, shall in all cases make the determinations and take the actions required by § 2.205; and

(2) Notwithstanding § 2.205(f), if, within 30 calendar days of the date of receipt by a business of the notice prescribed by § 2.205(f)(1), EPA receives notice from the business that it has commenced an action for a declaratory judgment under section 10(c) of the Act (7 U.S.C. 136h(c)), EPA shall not release the information in question until the declaratory judgment action and all related appeals have been concluded. No information to which this section applies which was the subject of a notice under § 2.205(f)(1) shall be released until the passage of such 30-day period, unless the business notifies EPA that it will not commence an action under Section 10(c) of the Act. The notice's contents (§ 2.205(f)(2)) shall be consistent with, and reflect the provisions of, this paragraph. Notwithstanding § 2.205(g), the 30-day waiting period shall not be shortened without the business's consent.

(f) *Special procedure for advance confidentiality determinations.* Section 2.206 does not apply to information to which this section applies, since by definition such information is not voluntarily submitted.

(g) *Substantive criteria for use in confidentiality determinations.* Section 2.208 does not apply to information to which this section applies. Such information will be determined by EPA to be entitled to confidential treatment for reasons of business confidentiality if (and only if) it is not ineligible for such treatment under § 2.203, § 2.204 or § 2.205(c), and a detailed showing, by (or on behalf of) a business on behalf of which a business confidentiality claim has been made, satisfies the EPA legal office that—

(1) The business has taken reasonable measures to protect the confidentiality of the information;

(2) The information is not readily obtainable by others by legitimate means;

(3) The business confidentiality claim covering the information is reasonable in view of the nature of the information, the interests and normal practices of the business, and the practices of other businesses;

(4) There is a substantial likelihood that disclosure of the information would substantially harm the competitive position of the business; and

(5) The information does not consist of the methodology or results of tests which concern the safety, toxicity or efficacy of, or state the adverse effects on humans of exposure to, a pesticide which is or has been registered under the Act or for which a notice of application for registration has been published under section 3(c)(4) of the Act, 7 U.S.C. 136a(c)(4).

(h) *Disclosure of information in special circumstances.* Section 2.209 does not apply to information to which this section applies. Under sections 10(b) and 12(a)(2)(D) of the Act, 7 U.S.C. 136h(b), 136j(a)(2)(D), notwithstanding the fact that information otherwise may be entitled to confidential treatment for reasons of business confidentiality, EPA may disclose any such information—

(1) If EPA has obtained the prior consent of each affected business to such disclosure;

(2) Upon request, to another Federal executive agency (EPA will notify the requesting agency of any business confidentiality claim covering the information, and of any prior EPA determination concerning entitlement to confidential treatment);

(3) To physicians, pharmacists, and other qualified persons, including hospitals, veterinarians, law enforcement personnel, or Federal, state or local governmental agencies with responsibilities for protection of public health, and employees of any such persons or agencies, when disclosure of the information is necessary in order to treat illness or injury to persons or animals, or to prevent imminent harm to persons or animals, in the opinion of the Administrator or of any employee of EPA to whom the

Administrator has delegated authority to disclose information under this paragraph;

(4) To any person under contract to EPA to perform work for EPA in connection with the Act or regulations which implement the Act, when disclosure of the information is necessary for the performance of that work. Information may be disclosed under this paragraph (4) only if it bears (or is accompanied by) a clear and prominent notice stating that the information is or may be entitled to confidential treatment for reasons of business confidentiality, and only if the contractor has first agreed in the contract that the contractor and its employees will use the information only for the purpose of carrying out the contract with EPA and will refrain from disclosing the information to anyone other than EPA without the prior written approval either of each affected business or of an EPA legal office, and that the contractor will notify each of its employees having access to the information of such restrictions on use and disclosure of the information;

(5) Which relates to formulas of products, at any public hearing or in findings of fact issued by the Administrator; or

(6) If its disclosure is duly ordered by a Federal court.

**§ 2.308 Special rules governing certain information obtained under the Federal Food, Drug and Cosmetic Act.**

(a) *Definitions.* For the purposes of this section:

(1) "Act" means the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. 301 et seq.

(2) "Petition" means a petition for the issuance of a regulation establishing a tolerance for a pesticide chemical or exempting the pesticide chemical from the necessity of a tolerance, pursuant to section 408(d) of the Act, 21 U.S.C. 346 a(d).

(3) "Petitioner" means a person who has submitted a petition to EPA.

(b) *Applicability.* This section applies only to information submitted to EPA (or to an advisory committee) by a petitioner, solely in support of a petition which has not been acted on by the publication by EPA of a regulation establishing a tolerance for a pesticide chemical or exempting the pesticide chemical from the necessity of a tolerance, as provided in section 408(d) (2) or (3) of the Act, 21 U.S.C. 346a(d) (2) or (3). Section 2.307, not this section, applies to information described by the first sentence of § 2.307(b) (material incorporated into submissions in order to satisfy the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended). This section does not apply to information gathered by EPA under a proceeding initiated by EPA to establish a tolerance under section 408 (e) of the Act, 21 U.S.C. 346a(e).

(c) *Basic rules which apply without change.* Section 2.201 through § 2.203, § 2.209, § 2.210 and § 2.211 apply without change to information to which this section applies.

(d) *Business confidentiality claim to accompany information.* No information to which this section applies shall be made available to the public on the basis of failure to comply with § 2.203.

(e) *Initial action by EPA office possessing information.* Section 2.204 applies to information to which this section applies, except as provided in paragraph (e) of this section with regard to changes in § 2.205(f) and § 2.206(i), and except that—

(1) The EPA office taking action under § 2.204 shall treat any information to which this section appears to apply as if it were covered by a business confidentiality claim and entitled to confidential treatment for the purposes of § 2.204(c) and § 2.204(d), and

(2) The notice and request for comments prescribed by § 2.204(e) shall state, in addition to the provisions prescribed by § 2.204(e), that—

(A) Section 408(f) of the Act, 21 U.S.C. 346a(f), affords absolute confidentiality to information to which this section applies, but after publication by EPA of a regulation establishing a tolerance (or exempting the pesticide chemical from the necessity of a tolerance) neither section 408(f) of the Act nor this section affords any protection to the information;

(B) Information submitted in a petition which is incorporated into a submission in order to satisfy a requirement or condition of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 135 et seq., 136 et seq., is regarded by EPA as being governed by § 2.307 and not by this section;

(C) Although it appears that this section may currently apply to the information, EPA is presently engaged in determining whether for any reason the information is entitled to confidential treatment or will be entitled to confidential treatment if and when this section no longer applies to the information; and

(D) Information entitled to confidential treatment under section 408(f) of the Act and this section will not be disclosed until such time as it is determined that this section no longer applies, but will be available to the public thereafter (subject to § 2.210) unless the business furnishes timely comments in response to the invitation to comment and otherwise complies with the requirements and conditions of this subpart.

(f) *Final confidentiality determination by EPA legal office.* Section 2.205 applies to information to which this section applies, except that—

(1) Notwithstanding § 2.205(f), the General Counsel, rather than the Regional Counsel, shall in all cases make the determinations and take the actions required by § 2.205; and

(2) In addition to the circumstances mentioned in § 2.205(f)(1), notice in the form prescribed by § 2.205(f)(2) shall be furnished to each affected business whenever information is found to be temporarily entitled to confidential treatment under section 408(f) of the Act but not otherwise entitled to confidential treatment. In such a case, the notice shall state that the information will be made available to the public (subject to § 2.210) upon cessation of entitlement to confidential treatment under section 408(f) of the Act or upon the passage of 30 calendar days, whichever occurs later, unless a Federal court has first ordered EPA not to make the information available to the public. No information to which this section applies shall be made available to the public before such 30-day period has passed unless all business confidentiality claims covering it have been waived or withdrawn. Notwithstanding § 2.205(g), the 30-day waiting period shall not be shortened without the consent of each affected business.

(g) *Special procedure for advance confidentiality determinations.* Section 2.206 does not apply to information to which this section applies, since by definition such information is not voluntarily submitted.

(h) *Substantive criteria for use in confidentiality determinations.* Section 2.208 does not apply to information to which this section applies. The EPA legal office acting under § 2.205 will determine that any information to which this section applies is entitled to confidential treatment for reasons of business confidentiality for so long as this section continues to apply, under 21 U.S.C. 346a(f).

(i) *Disclosure to advisory committees.* Notwithstanding any other provision of this section, any information to which this section applies may be disclosed by EPA to an advisory committee in accordance with section 408(d) of the Act, 21 U.S.C. 346a(d).

**§ 2.309 Special rules governing certain information obtained under the Marine Protection, Research and Sanctuaries Act of 1972.**

(a) *Definitions.* For the purposes of this section:

(1) "Act" means the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. 1401 et seq.

(2) "Permit" means any permit applies for or granted under the Act.

(3) "Application" means an application for a permit.

(b) *Applicability.* This section applies only to all information received by EPA as a part of any application or in connection with any permit.

(c) *Basic rules which apply without change.* Section 2.201 through § 2.203, § 2.207, § 2.209 and § 2.211 apply without change to information to which this section applies.

(d) *Initial action by EPA office possessing information.* Section 2.2.04 applies to information to which this section applies, except that—

(1) Any information received by EPA as part of any application for a permit under the Act shall, pursuant to section 104(f) of the Act, 33 U.S.C. 1414(f), be available to the public, notwithstanding any other provision of or determination under this part. Accordingly, such information need not be afforded confidential treatment at any stage, and no EPA office need make business confidentiality claim inquiries under § 2.204(c) or furnish notice under § 2.204(d) or (e).

(2) Under 33 U.S.C. 1414, information received by EPA "in connection with any permit granted" under the Act is also required to be available to the public. It may not always be immediately clear whether given information was received by EPA in connection with a permit granted under the Act, however. When there is substantial doubt whether this section applies to the information in question, the various actions prescribed by § 2.204 should be taken; but if at any time it is clear that the information was received by EPA in connection with any permit granted under the Act, the information shall be determined to be available to the public and no further notice, inquiry or waiting period requirements need be followed.

(e) *Final confidentiality determination by EPA legal office.* Section 2.205 applies to information to which this section applies, except that the limitations contained in paragraph (d) of this section also apply to § 2.205 and to actions taken thereunder by an EPA legal office.

(f) *Special procedure for advance confidentiality determinations.* Section 2.206 does not apply to information to which this section applies.

(g) *Substantive criteria for use in confidentiality determinations.* Section 2.208 does not apply to information to which this section applies. Such information shall not be determined to be entitled to confidential treatment for reasons of business confidentiality or for any other reason and shall be available to the public.

(h) *Nondisclosure for reasons other than business confidentiality.* Section 2.210 does not apply to information to which this section applies; see paragraph (g) of this section.

## PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

2. By revising § 60.9 to read as follows:

**§ 60.9 Availability of information.**

The availability to the public of information provided to, or otherwise obtained by, the Administrator in accordance with this part shall be governed by part 2 of this chapter. Information submitted voluntarily to the Administrator for the purposes of §§ 60.5–60.6 is governed by § 2.200 through § 2.210 of this chapter and not by § 2.301 of this chapter.

## PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

3. By revising § 61.15 to read as follows:

**§ 61.15 Availability of information.**

The availability to the public of information provided to, or otherwise obtained by, the Administrator in accordance with this part shall be governed by part 2 of this chapter.

## PART 79—REGISTRATION OF FUEL ADDITIVES

4. By revising § 79.3 to read as follows:

**§ 79.3 Availability of information.**

The availability to the public of information provided to, or otherwise obtained by, the Administrator in accordance with this part shall be governed by part 2 of this chapter.

## PART 125—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

5. By revising § 125.37 to read as follows:

**§ 125.37 Public access to information.**

Certifications issued pursuant to section 401 of the Act, the comments of all governmental agencies on a permit application, and draft permits prepared pursuant to § 125.31 shall be available to the public without restriction. The availability to the public of other information submitted by an applicant to the Administrator in connection with a permit application or which may be furnished by a permittee in connection with required periodic reports shall be governed by the provisions of part 2 of this chapter.

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

6. By revising § 167.5 to read as follows:

**§ 167.5 Pesticides reports.**

* * * * *

(d) The availability to the public of information provided to, or otherwise obtained by, the Administrator in accordance with this part shall be governed by part 2 of this chapter.

## PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

7. By revising paragraph (c) of § 180.7 to read as follows:

**§ 180.7 Petitions proposing tolerances or exemptions for pesticide residues in or on raw agricultural commodities.**

* * * * *

(c) Except as noted in paragraph (d) of this section, a petition shall not be accepted for filing if any of the data prescribed by section 408(d) are lacking or are not set forth so as to be readily understood. The availability to the public of information provided to, or otherwise obtained by, the Agency under this part shall be governed by part 2 of this chapter.

* * * * *

(5 U.S.C. 552, 553; secs. 114, 208, 301, and 307 of the Clean Air Act, as amended, 42 U.S.C. 1857c-9, 1857f-6, 1857g, 1857h-5; secs. 308 and 501 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1318, 1361; sec. 13 of the Noise Control Act of 1972, 42 U.S.C. 4912; secs. 1445 and 1450 of the Safe Drinking Water Act, 42 U.S.C. 300j-4, 300j-9; secs. 10 and 25 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. 136h, 136v; sec. 408(f) of the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 346a(f); and secs. 104(f) and 108 of the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. 1414(f), 1418.)

[FR Doc.75-13247 Filed 5-19-75;8:45 am]

# FEDERAL COMMUNICATIONS COMMISSION

## [47 CFR Part 73]

[Docket No. 20480; RM-2515 etc.]

## FM BROADCAST STATIONS; CALIFORNIA AND TENNESSEE

### Table of Assignments; Notice of Proposed Rulemaking

1. This notice of proposed rulemaking sets forth five proposals for a first FM channel assignment. Each petitioner requests assignment of a Class A channel which would satisfy the spacing requirements. All petitioners state that they will apply for use of the channels and build promptly if the channels are assigned. A sixth proposal, that of Young Radio, Inc., requests an exchange of Class A channel assignments between St. Helena and Santa Rosa, California.

2. *St. Helena/Santa Rosa, California (RM-2515).* Young Radio, Inc., permittee of Station KVYN(FM) (Channel 269A, St. Helena, California), requests that the assignments at St. Helena and Santa Rosa be exchanged. Petitioner alleges that the change will provide a means by which to significantly improve the coverage for its area of service, the Napa Valley. Petitioner presents engineering data to show that the channel exchange will not adversely affect the Santa Rosa facility, KVRE-FM (Channel 257A). Since petitioner has submitted into the record a letter from the KVRE, Inc. president stating that that corporation has no objections to the exchange, we are not issuing an Order to Show Cause. We refer petitioner to the leading cases on reimbursement since KVRE, Inc.'s approval is conditioned upon its receiving the costs incurred because of the change.[1]

3. *Kalkaska, Michigan (RM-2519).* Roy E. Henderson requests the assignment of Channel 249A to Kalkaska as its first FM assignment. Kalkaska, approximately 55 miles south of the Mackinaw Bridge, has a population of 1,475 persons and is located in Kalkaska County (pop. 5,272). Neither the community nor the county presently receives local aural service. Petitioner alleges economic data which demonstrate the need for an FM channel. All minimum mileage separation requirements can be met without altering the existing Table of Assignments. No preclusion study is required. Since Kalkaska is within 250 miles of the Canada-United States border, Canadian approval of the proposal is required according to the Working Agreement under the Canada-United States FM Agreement of 1947.

[1] Circleville, Ohio, 8 F.C.C. 2d 159 (1967); Kenton and Bellefontaine, Ohio, 3 F.C.C. 2d 598 (1966).

4. *Newberry, Michigan (RM-2513).* Leon B. Van Dam asks that Channel 237A be assigned to Newberry as its first FM assignment. Newberry, approximately 100 miles north of Gaylord, Michigan, is the seat of Luce County (pop. 6,789) and has a population of 2,334 persons. Petitioner states that the nighttime services of an FM channel are required to provide the community with severe weather warnings. Minimum mileage separation requirements can be complied with and no preclusion study is necessary. Since Newberry is within 250 miles of the Canada-United States border, Canadian approval of the proposal is required according to the Working Agreement under the Canada-United States FM Agreement of 1947.

5. *Tarkio-Rock Port, Missouri (RM-2516).* Petitioner, Ashdown Broadcasters, Inc., asks that Channel 228A be assigned to Tarkio-Rock Port as the area's first FM assignment. The communities, in Atchison County (pop. 9,240), are located in northwest Missouri, just east of the Nebraska border and 11 miles south of the Iowa state line. Adequate evidence of need for a channel is submitted. Minimum mileage separation requirements are met and no preclusion study need be submitted. Since Tarkio is the larger of the two communities, population of 2,517 as compared to 1,575, the Commission proposes the assignment to that community. If assigned to Tarkio, the channel could be used at Rock Port since the two communities are approximately 7 miles apart. (Rules and regulations, § 73.203(b)).

6. *Surfside Beach, South Carolina (RM-2525).* Theodore J. Gray, Jr., requests the assignment of Channel 276A to Surfside Beach as its first FM assignment. Surfside Beach (pop. 1,329), in Horry County (pop. 69,992), is located approximately four miles south of Myrtle Beach, South Carolina. Sufficient economic data evidencing need for a channel have been submitted. Minimum mileage separation requirements can be met without changing the existing Table of Assignments. No preclusion study is necessary. Surfside presently has no local aural facility.

7. *Trenton, Tennessee (RM-2526).* Trentone Incorporated, licensee of WTNE(AM), Trenton, requests the assignment of Channel 249A to that community as its first FM assignment. Trenton (pop. 4,226), the seat of Gibson County (pop. 47,871), is located in central Tennessee, approximately 93 miles northwest of Memphis, Tennessee. Minimum mileage separation requirements can be met if the transmitter site is located 1 mile northeast of the community.

§ 73.202 [Amended]

8. In light of the above, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) as follows:

| City | Channel number | |
|---|---|---|
| | Present | Proposed |
| St. Helena, Calif. | 269A | 257A |
| Santa Rosa, Calif. | 257A, 261A | 261A, 269A |
| Kalkaska, Mich. | | 240A |
| Newberry, Mich. | | 237A |
| Tarkio, Mo. | | 228A |
| Surfside Beach, S.C. | | 276A |
| Trenton, Tenn. | | 249A |

9. The Commission's authority to institute rule making proceedings; showings required; cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated herein.

10. Interested parties may file comments on or before July 7, 1975, and reply comments on or before July 28, 1975.

Adopted: May 9, 1975.

Released: May 14, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
*Chief, Broadcast Bureau.*

APPENDIX

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *notice of proposed rulemaking* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the notice of proposed rulemaking to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *notice of proposed rulemaking* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.419 of the Commission's rules and regulations, an original and fourteen copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc.75-13239 Filed 5-19-75;8:45 am]

---

## [47 CFR Part 73]

[Docket No. 20481 RM-2388]

## FM BROADCAST STATIONS, OREGON

### Table of Assignments; Notice of Proposed Rulemaking

In the Matter of § 73.202(b).

1. On April 29, 1974, KBND, Inc. (licensee of standard broadcast Station KBND at Bend, Oregon) filed a petition for rule making requesting the assignment of FM Channel 243 to Bend, Oregon. No other revisions in our FM Table of Assignments were proposed. The petition was supplemented on May 3 and June 3, 1974.

2. Public notice of the filing of the petition was given by the Commission on June 18, 1974. A timely opposition to the petition was filed by Paulina Broadcasting Corporation (Paulina), licensee of FM Station KICE at Bend. Petitioner filed a response to the opposition.

3. Bend, Oregon (population 13,710)[1] (1960 population 11,936) is the seat of Deschutes County (population 30,442 (1960 population 23,100)). There are two standard broadcast stations in the community—KBND, licensed to petitioner and KGRL a daytime-only station which is licensed to Juniper Broadcasting, Inc. Two FM channels are assigned to Bend—231 (KXIQ) and 264 (KICE). Juniper Broadcasting, Inc. and Paulina are their respective licensees.

4. Bend, Oregon, is located approximately 90 miles east of Eugene, Oregon, and 120 miles southeast of Portland, Oregon. In advancing the assignment of a third FM channel to the community petitioner offers, and relies on, the following population statistics as facts which describe a rapidly accelerating growth in the Bend area.

* * * Bend's population as of February 1974 was estimated at 17,215, and the population of Deschutes County on that date was

[1] Population figures are from the 1970 U.S. Census unless otherwise specified.

estimated at 37,340. * * *, of primary significance is the fact that both Bend and Deschutes County are experiencing accelerated rates of growth, which are expected to continue. From 1960 to 1970, Bend grew from 11,936 people to 13,710 people, a gain of 1774 persons (or 14.9 percent). But since 1970, Bend's population has increased at a pace over 4 times greater than the growth rate experienced by the city during the 1960s. The average annual rate of growth between 1960 and 1970 was about 1.5 percent, but since 1970 it has accelerated to a level of about 6.6 percent. Another significant characteristic of the recent growth spurt has been the population's spillover beyond the corporate limits of Bend into the adjacent urban fringe area of Deschutes County. This was not a dominant feature of growth until the past several years. According to Albert D. Kreisker and Associates of Pasadena, California, the Bend Urban Area population as of February 1974 was almost 26,000 people. In 1970 that total was about 19,000 people. Thus, in the last four years the Bend Urban Area has grown by about 7,000 people, or by 34 percent. This volume of growth represents over 90 percent of the total growth in Deschutes County between 1970 and 1974, and the annual rate of growth for the Bend Urban Area since 1970 has been almost 9 percent. This is indeed dramatic growth. Since 1970 the population of Deschutes County has increased by 22.7 percent. Contrasted to the growth between 1960 and 1970, during which decade Deschutes County grew by only about 7,000 people, there is also accelerated growth in the county. The growth population characteristics in this area can be seen by the following graph:

"*Population growth—1940–74*

| "Area | 1940 | 1950 | 1960 | 1970 | 1974 |
|---|---|---|---|---|---|
| City of Bend | 10,021 | 11,409 | 11,936 | 13,710 | 17,215 |
| Bend urban area | | | | 19,150 | 25,690 |
| Deschutes County | 18,631 | 21,812 | 23,100 | 30,442 | [1] 37,340" |

[1] The quoted statistics offered by petitioner are maintained to have been drawn from: U.S. census; land use survey, urban area planning study; and Albert D. Kreisker and Associates.

Petitioner supports the above statistics concerning population with statistics demonstrating rapid growth in the following sectors of the area's life-education, employment, manufacturing, wholesale-retail trade, and contract construction which, for example, grew by 252 percent between 1962 and 1972 (building valuation in Bend increased from $2.2 million in 1968 to almost $18 million in 1973—a rate of 698 percent). The Bend Urban Area is predicted, by Albert D. Kreisker and Associates, to have a population of 45,000 people by 1985.

5. KBND, Inc.'s engineering study indicates that its proposal would not provide a first or second FM service to any part of the proposed coverage area, inasmuch as this area is already served by facilities on Channel 231 (KXIQ) and Channel 264 (KICE). Further, the proposed service would not provide nighttime service for any new areas. However, petitioner estimates that its proposal would provide a third potential FM service to a population of 22,538 in a 2,111 square mile area; a fourth potential FM service to a population of 17,658 in a 850 square mile area; and a fifth potential FM service to a population of 1,796 in a 219 square mile area.

6. With respect to channel preclusion—although the petitioner's engineering study indicates that the proposed assignment would result in preclusions on Channel 243 and on several adjacent channels, such preclusions fall on areas having a number of unoccupied assignments. Moreover, in most instances where such preclusion would occur the petitioner has proposed alternate assignments which appear to be technically feasible. Therefore, it is argued that the preclusion effects created by the petitioner's proposal are comparatively insignificant with respect to future availability of local FM services within the affected areas.

7. KBND, Inc.'s final assertion is that this rule making proceeding is in the public interest because it is an effort to maximize the available aural services at Bend while minimizing the delay in implementing them by avoiding a lengthy (and costly) comparative hearing between itself and Juniper Broadcasting, Inc., for the use of Channel 231 assigned to Bend (see Docket Nos. 19667–8). Petitioner maintains that it will promptly apply for the use of Channel 243 if it is assigned to Bend and if granted a construction permit, build a new FM station.

8. Paulina raises a variety of interrelated questions in connection with petitioner's proposal. It points out that its station would be at a severe disadvantage in the event petitioner's proposal is successful. KICE would be in competition with two AM–FM combinations at Bend—Juniper Broadcasting, Inc.'s KGRL and KXIQ and petitioner's KBND and the proposed Channel 243 operation. Paulina maintains that such a circumstance is violative of the public interest in that it advances an anti-competitive situation. The opposition goes on to state that granting petitioner's alleged population for Bend in 1974 (17,215), Bend already has more than ample aural service in its existing two AM and two FM stations and that this is particularly true if one considers the fact that a variety of distant FM signals are provided to the community over the local cable system. With regard to distant stations, it is asserted that the signals of several of them (KEZI and KFMY, Eugene, Oregon and KPAM–FM, Portland, Oregon) will be interfered with at Bend by the activation of a Channel 243 there. In addition, Paulina underscores the Commission's rule of thumb that communities under 50,000 in population normally should be assigned only two FM channels and argues that the said rule or policy precludes the assignment of Channel 243 to Bend. Finally, Paulina argues that it is Commission policy that a request for an additional assignment will normally not be considered if it is merely to eliminate a comparative hearing (citing Bangor, Maine, 21 RR 2d 1742 (1971)).

9. In response to the Paulina opposition, KBND, Inc. intimates that Paulina is preoccupied only with avoiding future competition. KBND, Inc., explains that the AM–FM combination it hopes for in Bend meets the requirements of § 73.35 of our rules as to the proposed joint ownership. With regard to the question of the need of Bend for additional service, petitioner reiterates some of its demographic statistics underscoring the fact that Bend and its county are growing at a very rapid rate. Commenting on the allegation that a Channel 243 at Bend interferes with reception of some distant signals in Bend, KBND, Inc. simply remarks that the proposed FM service will be constructed in full accordance with the Commission's minimum mileage separation requirements—requirements which give other stations all the protection from interference they are due.

10. As to our population criteria which suggest the assignment of one or two channels to communities of under 50,000 population, petitioner asserts that where, as here, there is no adverse preclusionary impact there is good reason to exceed the criteria where there is an interested applicant. It further states that as pointed out by the Commission in Yakima, Washington, 42 F.C.C. 2d 548 (1973), the population guidelines are not viewed as a straitjacket precluding consideration of special circumstances.

11. Finally, petitioner argues that in trying to analogize the instant petition to the Bangor situation, Paulina has failed to mention that in the Bangor case there was preclusion of future assignments in a substantial area, which is not the situation here, and that the proposed Bangor assignment was contingent on another channel not being assigned to Augusta, Maine. Petitioner also asserts that the Commission has no per se ban on petitions for rule making to eliminate a comparative hearing but, rather, it will normally not consider that ground to be a sufficient showing. It implies that this situation is not normal since the proposed assignment to Bend may be made without any negative preclusionary impact, since it will be an assignment to a dramatically growing area, and since it will be applied for by a well-qualified and experienced broadcaster.

12. An evaluation of the pleadings in this proceeding at this time indicates that the matter requires a close examination of both the facts and the manner of application of section 307(b) of the Communications Act. Hence, we find it in the public interest to commence a rule making proceeding to more closely evaluate petitioner's proposal to assign FM Channel 243 to Bend, Oregon.

13. Accordingly, we propose, for consideration, the following revision in our FM Table of Assignments (§ 73.202(b) of our rules) with respect to the city listed below:

| City | Channel number | |
|---|---|---|
| | Present | Proposed |
| Bend, Oreg. | 231, 264 | 231, 243, 264 |

14. Comments in this proceeding must be filed on or before July 7, 1975, while reply comments must be filed on or before July 28, 1975.

15. Authority for the institution of this rule making proceeding and the procedural rules and regulations governing it are set out and/or cited in the attached Appendix.

Adopted: May 9, 1975.

Released: May 15, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
*Chief, Broadcast Bureau.*

APPENDIX

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *notice of proposed rulemaking* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the notice of proposed rulemaking to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this notice, they will be considered as comments in the proceeding, and public notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rulemaking to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, an original and fourteen copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc.75-13238 Filed 5-19-75;8:45 am]

---

## [47 CFR Part 73]

[Docket No. 20479; RM-2447]

## FM BROADCAST STATIONS, WEST VIRGINIA

### Table of Assignments; Notice of Proposed Rulemaking

1. *Petitioner, proposal, and comments.* (a) Petition for rulemaking filed August 5, 1974, by Hillbilly Broadcaster, Inc., proposing in the alternative, assignment of either Channel 224A or 265A to Princeton, West Virginia, as its second FM assignment.

(b) The assignment of Channel 224A requires no changes in the existing Table of Assignments. In order to assign Channel 265A to Princeton, however, unoccupied and unapplied for Channel 265A at Montgomery, West Virginia, would have to be deleted. Petitioner proposes Channel 296A as a substitute Montgomery assignment, should its Channel 265A alternative be adopted.

(c) Petitioner views a Channel 265A assignment as more desirable because it provides a greater number of transmitter site options.

2. *Demographic data.* (a) *Location:* Princeton, the seat of Mercer County, is approximately 75 miles south-southeast of Charleston, West Virginia, Montgomery, located on the Kanawha and Fayette Counties' border, is approximately 25 miles southeast of Charleston and 58 miles north-northwest of Princeton.

(b) *Population—1970 U.S. Census:* Princeton—7,253; Mercer County—63,206; Montgomery—2,525; Fayette County—49,332; Kanawha County—229,515.

(c) *Present local broadcast service:* Princeton receives local service from Class IV AM Station WAEY and WAEY-FM (Channel 240A). Local service is provided at Montgomery by Class IV AM Station WMON. Montgomery is also currently assigned unoccupied and unapplied for Channel 265A.

(d) *Economic considerations:* Petitioner has adduced economic evidence to indicate sufficient need for a second FM assignment.

3. *Preclusions.* The 224A alternative would cause preclusion on the co-channel and on Channel 225. If the Channel 265A assignment were made only co-channel preclusion would occur. Less area would be precluded by a Channel 265A assignment than would be precluded by a Channel 224A assignment. Moreover, were Channel 265A to be assigned to Princeton, Channel 224A would be available for assignment in much of the Channel 265A preclusion area.

§ 73.202 [Amended]

4. In light of the above, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) as follows:

| City | Channel number | |
|---|---|---|
| | Present | Proposed |
| Princeton, W. Va. | 240A | 240A, 265A |
| Montgomery, W. Va. | 265A | 296A |
| or | | |
| Princeton, W. Va. | 240A | 242A, 240A |

5. The Commission's authority to institute rule making proceedings, showings required; cut-off procedures; and filing requirements are contained in the attached Appendix and are incorporated herein.

6. Interested parties may file comments on or before July 7, 1975, and reply comments on or before July 28, 1975.

Adopted: May 9, 1975.

Released: May 13, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
*Chief, Broadcast Bureau.*

APPENDIX

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the notice of proposed rule making to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the notice of proposed rule making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See section 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *notice of proposed rule making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of section 1.419 of the Commission's rules and regulations, an original and fourteen copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, D.C.

[FR Doc.75-13081 Filed 5-19-75;8:45 am]

## FEDERAL POWER COMMISSION

**[ 18 CFR Parts 2, 154, 157 ]**

**[Docket No. RM75-14]**

### NATURAL GAS

**National Rates for Jurisdictional Sales; Further Extension of Time**

MAY 13, 1975.

National rates for jurisdictional sales of natural gas dedicated to interstate commerce on or after January 1, 1973, for the period January 1, 1975, to December 31, 1976.

Notice is hereby given that the date for filing comments in the above matter, set by notice issued March 4, 1975 (40 FR 11739, March 13, 1975), is further extended to and including May 30, 1975, and the date for filing reply comments is further extended to and including June 30, 1975.

By direction of the Commission.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75-13126 Filed 5-19-75;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 STATE

[CM-5/49]

### ADVISORY COMMITTEE ON THE LAW OF THE SEA

#### Closed Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the Advisory Committee on the Law of the Sea will hold both closed and open meetings on Friday, June 27 and Saturday, June 28, 1975, in the International Conference Room, Room 1309, U.S. Department of State, Washington, D.C. The open session of the meeting will take place on Saturday, June 28, 1975, at 1 p.m.

The purpose of the closed meeting is to review developments of the 1975 Geneva Session of the Third United Nations Conference on the Law of the Sea and to discuss preparations for further negotiations. During these closed sessions, documents classified under the provisions of Executive Order 11652 will be discussed.

These documents, which contain new substantive proposals as well as revisions of earlier policy statements, relate to the issues which the United States will be further negotiating in the Conference. The documents are exempt under 5 USC 552(b)(1), and are required to be withheld from disclosure in the public interest.

The issues cover such subjects as freedom of navigation on the high seas and in international straits, the establishment of a deep seabeds mining regime, the breadth of the continental margin, the juridical content of the economic zone, and other related topics involving U.S. national security matters. Premature disclosure of the contents of these documents could adversely affect our foreign relations interests and jeopardize the chances of obtaining a timely and satisfactory Law of the Sea Treaty.

The open session of the Advisory Committee meeting will discuss all principal agenda issues to be considered during the Third United Nations Conference on the Law of the Sea, including those issues stated above, but will not examine the classified items discussed during the closed session.

The Advisory Committee on the Law of the Sea represents a broad cross-section of industries, professions, academic disciplines and other public groups. As such, it will comprehensively review the proposals which will come before the Conference.

Dated: April 30, 1975.

OTHO E. ESKIN,
*Staff Director, NSC Interagency Task Force on the Law of the Sea.*

[FR Doc.75-13148 Filed 5-19-75;8:45 am]

---

[CM-5/50]

### ADVISORY COMMITTEE ON PRIVATE INTERNATIONAL LAW

#### Meeting

A meeting of the Study Group on Matrimonial Matters, a subgroup of the Secretary of State's Advisory Committee on Private International Law, will take place on Wednesday, June 4, 1975, at Pleasant Hall, Louisiana State University, Baton Rouge, Louisiana. The meeting, which will begin at 10 a.m., will be open to the public.

The purpose of the meeting is to review the conclusions provisionally adopted by the first session of the Hague Conference's Special Commission on Matrimonial Property and to review a draft convention based on those conclusions that will be considered at a second meeting of the Special Commission beginning on June 9.

Members of the public who desire to attend the meeting will be admitted up to the limits of the capacity of the meeting room. It is requested that prior to June 2, 1975, members of the general public who plan to attend the meeting inform their name and affiliation and address to Mr. Robert E. Dalton, Office of the Legal Adviser, Department of State; the telephone number is area code 202, 632-2107.

Dated: May 14, 1975.

ROBERT E. DALTON,
*Executive Director.*

[FR Doc.75-13163 Filed 5-19-75;8:45 am]

## DEPARTMENT OF THE TREASURY

### Customs Service

### CHEESE FROM AUSTRIA

#### Preliminary Countervailing Duty Determination

On January 15, 1975, a "Notice of Receipt of Countervailing Duty Petitions" was published in the FEDERAL REGISTER (40 FR 2718). The notice stated that petitions had been received, including among others, a petition alleging that payments, bestowals, rebates or refunds, granted by the Government of Austria upon the manufacture, production, or exportation of cheese constitute the payment or bestowal of a bounty or grant, directly or indirectly, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303).

It has been tentatively determined that payments are being made, directly or indirectly upon the manufacture, production, or exportation of Austrian cheese, which constitute a bounty or grant within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303).

Information indicates that the bounty or grant on certain soft cheeses range from approximately $0.02 to $0.40 per pound, and on certain hard cheeses from approximately $0.20 to $0.33 per pound.

Interested persons are invited to submit any relevant data, views, or arguments with respect to this preliminary determination in writing to the Commissioner of Customs, 2100 K Street, NW., Washington, D.C. 20229, in time to be received by his office not later than June 19, 1975.

This preliminary determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

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

Approved: May 7, 1975.

DAVID R. MACDONALD,
*Assistant Secretary of the Treasury.*

[FR Doc.75-12859 Filed 5-19-75;8:45 am]

---

[T.D. 75-111; Customs Delegation Order No. 49]

### REGIONAL DIRECTORS OF INVESTIGATIONS ET AL.

#### Customs Officers Delegation of Authority

MAY 9, 1975.

By virtue of authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, there are hereby delegated to regional directors of investigations, assistant regional directors of investigations, special agents in charge, resident agents, Customs attaches and senior Customs representatives of the United States Customs Service the functions,

rights, privileges, powers, and duties under section 509 of the Tariff Act of 1930, as amended (19 U.S.C. 1509), to cite to appear before them and examine upon oath, which they are authorized to administer, any owner, importer, consignee, agent, or other person upon any matter or thing which they may deem material with respect to any imported merchandise then under consideration or previously imported within one year, in ascertaining the classification or the value thereof or the rate or amount of duty; to require the production of any letters, accounts, contracts, invoices, or other documents relating to said merchandise; and to require such testimony to be reduced to writing. This delegation of authority will become effective May 20, 1975.

The above delegation of authority in no way affects similar delegations of authority to various other Customs officers contained in Customs Delegation Orders No. 22 and 40 (T.D. 56470, 30 FR 11180; T.D. 71-61, 36 FR 3830).

This order supersedes Customs Delegation Order No. 38, dated September 1, 1970 (T.D. 70-194, 35 FR 14223).

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

[FR Doc.75-13176 Filed 5-19-75;8:45 am]

## DEPARTMENT OF DEFENSE

### Department of the Army

### MILITARY HISTORY RESEARCH COLLECTION ADVISORY COMMITTEE

#### Meeting Cancellation

This is to announce that the planned meeting of the U.S. Army Military History Research Collection Advisory Committee which was scheduled for May 22 and 23, 1975, in Upton Hall, Carlisle Barracks, Pennsylvania will not be held. The meeting was announced on page 18189 of the April 25, 1975, issue of the FEDERAL REGISTER.

By authority of the Secretary of the Army.

Dated: May 12, 1975.

FRED R. ZIMMERMAN,
*Lt. Colonel, U.S. Army,*
*Chief, Plans Office, TAGO.*

[FR Doc.75-13139 Filed 5-19-75;8:45 am]

### Department of the Navy

### CHIEF OF NAVAL OPERATIONS EXECUTIVE PANEL ADVISORY COMMITTEE

#### Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations Executive Panel Advisory Committee will hold a closed meeting on June 5 and 6, 1975, at the Pentagon, Washington, D.C. The sessions will commence at 9:00 a.m. and terminate at 5:30 p.m. daily. The agenda will consist of matters required by Executive Order to be kept secret in the interest of national defense, including intelligence systems and applications, anti-submarine warfare technology, and long-range Navy plans. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that this meeting be closed to the public because it will be concerned with matters listed in section 552(b)(1) of title 5, United States Code.

Dated: May 14, 1975.

WILLIAM O. MILLER,
*Rear Admiral, JAGC, U.S. Navy*
*Acting Judge Advocate General.*

[FR Doc.75-13140 Filed 5-19-75;8:45 am]

### CHIEF OF NAVAL OPERATIONS INDUSTRY ADVISORY COMMITTEE FOR TELECOMMUNICATIONS (CIACT)

#### Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given of a closed meeting of the Chief of Naval Operations Industry Advisory Committee for Telecommunications (CIACT) on June 11 and 12, 1975. The meeting will commence at 9 a.m. on both days, at the facilities of the Naval Electronics Systems Command Headquarters, Arlington, Virginia. The purpose of the meeting is to solicit the advice of the committee concerning command and control and communications developments being undertaken by the Navy pertainnig to matters which are classified in the interest of national defense and required to be kept secret. For that reason, the Secretary of the Navy has determined in writing that the entire meeting be closed to the public because it will be concerned with matters listed in section 552(b)(1) of title 5, United States Code.

Dated: May 14, 1975.

WILLIAM O. MILLER,
*Rear Admiral, JAGC, U.S. Navy*
*Acting Judge Advocate General.*

[FR Doc.75-13141 Filed 5-19-75;8:45 am]

### Office of the Secretary

### DEPARTMENT OF DEFENSE COMMITTEE MANAGEMENT PROGRAM

#### Organization and Functions

The Deputy Secretary of Defense approved the following:

Refs.:
(a) P. L. 92-463, "Federal Advisory Committee Act"
(b) Executive Order 11769, "Advisory Committee Management"
(c) OMB Circular A-63, "Advisory Committee Management," March 27, 1974
(d) Title 5 U.S.C. Section 552, "Freedom of Information Act"
(e) DoD Directive 5105.18, "Department of Defense Committee Management Program," August 25, 1959 (hereby cancelled)
(f) DoD Instruction 5030.13, "Regulations for the Formation and Use of Advisory Committees," April 20, 1962 (hereby cancelled)
(g) DoD Instruction 5030.39, "Interagency Committees," December 9, 1968 (hereby cancelled)
(h) DoD Directive 5000.19, "Policies for the Management and Control of DoD Information Requirements," June 2, 1971 [1]
(i) DASD(A) Multiaddressee Memorandum, "Committee Management," June 26, 1972 (hereby cancelled)
(j) SecDef Multiaddressee Memorandum, "Interagency and Advisory Committees," December 28, 1973 (hereby cancelled)

I. *Purpose.* This Directive implements references (a), (b), and (c); defines terms; establishes policy, and assigns responsibilities for the Department of Defense Committee Management Program.

II. *Cancellations.* References (e), (f), (g), (i), (j), and Report Control Symbols DD-A(A)923, DD-A(A)1195, and DD-A(A)1319 are hereby superseded and cancelled.

III. *Applicability.* The provisions of this Directive apply to the Office of the Secretary of Defense, Organization of the Joint Chiefs of Staff, Unified and Specified Commands, Military Departments, and Defense Agencies (hereinafter referred to collectively as "DoD Components").

IV. *Definitions.* As used herein, the following definitions apply:

A. *Committee.* A committee is a body of persons with a collective responsibility appointed to consider, investigate, advise or take action, and usually to report on specific problems or subject areas. The prime characteristic, however, is the corporate or collective responsibility. The term "committee," applies to any committee, board, commission, council, conference, panel, task force or other similar group or any subcommittee or any subgroup thereof which is established by statute or reorganization plan, or established or utilized by the President, or established or utilized by one or more agencies in the interest of obtaining advice or recommendations for the President, or one or more agencies or officers of the Federal Government.

1. *Advisory Committee.* Any committee which is not composed wholly of full-time officers or employees of the Federal Government.

2. *Interagency Committee.* Any committee which has membership that consists wholly of representatives from two or more departments or agencies of the Federal Government.

3. *International Committee.* Any committee established by formal agreement between the United States and the government of another country(s), or by an international body in which the United States participates.

4. *Operational Committee.* Operational committees are those whose primary functions and responsibilities are operational rather than advisory in nature. An operational committee which is not composed wholly of full-time officers or employees of the Federal Government will not be established without the express approval of the DoD Committee Management Officer. This approval will be given only after consultation with the General Counsel.

5. *Joint DoD Committee.* Any committee which has a membership that consists wholly of DoD representatives from two or more DoD Components.

6. *Intra-component Committee.* Any committee which has a membership that consists wholly of representatives from one DoD Component.

V. *Policy.* A. Committees will not be established to perform duties, responsibilities and functions that can be accomplished effectively through command or staff actions.

B. Committees will be established to perform such tasks as fact-finding, research, special studies, audit, review, and inspections.

C. Advisory committees will not be established to perform operational, administrative, or management responsibilities such as administering programs and making determinations, or to effect coordination required in the performance of such responsibilities.

D. Nothing contained in this Directive will be construed to limit or restrict the free exchange of information, advice and ideas between representatives of DoD Components or other Departments and Agencies of the Executive Branch through regular or occasional meetings or other means, as long as such arrangements do not require the issuance of formal charters or terms of reference or the formal designation of membership on a committee.

VI. *Responsibilities.* A. The Assistant Secretary of Defense (Comptroller) or his designee shall:

1. Provide policy guidance and prescribe operating procedures for the DoD Committee Management Program to ensure compliance with the requirements of this Directive and references (a) through (d).

2. Recommend approval or disapproval to the Office of Management and Budget (OMB) of the establishment of the continuation of DoD advisory committees.

3. Obtain such information, analyses, reports, and assistance from DoD Components as he deems necessary to perform his assigned functions consistent with the policies and criteria of DoD Directive 5000.19 (reference (h)).[1]

4. Maintain liaison with the OMB and other Government Agencies as required.

5. Designate a DoD Committee Management Officer who is responsible for ensuring compliance with this Directive and references (a) through (c).

B. Secretaries of the Military Departments, Chairman, Joint Chiefs of Staff, Principal Staff Assistants to the Secretary of Defense (Director of Defense Research and Engineering, Assistant Secretaries of Defense, and Assistant to the Secretary of Defense or equivalent) and Directors of Defense Agencies shall:

1. Ensure that the committees under their cognizance comply with the requirements of this Directive and references (a) through (d).

2. Provide supplemental guidance as required for the efficient operation of the DoD Committee Management Program.

3. Manage all aspects, including internal reporting requirements and the approval or disapproval of proposals for the establishment, revision, continuation or termination of interagency, operational, Joint DoD and Intra-component committees under their cognizance.

4. Approve or disapprove proposals for participation by their components on committees chaired by another DoD Component or Federal department or agency.

5. Submit to the Assistant Secretary of Defense (Comptroller) proposals to establish, revise, continue or terminate all advisory committees under their cognizance.

6. Maintain information about the program, objectives, and activities of each committee established within their organizations (including affiliation and participation) and providing, as required, reports to the Assistant Secretary of Defense (Comptroller) on such matters.

7. Ensure that action is taken to respond to requests submitted under the "Freedom of Information Act" (reference (d)) requesting information concerning committees.

8. Provide assistance to the Assistant Secretary of Defense (Comptroller) in the review of existing committees and development of recommendations for revision, consolidation, or termination.

9. Make a determination, when appropriate, that part or all of an advisory committee meeting shall be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act (reference (a)).

10. Submit required reports on a timely basis.

11. Designate a Committee Management Officer to assist in the performance of the above responsibilities and functions. The individual so designated will be of sufficient stature in the organization, that he or she will be capable of effectively carrying out this program.

VII. *Operating guidelines for advisory committees.* A. Except when the President determines otherwise for reasons of national security, a notice of each advisory committee meeting will be published in the FEDERAL REGISTER at least 15 days before the date of the meeting. If an emergency situation arises whereby a notice of meeting has to be published giving less than 15 days' notice, such notice shall not be published without prior approval of the DoD Committee Management Officer.

B. The notice should state the name of the advisory committee, time, place and purpose of the meeting (including where possible a summary of the agenda). Notices should state whether meetings are open or closed to the public. If the meeting is to be closed, in whole or in part, the notice should give good reason and cite the applicable Section of 5 U.S.C. 552(b) (reference (d)).

C. Subject to 5 U.S.C. 552(b), the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee will be available for public inspection and copying at a single location in the offices of the advisory committee or the Agency to which the advisory committee reports.

D. Detailed minutes of each advisory committee meeting will be kept and will contain a record of persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes will be certified to by the chairman of the advisory committee.

E. There will be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. Advisory committee meetings will not be conducted in the absence of that officer or employee.

F. Advisory committees will not hold any meetings except at the call, or with the advance approval of, a designated officer or employee of the Federal Government.

G. Eight copies of each report made by an advisory committee will be filed with the Library of Congress.

VIII. *Reporting requirements.* As prescribed in references (a) through (c), annual reports on Federal Advisory Committees are required by the General Services Administration and OMB. These information requirements are assigned Interagency Report Control Number 1121–GSA–AN, which supersedes Report Control Symbol DD–A(A) 1319. Since the due dates and formats of these reports have varied from year to year, no specific reporting requirements are included in this Directive. Every attempt will be made to provide all DoD Components with as much lead time as possible.

IX. *Effective date and implementation.* This Directive is effective immediately. Two copies of implementing regulations shall be forwarded to the Assistant Secretary of Defense (Comptroller) within 90 days.

MAURICE W. ROCHE,
*Director, Correspondence and Directives OASD (Comptroller).*

MAY 15, 1975.

[FR Doc.75-13244 Filed 5-19-75;8:45 am]

[1] Filed as part of original. Copies available from U.S. Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120. Attention: Code 300.

## DEFENSE SCIENCE BOARD TASK FORCE ON "ELECTRONIC TEST EQUIPMENT"

### Advisory Committee Meeting

Pursuant to the provisions of Pub. L. 92–463, notice is hereby given that the Defense Science Board Task Force on "Electronic Test Equipment" will meet in open session on 9 and 10 June in Room 9W67, National Center Building #1, 2511

Jefferson Davis Highway, Arlington, Virginia. The session will commence at 9 a.m. each day.

The mission of the Defense Science Board is to advise the Secretary of Defense and Director of Defense Research and Engineering on overall research and engineering and to provide long-range guidance in these areas to the Department of Defense.

The primary responsibility of the Task Force is to examine the greater use of the Department of Defense of privately-developed, commercially-available, off-the shelf electronic test equipment, including modifications thereof, with the goal of achieving economy and reliability benefits for the several Armed Services and to recommend policies and procedures which will maximize these benefits.

This will be the fourth meeting of the Task Force. The planned agenda will cover three general areas:

1. Procurement.
2. Logistics.
3. Applications, Requirements and Equipment.

The detailed discussions and investigations into these general areas will be conducted by working groups made up of designated Task Force members or their designated representatives and selected Task Force observers. The working groups will meet as required and all interested parties and observers are invited, and encouraged, to attend these meetings. Each working group will formulate proposals related to its general area of responsibility corresponding to one of the three specified above. These proposals will be discussed with the Task Force as a whole for consideration, consolidation, modification and approval. The working group proposals as approved by the Task Force will form the basis for the ultimate Task Force recommendations.

Persons wishing to attend are advised that a reasonable quantity of seating for observers will be available on a first-come, first-seated basis. No specific arrangements or notification of desire to attend is necessary.

The Executive Secretary for the Task Force is Mr. Rudolph J. Sgro, OASD (I&L) WS Room 2A318, Pentagon, Washington, D.C. 20301.

MAURICE W. ROCHE,
*Director, Correspondence and Directives OASD (Comptroller).*

MAY 15, 1975.

[FR Doc.75-13245 Filed 5-19-75;8:45 am]

## DEPARTMENT OF JUSTICE

### Antitrust Division

### UNITED STATES VS. REAL ESTATE BOARD OF ROCHESTER, N.Y., INC.

### Proposed Consent Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), that a proposed consent judgment and a competitive impact statement as set out below have been filed with the United States District Court for the Western District of New York in Civil Action No. 74-535, United States v. Real Estate Board of Rochester, N.Y., Inc. The judgment was entered on December 23, 1974; however, the effective date has been stayed pending compliance with the APPA. The complaint in this case alleges that the defendant, Real Estate Board of Rochester, N.Y., Inc. ("Board") and co-conspirator members of the Board had combined and conspired to restrain trade and commerce in the commissions and fees charged in the sale, exchange, rental, leasing and mortgage of real estate in violation of section 1 of the Sherman Act. The proposed judgment forbids the Board and its members, among other things, from establishing, suggesting or otherwise attempting to influence rates, commission or other fees to be charged by its salesmen. The proposed judgment additionally prohibits the Board from requiring that its members only accept exclusive listings and also prohibits the Board from maintaining unreasonably high membership dues or otherwise excluding qualified applicants from the Board and from using its multiple listing service. Public comment is invited on or before July 19, 1975. Such comments and responses thereto will be published in the FEDERAL REGISTER and filed with the Court. Comments should be addressed to Bernard Wehrmann, Antitrust Division, Department of Justice, 26 Federal Plaza, Room 3630, New York, New York 10007.

Dated: May 13, 1975.

THOMAS E. KAUPER,
*Assistant Attorney General Antitrust Division.*

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

[Civil No. 74-535]

UNITED STATES OF AMERICA, PLAINTIFF, V. REAL ESTATE BOARD OF ROCHESTER, N.Y., INC., DEFENDANT

Filed: November 19, 1974.
Entered: December 23, 1974.

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court at any time after the expiration of thirty (30) days following the date of filing of this Stipulation without further notice to any party or other proceedings, either upon the motion of any party or upon the Court's own motion, provided that plaintiff has not withdrawn its consent as provided herein.

(2) The plaintiff may withdraw its consent hereto at any time within said period of thirty (30) days by serving notice thereof upon the defendant herein and filing said notice with the Court.

(3) In the event plaintiff withdraws its consent hereto, this Stipulation shall be of no effect whatever in this or any other proceeding and the making of this Stipulation shall not in any manner prejudice any consenting party in any subsequent proceedings.

Dated: October ——, 1974.

For the Plaintiff: Thomas E. Kauper, Assistant Attorney General; Baddia J. Rashid, Bernard M. Hollander, Bernard Wehrmann, Attorneys, Department of Justice; Philip F. Cody, Paul D. Sapienza, Attorneys, Department of Justice; John T. Elfvin, United States Attorney; By Gerald Houlihan, Assistant United States Attorney.

For the Defendant: Real Estate Board of Rochester, N.Y., Inc., Elliott Horton, Harris, Beach and Wilcox, Two State Street, Rochester, New York 14614 (716) 232-4440; C. Richard Cole, Wiser, Shaw, Freeman, Van Graafeiland, Harter & Secrest, 700 Midtown Tower, Rochester, New York 14604 (716) 232-6500; Attorneys for Defendant.

So ordered: Rochester, N.Y.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

[Civil Action No. 74-535]

UNITED STATES OF AMERICA, Plaintiff, v. REAL ESTATE BOARD OF ROCHESTER, N.Y., INC., Defendant.

Entered: December 23, 1974.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint here in on Nov. 19, 1974, and Plaintiff and Defendant by their respective attorneys, having consented to the making and entry of this Final Judgment, without admission by either party in respect to any issue and without this Final Judgment constituting evidence or an admission by any party hereto with respect to any issue;

Now, therefore, before any testimony has been taken herein, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed, as follows:

I. This Court has jurisdiction over the subject matter of this action and of the parties hereto. The Complaint states claims upon which relief may be granted against the Defendant under section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 1), commonly known as the Sherman Act.

II. As used in this Final Judgment:

(A) "Board" shall mean the Defendant Real Estate Board of Rochester, N.Y., Inc.;

(B) "Multiple Listing Service" shall mean any plan or program for the circulation of real property listings among brokers;

(C) "Person" shall mean any individual, partnership, firm, association, corporation, real estate agency, member of Defendant or other business or legal entity.

III. The provisions of this Final Judgment shall apply to the Defendant and to each of its subsidiaries, successors and assigns, to its directors, officers, agents, and employees, when acting in such capacity, and, in addition, to all its members and other persons in active concert or participation with them who receive notice of this Final Judgment by personal service or otherwise.

IV. The Board, whether acting unilaterally or in concert or agreement with any other person, is enjoined and restrained from:

(A) Fixing, establishing or maintaining any rate or amount of commissions or other fees for the sale, exchange, rental, lease, management, or mortgage of real estate;

(B) Urging, recommending or suggesting that any of its members adhere to any schedule or other recommendation concerning the rates or amounts of commissions or other fees for the sale, exchange, rental, lease, management, or mortgage of real estate;

(C) Adopting, suggesting, publishing or distributing any schedule or other recommendation concerning the rates or amounts

of commissions or other fees for the sale, exchange, rental, lease, management, or mortgage of real estate;

(D) Conducting, publishing or distributing any survey or study relating to rates or amounts of commissions or ranges thereof or other fees for the sale, exchange, rental, lease, management, or mortgage of real estate;

(E) Including in any instructional course or other educational material any recommended or suggested rates or amounts of commissions or other fees for the sale, exchange, rental, lease, management, or mortgage of real estate;

(F) Adopting, adhering to, maintaining, enforcing or claiming any rights under any bylaw, rule, regulation, plan or program which restricts or limits the right of any of its members or any other person engaged in the business of real estate in accordance with his own business judgment to agree with his client on any commissions or fees for the sale, exchange, rental, lease, management, or mortgage of real estate;

(G) Taking any punitive action against any of its members where such action is based upon the member's failure or refusal to adhere to any rate or amount of commission or fee for the sale, exchange, rental, lease, management, or mortgage of real estate;

(H) Fixing, maintaining, suggesting or enforcing any division or split between a selling broker and a listing broker of commissions or other fees for the sale, exchange, rental, lease, management, or mortgage of real estate;

(I) Refusing to accept for multiple listing any listing for the sale of real estate because of the rate or amount of commission set forth in such listing;

(J) Adopting, adhering to, maintaining, enforcing or claiming any rights under any bylaw, rule, regulation, plan or program that requires members or any group of members to accept only exclusive rights to sell or exclusive agencies;

(K) Adopting, adhering to, maintaining, enforcing or claiming any rights under any bylaw, rule, regulation, plan or program that requires any member to file that member's listings only with the Defendant's Multiple Listing Service or any other Multiple Listing Service;

(L) Establishing, maintaining, or enforcing any fees or dues for membership in the Board or any Multiple Listing Service, which are not approximately related to the cost, including the accumulation and maintenance of reasonable reserves for developing, maintaining, or improving such organization as a going concern; and

(M) Establishing or organizing any other person to do any of those acts prohibited in (A) through (L) above.

V. Defendant is ordered and directed to, upon application made, admit to membership in the Board any person duly licensed to sell real estate and to membership in any Multiple Listing Service any person duly licensed as a real estate broker by the appropriate governmental authority; provided, however, that the Board may adopt and maintain reasonable and nondiscriminatory written requirements for membership in the Board and any Multiple Listing Service, not otherwise inconsistent with the provisions of this Final Judgment.

VI. Defendant is ordered and directed within ninety (90) days from the date of entry of this Final Judgment to:

(A) Insert in all bylaws, rules, regulations, contracts, and forms requiring a client's signature, a provision, prominently situated in all-capital letters, that rates of commissions or other fees for the sale, exchange, rental, lease, management, or mortgage of real estate shall be negotiable between a broker and his client.

(B) Insert in the written material for all instructional courses given and other educational materials disseminated under its auspices, a provision, prominently situated in all-capital letters that rates of commissions and other fees for the sale, exchange, rental, lease, management, or mortgage of real estate shall be negotiable between a broker and his client.

VII. (A) Defendant is ordered and directed within ninety (90) days from the date of entry of this Final Judgment to amend its constitutional provisions, bylaws, rules, regulations, code of ethics, professional standards of practice, contracts, and all forms by eliminating therefrom any provision which is contrary to or inconsistent with any provision of this Final Judgment and send amended copies of each such constitutional provision, bylaw, rule, regulation, code of ethics, professional standards of practice, contract, and form to each of its members.

(B) The defendant is ordered and directed within ninety-five (95) days from the date of entry of this Final Judgment to file with the Plaintiff a true copy of its constitution, bylaws, rules, regulations, code of ethics, professional standards of practice, contracts and forms as aforesaid amended and distributed.

(C) Upon amendment of its constitution, bylaws, rules, regulations, code of ethics, professional standards of practice, contracts and forms as aforesaid, Defendant is thereafter enjoined and restrained from adopting, adhering to, enforcing or claiming any rights under any constitutional provision, bylaw, rule, regulation, code of ethics, professional standard of practice, contract or form which is contrary to or inconsistent with any of the provisions of this Final Judgment.

VIII. Defendant is ordered and directed to mail within sixty (60) days after the date of entry of this Final Judgment, a copy of this Final Judgment to each of its members and within one hundred and twenty (120) days from the aforesaid date of entry to file with the Clerk of this Court and with the Plaintiff, an affidavit setting forth the fact and manner of compliance with sections VI (A)–(B) and VII(A) above.

IX. For a period of ten (10) years from the date of entry of this Final Judgment, Defendant is ordered to file with the Plaintiff, on each anniversary date of such entry, a report setting forth the steps which it has taken during the prior year to advise the Defendant's appropriate officers, directors, agents, employees, members and all appropriate committees of its and their obligations under this Final Judgment.

X. For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, be permitted, subject to any legally recognized privilege, and subject to the presence of counsel if so desired:

(A) Access during its office hours to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of Defendant relating to any matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of Defendant, and without restraint or interference from it to interview officers or employees of Defendant regarding any such matters.

Upon such written request, Defendant shall submit such reports in writing, under oath if so requested, to the Department of Justice with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means provided in this section X shall be divulged by any representative of the Department of Justice to any person, other than a duly authorized representative of the Executive Branch of Plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith; and for the punishment of violations thereof.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

[Civil No. 74–535]

UNITED STATES OF AMERICA, PLAINTIFF, V. REAL ESTATE BOARD OF ROCHESTER, N.Y., INC., DEFENDANT.

Filed: May 13, 1975.

COMPETITIVE IMPACT STATEMENT

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16 (b)–(h)), the United States of America hereby files this Competitive Impact Statement relating to the Final Judgment entered herein on December 23, 1974. The effective date of the Judgment was stayed by the Order of this Court, entered on February 18, 1975, until such time as the requirements of the Antitrust Procedures and Penalties Act are satisfied with respect to said Judgment. The Judgment is subject to a stipulation between the United States and the defendant, which provides that the United States may withdraw its consent to the Judgment at any time before the Court vacates its Order of February 18, 1975.

On November 19, 1974, the Department of Justice filed a civil antitrust suit against the defendant Real Estate Board of Rochester, N.Y., Inc. ("Board") alleging that it and coconspirator members of the Board had combined and conspired to restrain trade and commerce in the commissions and fees charged for the sale, rental, management and mortgage of real estate in violation of section 1 of the Sherman Act.

During the course of the investigation of the Board by the Antitrust Division, the Board, through its counsel, formally requested the opportunity to avail itself of the Department of Justice's "prefile procedure," which permits negotiations on the terms of a consent judgment prior to the filing of a case by the Antitrust Division. Pursuant to this procedure, an agreement was reached between the Board and the Antitrust Division, and on November 19, 1974, the Government's Complaint, a Stipulation and proposed Final Judgment were filed in the District Court in Rochester, New York. The Stipulation and proposed Final Judgment were marked filed by the District Court Clerk's Office in Buffalo, New York on November 21, 1974.

DESCRIPTION OF THE BUSINESS INVOLVED

The Board is a New York corporation with its principal place of business in Rochester, New York. It is an association of real estate brokers and salesmen with about 2,000 members. The members of the Board are engaged in bringing together buyers and sellers of real estate and assisting in negotiating and arranging the prices and terms of real estate sales in Monroe County, New York, in return for fees or commissions.

A principal function of the Board is the operation of a multiple listing service ("MLS"). Membership in the Board is a prerequisite for MLS membership and those Board members who join the MLS are generally called "service members." The MLS operates by having its individual service members submit to it detailed information concerning listings of real estate for sale in Monroe County. The MLS then copies and distributes such information to all service members thus providing potential sellers of real estate with wide dissemination of the available status of their property.

The service member who lists a property with the MLS is known as the "listing broker." Once a property is listed with the MLS, any MLS member may negotiate its sale and become the "selling broker." If the listing broker and selling broker involved in connection with the sale of a piece of property are different, the brokerage commission or fee earned is divided between them according to schedules prescribed by the Board.

In 1972, sales of over 7,000 parcels of real property were made through the MLS, totaling over $174 million. Because of a high incidence of sales of homes listed with the MLS, it represents a valuable service for homeowners, brokers and salesmen. MLS membership is, therefore, considered advantageous to brokers and salesmen doing business in Monroe County.

VIOLATIONS ALLEGED

The Complaint filed by the Government challenged an alleged conspiracy among the Board and its co-conspirator members whereby they had agreed and conspired to raise, fix, and maintain the amounts of commissions or fees which Board members were to charge for their services when selling, leasing or managing property. The Complaint also alleged that the Board and its members conspired to unreasonably exclude certain persons from membership in the Board and, therefore, from participation in the MLS, and with adopting rules and regulations restricting competition between real estate brokers and salesmen.

The Complaint then went on to allege specifically that in carrying out the conspiracy the Board and its members (1) established and followed commission schedules for the sale of real estate and for determining the percentage division of commissions between listing and selling brokers; (2) agreed that all listings of one, two, and three family lived-in houses obtained by service members had to be listed with the MLS and that before any property could be listed with the MLS the listing broker must have obtained the exclusive right to sell the property; and (3) established arbitrary and unreasonably restrictive requirements for membership in the Board and MLS.

According to the Complaint, the conspiracy has had the following effects: commissions and fees charged for real estate services have been raised, fixed, and mantained at artificial and noncompetitive levels; price competition among members of the Board in providing real estate services has been eliminated and, therefore, persons using the services of Board members have been denied such use at competitively determined prices; licensed brokers and salesmen have been unreasonably restricted in the conduct of their business and have been restrained in competing in the sale of real estate listed with MLS. These have had an overall adverse effect on competition in real estate services in Monroe County and on the interstate commerce in financing, insurance, and other commodities associated with the sale of real estate.

PROVISIONS OF THE FINAL JUDGMENT

The Final Judgment applies to the Board and its members and other persons acting with them who have notice of the Judgment.

With regard to fees and commissions, the Final Judgment forbids the Board under penalty of contempt of court, from establishing or recommending any rates or schedules of commissions to be charged by its brokers or salesmen in connection with the sale, exchange, rental, lease, management or mortgage of real estate. The Board may not take any action under its by-laws or other rules against a member or other person engaged in the sale of real estate which limits his right to agree with the client on any commission or fee charged. Nor may the Board take any punitive action against a member for failure or refusal to adhere to any specified commission or fee.

The Judgment further prohibits the Board from publishing or distributing recommended commission and fee scchedules or surveys showing the range of commissions and fees charged in real estate transactions. In addition, the Board may not refuse to accept for its MLS any listing for the sale of real estate because of the rate of commission specified in the listing.

The Judgment provides that the Board may not fix, enforce, or suggest how the commission or fees for the sale, rental, lease, or management of property are to be split between the listing broker and the selling broker.

The Judgment further forbids the Board from requiring Board members or any group of members to accept real estate listings only if the property owner gives the member an exclusive right to the listing. This prohibition should leave Board members free to accept nonexclusive listings if they so wish, and should also permit property owners to list their property on a nonexclusive basis with agreeable Board members, as well as with independent brokers. In addition, the Board may not require any of its members to file their real estate listings only with its MLS or only with another multiple listing service. This provision should permit a Board member who does list property with MLS to share this listing with independent brokers as well as with any other multiple listing service.

As to membership in the Board and the MLS, the Final Judgment prohibits the Board from establishing any fees or dues for membership in the Board or MLS which are not approximately related to the reasonable costs of maintaining, improving and developing the organization as a going concern. In addition, the Final Judgment orders the Board to admit to membership in the Board any person duly licensed to sell real estate, and to membership in the MLS any person duly licensed as a real estate broker by the appropriate governmental authority. It is provided, however, that the Board may adopt and maintain reasonable and nondiscriminatory written requirements for membership in the Board and its MLS, as long as the requirements are not otherwise inconsistent with the terms of the Judgment.

The Judgment orders the Board to insert in all Board by-laws, rules, regulations, contracts, forms requiring a client's signature, written materials for instructional courses and other educational materials disseminated under its auspices a provision, prominently situated in all-capital letters, that rates of commissions and other fees for the sale, exchange, rental, lease, management or mortgage of real estate shall be negotiable between a broker and his client.

In order to comply with the Judgment, the Board must amend constitutions, by-laws, rules, codes of ethics, and contracts eliminating any provisions contrary to the terms of the Judgment. The Board must mail to its members amended copies of these, and must file such copies with the government. In addition, for a period of ten years, the Board must file yearly reports with the Antitrust Division, stating what steps it has taken to ensure compliance with the Judgment.

By its terms, the Final Judgment provides for retention of jurisdiction of this action in order, among other things, to permit either of the parties thereto to apply to the Court for such orders as may be necessary or appropriate for its modification.

EFFECTS OF THE FINAL JUDGMENT

The provisions of the Final Judgment should serve to increase competition by removing and prohibiting, under penalty of contempt of court, unreasonable restraints imposed by the Board upon its members with respect to the amount of commissions or fees to be charged for their services and by removing unreasonable barriers to membership in the Board and participation in its MLS.

ALTERNATIVE RELIEF CONSIDERED

Alternative relief considered by the Antitrust Division included a provision submitted to the Board's counsel in writing which would have prohibited the Board from requiring service members to list all their real estate listings of a certain type (e.g., lived-in homes) with the MLS. The Board indicated that prohibiting a requirement that service members must list all their listings of a certain type with the MLS would work to the detriment of smaller service members who depend heavily on the MLS inventory of listings and, by the same token, unduly advantage larger, more firmly established service members who would be able to keep more promising listings to themselves while listing only the less promising with MLS. The Board also asserted that elimination of such requirement could also adversely affect open-housing efforts in Rochester.

After due consideration of these factors, the Antitrust Division determined that competition would be adequately enhanced by a provision in the Final Judgment which prohibited the Board from requiring its service members to list their properties with the MLS exclusively. This provision, which is noted above, and was consented to by the Board, prohibits the Board from preventing any individual service members from sharing their own listings, which they are required to list with MLS, with anyone else as well, such as independent brokers or any other multiple listing service which may exist. Such provision avoids the possibility of any detrimental effects upon smaller service members or upon open-housing efforts which might have been attendant to a broad prohibition against the Board's requiring service members to list all their listings of a certain type with MLS.

Another form of alternative relief considered by the Antitrust Division was a provision submitted to the Board's counsel in writing which would have prohibited the Board from requiring that any applicant for membership be a member of the National Association of Realtors and of the New York State Realtor Association. The Board's counsel represented to the Antitrust Division that the National Association of Realtors, of which the Board is a member, requires its local member boards to, in turn, require their members to maintain membership in the National Association of Realtors and the State Realtor Association. Annual dues for both the National and State Associations total about $55. The Antitrust Division determined that a case such as the instant one, i.e., a proceeding against a local real estate board, was not a proper vehicle in which to test this requirement.

By letter of November 19, 1974, Thomas E. Kauper, Assistant Attorney General, Antitrust Division, advised counsel that paragraph V of the Final Judgment requires the defendant Board to admit to membership in the Board anyone licensed to sell real estate and to membership in the MLS anyone licensed as a broker by the appropriate governmental authority. The letter states that the Judgment further provides that "the Board may adopt and maintain reasonable and nondiscriminatory written requirements for membership in the Board and the Multiple Listing Service, not otherwise inconsistent with the provisions of the Judgment."

Mr. Kauper's letter went on to state that: "The Judgment is silent with respect to a requirement by the defendant Board that its members must also become members of the National Association of Realtors and a state realtors association. This silence must not be construed as approval by the Department of Justice of such requirement or as an indication that we have concluded that such a requirement is reasonable and nondiscriminatory under Paragraph V."

His letter concluded by advising that should the National Association of Realtors eliminate its requirement that its local member boards require their member brokers to maintain membership in the national and state realtor associations, the Department may well view the defendant Board's dual membership requirement as "an unreasonable and impermissible membership requirement, not encompassed within the reasonable and nondiscriminatory requirements allowable pursuant to Paragraph V" of the Final Judgment. (A copy of this letter is attached as Exhibit "A".)

The only other alternative to the Final Judgment herein considered was a full trial on the merits. The Antitrust Division determined that the proposed Final Judgment immediately provided substantially all the relief which might reasonably be expected following a trial and a decision favoring the Government, without the commitment of manpower and delay involved in a trial.

EFFECTS ON PRIVATE PLAINTIFFS

Any potential private plaintiffs who might have been damaged by the alleged violations will retain the same right to sue for monetary damages and any other legal and equitable remedies which they would have had, were the Final Judgment not entered. However, this Judgment may not be used as prima facie evidence in private litigation pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. 16(a).

OPPORTUNITY FOR COMMENTS FROM THE PUBLIC

As provided by the Antitrust Procedures and Penalties Act, any persons believing that the Final Judgment should be modified may for a 60-day period submit written comments to Bernard Wehrmann, Antitrust Division, Department of Justice, 26 Federal Plaza, Room 3630, New York, New York 10007, who will file with the Court and publish in the FEDERAL REGISTER such comments and responses to such comments. The Department of Justice will thereafter evaluate any and all such comments and determine whether there is any reason for withdrawal of its consent to the Final Judgment.

DOCUMENTS DETERMINATIVE IN FORMULATING THE JUDGMENT

The letter of Assistant Attorney General Thomas E. Kauper to counsel for the Board, described above, is a document of the type described in section (b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16 (b)) and was considered in formulating this Final Judgment.

PAUL D. SAPIENZA,
PHILIP F. CODY,
*Attorneys, Department of Justice.*

Dated: May 13, 1975.

EXHIBIT A

Re: United States v. Real Estate Board of Rochester, N.Y., Inc. (Civ. 74-335 W.D.N.Y.)

ELLIOTT HORTON, Esq.
*Harris, Beach and Wilcox,*
*Two State Street,*
*Rochester, NY*

NOVEMBER 19, 1974.

File: 60-223-50

DEAR MR. HORTON: Paragraph V of the Final Judgment in the captioned case orders and directs the defendant Board to admit to membership in the Board any person duly licensed to sell real estate and to membership in the Multiple Listing Service any person duly licensed as a broker, provided, however, that the Board may adopt and maintain reasonable and nondiscriminatory written requirements for membership in the Board and the Multiple Listing Service, not otherwise inconsistent with the provisions of the Judgment. The Judgment is silent with respect to a requirement by the defendant Board that its members must also become members of the National Association of Realtors and a state realtors association. This silence must not be construed as approval by the Department of Justice of such requirement or as an indication that we have concluded that such a requirement is reasonable and nondiscriminatory under Paragraph V.

It is our understanding that the National Association of Realtors requires its local member boards of realtors to, in turn, require their member brokers to maintain membership in the National Association of Realtors and state realtor associations. Should the National Association of Realtors at any time eliminate this requirement, the Department of Justice may well view a requirement on the part of the defendant Board that its members must join any national or state realtor associations to be an unreasonable and impermissible membership requirement, not encompassed within the reasonable and nondiscriminatory requirements allowable pursuant to Paragraph V.

Sincerely yours,

THOMAS E. KAUPER,
*Assistant Attorney General*
*Antitrust Division.*

[FR Doc.75-13208 Filed 5-19-75;8:45 am]

### Law Enforcement Assistance Administration

### NATIONAL ADVISORY COMMITTEE ON CRIMINAL JUSTICE STANDARDS AND GOALS

#### Meeting

This is to provide notice of a meeting of the Disorders and Terrorism Task Force to the National Advisory Committee on Criminal Justice Standards and Goals.

The Disorders and Terrorism Task Force will meet on Tuesday, June 3, 1975. The meeting will be held at the New York University School of Law, Law Club Lounge, Main Floor, 40 Washington Square, South, New York, New York. The meeting will convene at 1 p.m. and will be open to the public.

The meeting will focus on the progress report on definition of the scope of problems and the work underway in the field.

For further information, contact William T. Archey, Acting Director, Law Enforcement Assistance Administration, Policy Analysis Division, Office of Planning and Management, 633 Indiana Avenue, NW, Washington, DC. 20531.

GERALD H. YAMADA,
*Attorney-Advisor,*
*Office of General Counsel.*

[FR Doc.75-13147 Filed 5-19-75;8:45 am]

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### BURLEY DISTRICT MULTIPLE USE ADVISORY BOARD

#### Cancelled Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that the meeting of the Burley District Multiple Use Advisory Board which was scheduled for May 30, 1975, has been postponed until further notice.

NICK JAMES COZAKOS,
*District Manager.*

[FR Doc.75-13207 Filed 5-19-75;8:45 am]

### Office of the Secretary

### WATCHES AND WATCH MOVEMENTS

#### Allocation of Duty-Free Quotas for Calendar Year 1975 Among Producers Located in Guam and American Samoa

CROSS REFERENCE: For a document issued jointly by the Department of Commerce and the Department of the Interior, on watch and watch movements in Guam and American Samoa, see FR Doc. 75-13190, *supra.*

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### RAISIN ADVISORY BOARD

#### Notice of Public Meeting

Under the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770), notice is given of a meeting of the Raisin Advisory Board at 1:30 p.m., June 11, 1975, in the Forum of the Sheraton Inn, Freeway 99 and Clinton Avenue, Fresno, California.

The purpose of the meeting is to: Review and discuss marketing policy for the 1975-76 crop year. The meeting will be open to the public.

The Raisin Advisory Board is established under the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

The names of Board members, agenda, summary of the meeting and other information pertaining to the meeting may

be obtained from Clyde E. Nef, Manager, Raisin Administrative Committee, 732 North Van Ness Street, Fresno, California, 93720; telephone 209–268–5666.

Dated: May 15, 1975.

JOHN C. BLUM,
*Associate Administrator.*

[FR Doc.75-13184 Filed 5-19-75;8:45 am]

## Forest Service

### MULTIPLE USE PLAN STILLMAN POINT PLANNING UNIT

#### Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for Stillman Point Planning Unit, Forest Service Report Number USDA–FS–DES (Adm).

The environmental statement concerns a proposed land use plan for the Stillman Point Planning Unit, Selway Ranger District, Nezperce National Forest, Idaho County, Idaho. It presents resource information, resource allocation decisions, management guidance, and documents public involvement. Also discussed are management alternatives, environmental impacts, economic analysis, short term vs. long term use of environment and irretrievability of resource commitment. The 60,000 acre planning unit is divided into 15 logical management units for resource allocation and direction.

This draft environmental statement was filed with CEQ on May 13, 1975.

Copies are available for inspection during regular working hours at the following locations:

USDA Forest Service
South Agriculture Bldg., Room 3231
12th St. & Independence Ave., SW
Washington, DC 20250

USDA Forest Service
Northern Region
Federal Building
Missoula, MT 59801

USDA Forest Service
Nezperce National Forest
319 East Main
Grangeville, Idaho 83530

USDA Forest Service
Selway Ranger District
Kooskia, Idaho 83539

A limited number of single copies are available upon request to Forest Supervisor Donald L. Biddison, Nezperce National Forest, 319 E. Main St., Grangeville, Idaho 83530.

Copies of the environmental statement have been sent to various Federal, state, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, and from state and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor Donald L. Biddison, Nezperce National Forest, 319 E. Main St., Grangeville, Idaho 83530. Comments must be received by July 13, 1975 in order to be considered in the preparation of the final environmental statement.

Dated: May 13, 1975.

KEITH M. THOMPSON,
*Acting Regional Forester, Northern Region, Forest Service.*

[FR Doc.75-13138 Filed 5-19-75;8:45 am]

## Office of the Secretary

### NATIONAL AGRICULTURAL RESEARCH PLANNING COMMITTEE

#### Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Agricultural Research Planning Committee (NPC) will be held beginning at 9 a.m., June 10, 1975, in Room 4306, South Building, U.S. Department of Agriculture, Washington, D.C.

The Committee is jointly sponsored and chaired by the Department of Agriculture and the National Association of State Universities and Land Grant Colleges. The Committee deals with the planning element of the Agricultural Research Policy Advisory Committee (ARPAC).

The matters to be considered at this meeting include activities and progress in national and regional planning for agricultural research, implementation of task force reports, and future NPC plans and actions.

The meeting will be open to the public. Attendance will be limited to the space available. While no oral presentations will be entertained, anyone may file with the Committee, before or after the meeting, a written statement concerning the matters to be discussed. Persons who wish to file written statements may submit them to Dr. David J. Ward, Research Planning and Coordination, Office of the Secretary, Room 307–A, USDA, Washington, D.C. 20250—Telephone 202–447–3854. A record of the meeting will be available for public inspection at the above address three weeks after the meeting.

Dated: May 15, 1975.

PAUL A. VANDER MYDE,
*Deputy Assistant Secretary for Conservation, Research, and Education.*

[FR Doc.75-13257 Filed 5-19-75;8:45 am]

## Soil Conservation Service

### KAHALUU WATERSHED PROJECT, HAWAII

#### Availability of Final Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; Part 1500 of the Council on Environmental Quality Guidelines (38 FR 20550, August 1, 1973); and Part 650 of the Soil Conservation Service Guidelines (39 FR 19650, June 3, 1974); the Soil Conservation Service, U.S. Department of Agriculture, has prepared a final environmental impact statement (EIS) for the Kahaluu Watershed Project, City and County of Honolulu, Hawaii. USDA–SCS–EIS–WS–(ADM)–75–3(F)–HI.

The EIS concerns a plan for watershed protection, flood prevention, and recreational facilities. The planned works of improvement provide for conservation land treatment; enlarging the lower reaches of Waihee, Kahaluu, and Ahuimanu Streams and lining them with concrete; and constructing a 28-acre, multipurpose lagoon where the streams come together before discharging into Kaneohe Bay. In addition, the City and County of Honolulu will construct a recreational park surrounding the multipurpose lagoon.

The final EIS has been filed with the Council on Environmental Quality.

A limited supply is available at the following location to fill single copy requests:

Soil Conservation Service, USDA, 440 Alexander Young Building, Honolulu, Hawaii 96813

(Catalog of Federal Domestic Assistance Program No. 10.904, National Archives Reference Services.)

Dated: May 9, 1975.

WILLIAM B. DAVEY,
*Deputy Administrator for Water Resources, Soil Conservation Service.*

[FR Doc.75-13137 Filed 5-19-75;8:45 am]

### CHOCTAW CREEK WATERSHED PROJECT, TEXAS

#### Availability of Negative Declaration

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; part 1500.6(e) of the Council on Environmental Quality Guidelines (38 FR 20550) August 1, 1973; and part 650.8(b)(3) of the Soil Conservation Service Guidelines (39 FR 19651) June 3, 1974; the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Choctaw Creek Watershed project, Grayson County, Texas.

The environmental assessment of this Federal action indicates that the project will not create significant adverse local, regional, or national impacts on the environment and that no significant controversy is associated with the project. As a result of these findings, Mr. Edward E. Thomas, State Conservationist, Soil Conservation Service, USDA, First National Bank Building, Temple, Texas 76501, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for watershed protection and flood prevention.

The remaining planned works of improvement as described in the negative declaration include conservation land treatment supplemented by seven single purpose floodwater retarding structures.

The environmental assessment file is available for inspection during the regular working hours at the following location:

Soil Conservation Service, USDA, First National Bank Building, Temple, Texas 76501

Requests for the negative declaration should be sent to the above address.

No administrative action on implementation of the proposal will be taken until June 4, 1975.

(Catalog of Federal Domestic Assistance Program No. 10.904, National Archives Reference Services.)

JOSEPH W. HAAS,
*Acting Deputy Administrator for Water Resources, Soil Conservation Service.*

MAY 8, 1975.

[FR Doc.75-13200 Filed 5-19-75;8:45 am]

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. Sub-B-38/50]

### PAN-ALASKA FISHERIES, INC.

### Hearing; Correction

MAY 15, 1975.

In FR Doc. 75-12427 appearing on page 20660 in the issue for Monday, May 12, 1975, the words "excluding a 200-mile zone off the east coast of the United States" should be inserted after the words "in the Atlantic Ocean" appearing in line 9 of the center column.

ROBERT W. SCHONING,
*Director.*

[FR Doc.75-13265 Filed 5-19-75;8:45 am]

### Office of the Secretary

### WATCHES AND WATCH MOVEMENTS

### Allocation of Duty-Free Quotas for Calendar Year 1975 Among Producers Located in Guam and American Samoa

On January 6, 1975, the Departments of the Interior and Commerce published a Joint Notice announcing the rules to be used by the Departments in the allocation of 1975 calendar year quotas for duty-free entry into the customs territory of the United States of watches and watch movements assembled in Guam and American Samoa (40 FR 1113). This notice provided that annual quotas for calendar year 1975 would be based on the following criteria:

*Guam*—(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, and (2) the total dollar amount of wages subject to FICA taxes paid by each 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 these criteria, equal weight was assigned to production and shipment history and to wages subject to FICA taxes.

*American Samoa*—No allocation formula is provided for American Samoa as there is only one producer in the territory.

As a temporary measure, pending announcement of final statistics to be issued by the United States International Trade Commission (formerly Tariff Commission) on total apparent United States watch consumption during 1974, and the verification of data submitted in support of individual quota applications by producers located in Guam and American Samoa, initial 1975 calendar year quotas were allocated to eligible producers that had received duty-free watch quotas for calendar year 1974.

Representatives of the Departments visited each quota holder in Guam and American Samoa during March, 1974, to verify the data submitted in support of individual quota applications. The verification indicated that firms had been accurate in reporting the number of units which were entered into the customs territory of the United States during calendar year 1974, and generally accurate in reporting the amount of wages subject to FICA taxes paid during calendar year 1974 to persons whose pay was attributable to Headnote 3(a) watch assembly operations in the territories.

The number of watches and watch movements authorized for shipment on or after January 1, 1975, under initial quotas previously allocated by the Departments are to be applied against the following allocations, which are issued for the full calendar year 1975. Quotas of producers located in Guam reflect (1) adjustments made as a result of the verification of data submitted by individual applicants, and (2) reallocation of voluntarily relinquished quota pursuant to section 2 of the 1975 allocation rules.

GUAM

| Name of firm: | *Number of units* |
|---|---|
| 1. Hallmark Watch Factory, Inc. | 45,552 |
| 2. Maro Watch Co., Inc. | 286,309 |
| 3. Phoenix Industries, Inc. | 45,948 |
| 4. Stratton Watch Corp. | 24,191 |
| 5. Westminster Time Corp. | 70,000 |

AMERICAN SAMOA

| Name of firm: | *Number of units* |
|---|---|
| 1. Pacific Time Corp. | 237,000 |

Assigned quotas for Guam may be adjusted at anytime during this calendar year in the event it becomes apparent that shipments through December 31, 1975, by any firm will be less than 90 percent of the number of units allocated to it.

Dated: May 9, 1975.

EMMETT RICE,
*Acting Director, Office of Territorial Affairs, Department of the Interior.*

ALAN POLANSKY,
*Deputy Assistant Secretary for Resources and Trade Assistance, Department of Commerce.*

[FR Doc.75-13190 Filed 5-19-75;8:45 am]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Food and Drug Administration

[FAP 5B3052]

### E. I. DUPONT DE NEMOURS & CO., INC.

### Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 5B3052) has been filed by E. I. duPont deNemours & Co., Inc., 1007 Market St., Wilmington, DE 19898 proposing that the food additive regulations (21 CFR Part 121) be amended to provide for the safe use of polyoxymethylene resins produced by polymerization of formaldehyde and containing Nylon 66/610/6 terpolymer, 2,2'-methylenebis (4-methyl-6-tert-butylphenol), N,N'-distearoyl ethylenediamine, polyethylene glycol 6000 and tetrakis [methylene (3,5-di-tert-butyl-4-hydroxyhydrocinnamate)] methane as optional adjuvant substances in articles intended to contact food.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Assistant Commissioner for Public Affairs, Rm. 15B-42 or the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, during working hours, Monday through Friday.

Dated: May 12, 1975.

HOWARD R. ROBERTS,
*Acting Director, Bureau of Foods.*

[FR Doc.75-13172 Filed 5-19-75;8:45 am]

[FDA-225-75-4033]

### ARTX TELECOMMUNICATION EQUIPMENT

### Memorandum of Understanding With the Nevada Department of Health, Welfare & Rehabilitation (Health Division)

Pursuant to the notice published in the FEDERAL REGISTER of October 3, 1974 (39 FR 35697), stating that future memoranda of understanding between the Food and Drug Administration and others would be published in the FEDERAL REGISTER, the Commissioner of Food and Drugs issues the following notice:

The Food and Drug Administration executed a Memorandum of Understanding with the Nevada Department of Health, Welfare & Rehabilitation (Health Division) on March 26, 1975. The purpose of the memorandum is to establish the procedures and guidelines for the operation, maintenance, and protection of FDA-rented ARTX Telecommunication Equipment. It reads as follows:

MEMORANDUM OF UNDERSTANDING BETWEEN THE NEVADA DEPARTMENT OF HEALTH, WELFARE & REHABILITATION (HEALTH DIVISION) AND THE FOOD AND DRUG ADMINISTRATION

I. *Purpose.* To establish the procedures and guidelines for the operation, maintenance and protection of FDA-rented ARTX Telecommunication Equipment located in Room 131, Bureau of Environmental Health, Consumer Health Protection Services, 201 So. Fall St., Carson City, Nevada 89701.

II. *Background.* The FDA, Assistant Secretary for Health, Department of HEW, and the General Services Administration have approved a program to install full telecommunication transmit and receive terminals in a number of prime state food and drug agencies. Although terminals will be placed in a number of prime food and drug regulatory agencies, there are a number of other agencies with food and drug responsibilities in each state, where no terminal will be installed. Therefore, your agency, being one that received a terminal, must agree to share the terminal with other food and drug agencies in your state to assure that the communication system is accessible to all agencies with food and drug related responsibilities.

In addition to terminal-sharing, it is necessary for our two agencies to assure that proper operation and necessary supporting requirements for the equipment is maintained and proper security is provided for the equipment.

III. *Substance of Agreement.* A. The Food and Drug Administration agrees:

1. To arrange for the installation of the equipment in the location designated by your agency.

2. To support financially the cost of initial installation of the equipment and pay directly to GSA and Western Union the monthly rental cost. After the initial installation, the state will be responsible for relocation installation cost, unless relocation is in conjunction with a major move of the terminal agency to a new location address.

3. To identify for you those units in your state on which terminal-sharing must be accomplished.

4. To require that the terminal location agency (your agency) submit to FDA a terminal-sharing plan to be developed by you and other sharing units in your state.

5. To arrange through Western Union for training of terminal operators.

6. To provide operation instruction manual.

7. To withdraw financial support for the terminal if gross misuse of the terminal is practiced after due notice.

B. The State Terminal Agency agrees:

1. To provide suitable physical location for equipment with adequate security protection.

2. To provide and pay for electric power source to operate the terminal. (110 volts)

3. To provide for paper, tape and other material necessary for the operation of the equipment.

4. To share the terminal with other food and drug agencies in the state according to a terminal-sharing plan agreed to by each potential user.

5. To submit to the FDA Regional Office monthly traffic log. (Form to be furnished by FDA)

6. To submit promptly all messages received for addressees other than your agencies. Transmit promptly messages to FDA received from other appropriate agencies.

7. Maintain operator coverage for the terminal between normal working hours of your agency.

8. Notify vendor (Western Union) of any breakdown of the equipment or other needs for maintenance.

9. Notify FDA (Regional or Headquarters) of periods that the equipment is out-of-service.

10. That the system will be used *only* for communication between your state and FDA (Regional, District, or Headquarters Office). It is understood that the equipment is not to be used for communication between state agencies.

IV. *Name and Address of Terminal Agency.* Nevada State Department of Health, Welfare and Rehabilitation, Health Division, 201 So. Fall Street, Carson City, Nevada 89701.

V. *Liaison Officers.* For Nevada Department of Health, Welfare & Rehabilitation (Health Division): Ernest Scruggs, Dir., Div. of Consumer Health Protection.

Address: 201 So. Fall Street, Carson City, Nevada 89701. Telephone No.: (702) 882-7870.

For FDA: John S. Rynd, Dir., Investigations Branch. Address: Food and Drug Administration. Telephone No.: (415) 556-8576.

VI. *Period of Agreement.* This agreement, when accepted by both parties, will have an effective period of performance three (3) years from date of signature and may be modified by mutual consent by both parties or may be terminated by either party upon a thirty (30) day advance written notice to the other.

Approved and accepted for the Nevada Department of Health, Welfare & Rehabilitation: s/Ernest N. Scruggs, Consumer Health Protection Services. Date: March 7, 1975.

Approved and accepted for the Food and Drug Administration: s/Irwin B. Berch Regional Food and Drug Director, Food & Drug Administration, Reg. 9. Date: March 26, 1975.

*Effective date.* This Memorandum of Understanding became effective March 26, 1975.

Dated: May 14, 1975.

SAM D. FINE,
*Associate Commissioner for Compliance.*

[FR Doc.75-13175 Filed 5-19-75;8:45 am]

---

[FDA-225-75-4045]

## ARTX TELECOMMUNICATION EQUIPMENT

### Memorandum of Understanding With the Maine Department of Agriculture

Pursuant to the notice published in the FEDERAL REGISTER of October 3, 1974 (39 FR 35697), stating that future memoranda of understanding between the Food and Drug Administration and others would be published in the FEDERAL REGISTER, the Commissioner of Food and Drugs issues the following notice:

The Food and Drug Administration executed a Memorandum of Understanding with the Maine Department of Agriculture on March 18, 1975. The purpose of the memorandum is to establish the procedures and guidelines for the operation, maintenance, and protection of FDA-rented ARTX Telecommunication Equipment. It reads as follows:

MEMORANDUM OF UNDERSTANDING BETWEEN THE MAINE DEPARTMENT OF AGRICULTURE AND THE FOOD AND DRUG ADMINISTRATION

I. *Purpose.* To establish the procedures and guidelines for the operation, maintenance and protection of FDA-rented ARTX Telecommunication Equipment located in a TWX room within the general offices of the Maine Department of Agriculture, ROOM 601, State Office Building, Augusta, Maine.

II. *Background.* The FDA, Assistant Secretary for Health, Department of HEW, and the General Services Administration have approved a program to install full telecommunication transmit and receive terminals in a number of prime state food and drug agencies. Although terminals will be placed in a number of prime food and drug regulatory agencies, there are a number of other agencies with food and drug responsibilities in each state, where no terminal will be installed. Therefore, your agency, being one that received a terminal, must agree to share the terminal with other food and drug agencies in your state to assure that the communication system is accessible to all agencies with food and drug related responsibilities.

In addition to terminal-sharing, it is necessary for our two agencies to assure that proper operation and necessary supporting requirements for the equipment is maintained and proper security is provided for the equipment.

III. *Substance of Agreement.* A. The Food and Drug Administration agrees:

1. To arrange for the installation of the equipment in the location designated by your agency.

2. To support financially the cost of initial installation of the equipment and pay directly to GSA and Western Union the monthly rental cost. After the initial installation, the state will be responsible for relocation installation cost, unless relocation is in conjunction with a major move of the terminal agency to a new location address.

3. To identify for you those units in your state on which terminal-sharing must be accomplished.

4. To require that the terminal location agency (your agency) submit to FDA a terminal-sharing plan to be developed by you and other sharing units in your state.

5. To arrange through Western Union for training of terminal operators.

6. To provide operation instruction manual.

7. To withdraw financial support for the terminal if gross misuse of the terminal is practiced after due notice.

B. The State Terminal Agency agrees:

1. To provide suitable physical location for equipment with adequate security protection.

2. To provide and pay for electric power source to operate the terminal. (110 volts)

3. To provide for paper, tape and other material necessary for the operation of the equipment.

4. To share the terminal with other food and drug agencies in the state according to a terminal-sharing plan agreed to by each potential user.

5. To submit to the FDA Regional Office monthly traffic log. (Form to be furnished by FDA)

6. To submit promptly all messages received for addressees other than your agencies. Transmit promptly messages to FDA received from other appropriate agencies.

7. Maintain operator coverage for the terminal between normal working hours of your agency.

8. Notify vendor (Western Union) of any breakdown of the equipment or other needs for maintenance.

9. Notify FDA (Regional or Headquarters) of periods that the equipment is out-of-service.

10. That the system will be used *only* for communication between your state and FDA (Regional, District, or Headquarters Office). It is understood that the equipment is not to be used for communication between state agencies.

11. To transmit on an emerging basis, messages for the FDA inspector assigned to Maine.

IV. *Name and Address of Terminal Agency.* Maine Department of Agriculture, Room 601, State Office Building, Augusta, Maine 04330.

V. *Liaison Officers.* For Maine Department of Agriculture: Maynard C. Dolloff, Commissioner, Department of Agriculture.

Address: Rom 601, State Office Building, Augusta, Maine 04330. Telephone No.: (207) 289–3871.

For FDA: Richard J. Davis. Address: Boston. Telephone No.: 223–5067.

VI. *Period of Agreement.* This agreement, when accepted by both parties, will have an effective period of performance three (3) years from date of signature and may be modified by mutual consent by both parties or may be terminated by either party upon a thirty (30) day advance written notice to the other.

Approved and accepted for the Maine Department of Agriculture: s/Maynard C. Dolloff, Commissioner, Department of Agriculture. Date: March 18, 1975.

Approved and accepted for the Food and Drug Administration: s/A. J. Beebe, Jr., Reg. Food and Drug Director. Date: March 13, 1975.

*Effective date.* This Memorandum of Understanding became effective March 18, 1975.

Dated: May 14, 1975.

SAM D. FINE,
*Associate Commissioner for Compliance.*

[FR Doc.75–13174 Filed 5–19–75;8:45 am]

## RETORTABLE LAMINATED POUCHES

### Public Meeting

The Food and Drug Administration announces a public meeting to be held at 10 a.m., June 6, 1975, in Rm. 1409, Federal Office Building 8, 200 C St. SW., Washington, DC 20204. The subject of the meeting will be the use of retortable laminated pouches to package food.

The Food and Drug Administration will outline potential problems concerning the proposed use of these retortable laminated pouches and will specify the testing necessary to provide a scientific basis for judging the safety of retortable laminated pouches. Further information concerning the meeting may be obtained by telephoning Thomas C. Brown, Division of Food and Color Additives, Bureau of Foods (202) 245–1186.

Dated: May 14, 1975.

SAM D. FINE,
*Associate Commissioner for Compliance.*

[FR Doc.75–13173 Filed 5–19–75;8:45 am]

## National Institutes of Health

## NATIONAL CANCER ADVISORY BOARD SUBCOMMITTEE ON CENTERS

### Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board Subcommittee on Centers, National Cancer Institute, on June 15, 1975, National Institutes of Health, from 8 p.m. to adjournment, in Building 31, Conference Room 7, Bethesda, Maryland. This meeting will be open to the public from 8 p.m. to 8:30 p.m. on June 15, 1975, to review and evaluate the cancer centers program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5) and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting of the Subcommittee will be closed to the public on June 15 from 8:30 p.m. to adjournment, for the review, discussion and evaluation of individual initial pending, supplemental, and renewal center grant applications. The closed portions of the meetings involve solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 3A16, National Institutes of Health, Bethesda, Maryland 20014 (301/496–5708) will furnish summaries of the meeting and roster of committee members.

Dr. John W. Yarbro, Executive Secretary, Westwood Building, Room 832, National Institutes of Health, Bethesda, Maryland 20014 (301/496–7427) will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.312)

Dated: May 12, 1975.

SUZANNE L. FREMEAU,
*Committee Management Officer, NIH.*

[FR Doc.75–13158 Filed 5–19–75;8:45 am]

## NATIONAL EYE INSTITUTE

### Meeting

Notice is hereby given of a change in the meeting which will be held June 9, 1975, at 9 a.m., in Bethesda, Maryland, of the National Advisory Eye Council, National Eye Institute, in Building 31, Conference Room No. 8, National Institutes of Health, which was published in the FEDERAL REGISTER on April 24, 1975 (40 FR 18020–1).

In addition to the review, discussion and evaluation of academic investigator awards and individual and institutional applications under the National Research Services Awards program, there will also be reviewed initial pending, supplemental and renewal grant applications and Core Center grants.

Dated: May 14, 1975.

SUZANNE L. FREMEAU,
*Committee Management Officer, NIH.*

[FR Doc.75–13160 Filed 5–19–75;8:45 am]

## NATIONAL INSTITUTE OF ARTHRITIS, METABOLISM, AND DIGESTIVE DISEASES

### Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Arthritis, Metabolism, and Digestive Diseases Advisory Council, National Institute of Arthritis, Metabolism, and Digestive Diseases on June 24–25, 1975, from 9 a.m. to 5 p.m., in Building 31, Conference Room 10, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to 1:00 p.m. on June 24, 1975, to discuss administrative reports. Attendance by the public will be limited to space available. In addition, a meeting of the Digestive Diseases Committee of the above Council will be held from 9 a.m. to 5 p.m. on June 23, 1975, in Building 31, Conference Room 8, Bethesda, Maryland.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5) and 552(b)(6), Title 5, U.S. Code and section 10(d) of P.L. 92–463, the meeting of the Council will be closed to the public on June 24 from 1 p.m. to 5 p.m. and on June 25, 1975, from 9 a.m. to 5 p.m., for the review, discussion and evaluation of individual initial, pending, supplemental and renewal grant applications. The Digestive Diseases Committee of the above Council will be closed to the public from 9 a.m. to 5 p.m. on June 23, 1975, also for the review, discussion and evaluation of individual initial, pending, supplemental and renewal grant applications. The closed portions of the meetings involve solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. Victor Wartofsky, Information Officer, NIAMDD, National Institutes of Health, Building 31, Room 9A04, Bethesda, Maryland 20014, (301) 496–3583, will furnish rosters of committee members, summaries of the meetings, and other information pertaining to the meetings.

(Catalog of Federal Domestic Assistance Program No. 13.309, National Institutes of Health)

Dated: May 14, 1975.

SUZANNE L. FREMEAU,
*Committee Management Officer, NIH.*

[FR Doc.75–13159 Filed 5–19–75;8:45 am]

## PRESIDENT'S CANCER PANEL

### Meeting

Notice is hereby given of a change in the meeting date of the President's Cancer Panel, National Cancer Institute, which was published in the FEDERAL REGISTER on April 3, 1975, Vol. 40, No. 65—page 14965.

This President's Cancer Panel was to have convened on May 29, 1975, but has been changed to June 18, 1975, National Cancer Institute, Building 31, Conference Room 6, National Institutes of Health.

The meeting will be open to the public from 2:30 p.m. to 3:30 p.m. and will

be closed to the public from 3:30 p.m. to adjournment.

Dated: May 13, 1975.

SUZANNE L. FREMEAU,
*Committee Management Officer, NIH.*

[FR Doc.75-13157 Filed 5-19-75;8:45 am]

## PRESIDENT'S CANCER PANEL

### Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, July 8, 1975, 9:30 a.m. to adjournment, National Institutes of Health, Building 31, Conference Room 8. This meeting will be open to the public from 9:30 a.m. to 12 noon for a report from the Director, National Cancer Institute, and a report from the Chairman, President's Cancer Panel. Attendance by the public will be limited to space available. The meeting will be closed to the public from 1:30 p.m. to adjournment for review and discussion of the proposed fiscal year 1977 budget in accordance with the provisions set forth in section 552(b)(5) of Title 5 U.S. Code and 10(d) of Pub. L. 92-463.

Dr. Richard A. Tjalma, Executive Secretary, Building 31, Room 11A46, National Institutes of Health, Bethesda, Maryland 20014 (301/496-5854) will provide substantive program information, transcripts of the open meeting and roster of committee members.

Dated: May 14, 1975.

SUZANNE L. FREMEAU,
*Committee Management Officer, NIH.*

[FR Doc.75-13161 Filed 5-19-75;8:45 am]

### Office of Education

## NATIONAL ADVISORY COUNCIL ON EXTENSION AND CONTINUING EDUCATION

### Public Meeting

Notice is hereby given, pursuant to the Federal Advisory Committee Act Pub. L. 92-463 that the next meeting of the National Advisory Council on Extension and Continuing Education will be held June 13-14, 1975, in Salons A and B at the Westbury Hotel, 480 Sutter Street, San Francisco, California. The meetings will begin at 9 a.m. each day.

The National Advisory Council on Extension and Continuing Education is authorized under Pub. L. 89-329. The Council is directed to advise the Commissioner of Education in the preparation of general regulations and with respect to policy matters arising in the administration of Title I, and to report to the President and to the Secretary of Health, Education and Welfare on the administration and effectiveness of all federally supported extension and continuing education programs, including community service programs.

The meeting of the Council will be open to the public. The meeting is expected to consist largely of work sessions at which committees develop in greater detail their parts of the plan for next year and at which the Council approves these plans and sets priority for use of Council resources. All records of Council proceedings are available for public inspection at the Council's Staff Office, located in Suite 710, 1325 G Street NW., Washington, D.C.

LLOYD H. DAVIS,
*Executive Director.*

MAY 13, 1975.

[FR Doc.13145 Filed 5-19-75;8:45 am]

## FOREIGN LANGUAGE AND AREA STUDIES RESEARCH PROGRAM

### Priorities for Funding Proposals for Fiscal Year 1975

On pages 11930 and 11931 of the FEDERAL REGISTER of March 14, 1975, there was published a notice of proposed rule making[1] which set forth priorities for funding proposals for Fiscal Year 1975 for financial assistance under section 602 of the National Defense Education Act of 1958, as amended (20 U.S.C. 512). Interested persons were given 30 days in which to submit written comments, suggestions, or objectives regarding the proposed regulations.

No objections have been received and the proposed priorities are hereby adopted without change and are set forth below.

*Effective date.* The notice of proposed rule making was transmitted to Congress on March 11, 1975 pursuant to section 431(d) of the General Education Provisions Act (20 U.S.C. 1232(d)). The time period set forth therein for congressional action has expired without such action having been taken. Therefore these priorities shall become effective May 20, 1975.

(Catalog of Federal Domestic Assistance Program: 13.436 Foreign Language and Area Studies—Research)

Dated: May 1, 1975.

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

Approved: May 14, 1975.

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

Section 602 of the National Defense Education Act of 1958, as amended (20 U.S.C. 512), authorizes the Commissioner of Education to contract for studies and surveys to determine the need for increased or improved instruction in modern foreign languages and related fields needed to provide a full understanding of the areas, regions, or countries in which such languages are commonly used, to conduct research on more effective methods of teaching such languages and such fields, and to develop specialized materials for use in training students and language teachers. For Fiscal Year 1975, the Commissioner has decided to accept proposals for such contracts as unsolicited proposals and to evaluate them in accordance with the requirements and evaluation criteria listed in § 3-4.5203-2(b) of the HEW procurement regulations (41 CFR 3-4.5203-2(b)). For the convenience of potential applicants, the funding priorities for such proposals are set forth in Paragraph A and the HEW procurement criteria are set forth in Paragraph B, below.

A. *Funding Priorities.* Priority will be given to proposals dealing with: (1) The preparation of specialized instructional material particularly for languages which are not widely taught in the United States and for which there is no commercial market, and for area studies concerned with the non-Western world; (2) teaching methodology, and more specifically methodology which applies linguistic, psycholinguistic and sociolinguistic theories to projects which can thereby be expected to increase our understanding of second language acquisition and improve teaching and learning methodology; and (3) conferences, studies, and surveys to assess the state of the art of foreign language and area studies in the United States, to determine new directions as needed, to identify priority needs for specialized materials, and to observe national trends through surveys of enrollments and degree requirements.

B. *HEW Procurement Criteria for evaluating unsolicited proposals.* The criteria listed in § 3-4.5203-2(b) of the HEW Procurement Regulation include:

(1) The overall scientific and technical merit of the proposed effort;

(2) The potential contribution which the proposed effort is expected to make to specific program objective(s), if supported at this time;

(3) The unique capabilities, related experience, facilities, instrumentation, or techniques which the offeror possesses and offers, and which are considered to be integral factors for achieving the scientific, technical, or technological objective(s) of the proposal; and

(4) The unique qualifications, capabilities, and experiences of the proposed principal investigator and/or key personnel.

For the further information of applicants, unsolicited proposals under the HEW procurement regulations (41 CFR 3-4.5202-1(b)), must include the following information:

(1) Name and address of the organization or individual submitting the proposal;

(2) Date of preparation or submission;

(3) Type of organization (profit, nonprofit, educational, other);

(4) Concise title and clear and concise abstract. Extensive material should be included only in appendices;

(5) An outline and discussion of the purpose of the proposed effort or activity, the method of approach to the problem, and the nature and extent of the anticipated results;

(6) Names of the key personnel to be involved, brief biographical information, including principal publications and relevant experience;

[1] NOTE: This document was published as a notice document in the issue of March 14, 1975.

(7) Proposed starting and completion dates;

(8) Equipment, facility, and personnel requirements;

(9) Proposed budget, including separate cost estimates for salaries and wages, equipment, expendable supplies, services, travel, subcontracts, other direct costs and overhead;

(10) Names of any other Federal agencies receiving the unsolicited proposal and/or funding the proposed effort or activity;

(11) Brief description of the offeror's facilities, particularly those which would be used in the proposed effort or activity;

(12) Brief outline of the offeror's previous work and experience in the field;

(13) A current financial statement and, if available, a descriptive brochure;

(14) Period for which unsolicited proposal is valid;

(15) Names and telephone numbers of offeror's primary business and technical personnel whom the agency may contact during evaluation and/or negotiation;

(16) Identification, on the cover sheet, of technical data which the offeror intends to be used by HEW for evaluation purposes only (see 41 CFR 3-1.353(c)); and

(17) Signature of a responsible official of the proposing organization of a person authorized to contractually obligate such organization.

(20 U.S.C. 512)

[FR Doc.75-13215 Filed 5-19-75;8:45 am]

## Office of the Secretary

## HUMAN SUBJECTS

### Submission of Assurances and Certificates Concerning Protection

On August 14, 1974, the Department of Health, Education, and Welfare published in the FEDERAL REGISTER (39 FR 29212) a notice concerning submission of certification of institutional review and approval of grants and contracts in support of activities involving human subjects as required by §§ 46.11 and 46.12 of 45 CFR Part 46.

Said notice was to remain in force until the effective date of regulations implementing section 212 of the National Research Act, Pub. L. 93-348. These regulations appeared in the FEDERAL REGISTER on March 13, 1975 (40 FR 11853) and became effective as of that date. They in effect readopted Part 46, with only minor changes.

These regulations require each institution to submit in or with any application or proposal for support of an activity involving human subjects an assurance that it has established an Institutional Review Board satisfying the requirements of Part 46. However, §§ 46.11 and 46.12 thereof authorize the Secretary to permit institutions to delay review and approval of applications or proposals by their Institutional Review Boards until after the applications or proposals have been submitted to DHEW. This notice is for the purpose of permitting such delay to the limited extent prescribed below.

Whenever possible, such review and approval should occur prior to submission of the application or proposal and a certification to that effect should be included in or with the application or proposal itself. Under no circumstances will the review of an application by DHEW be completed until certification is received from the institution that its Institutional Review Board has reviewed and approved the application.

Institutions having on file with DHEW an approved general assurance must submit such certification within 30 days of the receipt of a written request therefor; and in any event these institutions must submit such certification within 90 days after the deadline for which the application or proposal was submitted or, if no deadline is specified, within 90 days following the submission date of the application or proposal.

Institutions not having on file an approved general assurance must submit in or with the application or proposal for activities covered by 45 CFR Part 46, a special assurance that shall: (a) identify the specific application or proposal by its full title, and by the name of the activity director or other person immediately responsible for the conduct of the activity; and (b) include a statement, executed by an appropriate institutional official, indicating that the institution has established an Institutional Review Board satisfying the requirements of §§ 46.6(b) and 46.7(b) of Part 46. This statement may take the following form:

> Assurance is hereby given that this institution will comply with requirements of the DHEW Regulations on Protection of Human Subjects (45 CFR Part 46), that it has established an Institutional Review Board for the protection of human subjects which meets said requirements, and that it will submit to DHEW, upon request, such additional documentation and assurances of compliance with said requirements as may be deemed necessary by DHEW.

Institutions having submitted such a special assurance must submit additional assurances of compliance and a certification of review and approval of the application or proposal by its Institutional Review Board, as well as required documentation, within 30 days of the receipt of a written request for the submission of such additional assurances, certification, and documentation.

The provisions of this notice will be re-evaluated no later than 18 months after publication to determine whether there is any need for modification thereof.

Dated: May 14, 1975.

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

[FR Doc.75-13218 Filed 5-19-75;8:45 am]

## NATIONAL INSTITUTE OF EDUCATION

### Statement of Organization, Functions, and Delegations of Authority

The Statement of Organization, Functions, and Delegations of Authority of the Department of Health, Education, and Welfare is amended to add a new Part 12 for the National Institute of Education. The previous statement for this organization was contained in Part 7 of the Department's statement and published in the FEDERAL REGISTER (37 FR 19158, September 19, 1972). It is superseded by a revised statement which is included in Part 12 and reads as follows:

SECTION 12.00 *Mission.* The National Institute of Education carries out the policies set forth by Congress in the General Education Provisions Act, (GEPA), as amended, as follows: to provide every person an equal opportunity to receive an education of high quality regardless of race, color, religion, sex, national origin, or social class; to help solve or to alleviate the problems of, and promote the reform and renewal of American education; to advance the practice of education, as an art, science, and profession; to strengthen the scientific and technological foundations of education; and to build an effective educational research and development system.

The Director of the Institute, through the Institute, conducts educational research; collects and disseminates the findings of educational research; trains individuals in educational research; assists and fosters such research, collection dissemination, or training, through grants, technical assistance to, or jointly financed cooperative agreements with, public organizations, institutions, agencies or individuals; promotes the coordination of such research and research support within the Federal Government; and constructs or provides (by grant or otherwise) for such facilities as he determines may be required to accomplish such purposes. The term "Educational Research" as used in Section 405(e)(1) of GEPA includes "Research (basic and applied), planning, surveys, evaluations, investigations, experiments, developments and demonstrations in the field of education (including career education)."

SEC. 12.10 Organization. The National Institute of Education consists of a National Council on Educational Research (NCER) and a Director of the Institute. The Director is responsible to the Assistant Secretary for Education, and reports to the Secretary through the Assistant Secretary for Education. The organization responsible to the Director is as follows: Office of the Director; Office of Government and External Relations; Office of Public Affairs; NCER Staff; NIE Fellows Program Staff; Office of Planning, Budget and Program Analysis; Office of Administration and Management; Dissemination and Resources Group; Basic Skills Group; Finance and Productivity Group; School Capacity for Problem-Solving Group; Education and Work Group; and Educational Equity Group.

SEC. 12.20 *Functions.* A. The National Council on Educational Research: Establishes general policies for, and reviews the conduct of the Institute; advises the Assistant Secretary for Education and the Director of the Institute on the development of programs to be carried out

by the Institute; presents to the Assistant Secretary for Education and the Director such recommendations as it may deem appropriate for the strengthening of educational research, the improvement of methods of collecting and disseminating the findings of educational research, and ensuring the implementation of educational renewal and reform based upon the findings of educational research; conducts such studies as may be necessary to fulfill its functions; prepares an annual report to the Assistant Secretary for Education on the current status and needs of educational research in the United States; submits an annual report to the President on the activities of the Institute, and on educational research in general which (1) shall include such recommendations and comments as the Council may deem appropriate, and (2) shall be submitted to the Congress not later than March 31 of each year.

B. The Office of the Director: Coordinates and directs the activities of the Institute.

C. Office of Government and External Relations: Carries out responsibilities for coordinating and improving NIE relations with Congress, State and local governments, minority communities, and special interest groups in education to increase understanding of NIE's activities and the policies of the National Council on Educational Research.

D. Office of Public Affairs: Carries out responsibilities for planning, developing and implementing a coordinated media relations, internal communications, publications, and public information program for NIE and the National Council on Educational Research.

E. NCER Staff: Carries out responsibilities for the preparation of policy recommendations, statements, and reports about education issues and NIE programs for the National Council on Educational Research; for communicating and interpreting NCER policies and interests to NIE, other government officials, and the public; for advising the Council and its individual members in their duties; for overseeing the preparation of the NCER annual report; and for providing administrative support to the NCER.

F. NIE Fellows Program Staff: Carries out responsibilities for a residential scholars program to affiliate senior level researchers and practitioners with NIE to address special needs and provide expertise to the Institute in various areas.

G. Office of Planning, Budget and Program Analysis: Carries out responsibilities for the preparation, presentation and execution of the Institute's annual budget; for the development and operation of the Institute's annual and long range program planning process; for program review and analysis; and for preparing with the assistance of the Committee on Equal Educational Opportunity (with Institute-wide membership), descriptions and analyses of the Institute's programs as they relate to equality of educational opportunity.

H. Office of Administration and Management: Carries out responsibilities for administrative and managerial systems required for the operation of the Institute; for the internal review of functions related to the fiscal operations of the Institute; for the development of standards and guidelines for the administration of Institute programs and the review and coordination of regulations development for new activities; and for ensuring that the Institute in its internal operations is sensitive to the concerns of minorities and women by pursuing equal employment opportunity.

I. Dissemination and Resources Group: Responsible for improving the dissemination and use of knowledge for solving educational problems, and for activities to study, evaluate, and improve the capabilities of institutions and individuals to produce and use knowledge in improving education.

J. Basic Skills Group: Responsible for carrying out research on the teaching and learning of basic subjects (primarily reading and mathematics) and on the measurement of student progress in these areas. Through the application of research findings and new developments to classroom instruction, the Basic Skills Group expects to provide a sound basis for the improvement of education and for equal education opportunity.

K. Finance and Productivity Group: Responsible for carrying out a program to improve the effectiveness and efficiency of educational institutions through a program of policy studies; research and development in the areas of finance, management, organization, alternative delivery systems; and the application of competency concepts.

L. School Capacity for Problem-Solving Group: Responsible for identifying and understanding how school systems develop the capacity for problem solving and for finding ways of helping other schools to do so. This Group will (1) study the workings and assess the effectiveness of selected organizational strategies in initiating and sustaining school improvements; (2) identify and study policy and basic research issues involved in the development and implementation of such strategies; and (3) develop ways of utilizing the knowledge generated by the study of policy and basic research issues to help schools and school systems to employ various strategies.

M. Education and Work Group: Responsible for carrying out a program to improve the preparation of youth and adults for entering and progressing in careers. This Group will develop and test projects that increase understanding of the issues and problems associated with education and work; support programs that will develop the skills and abilities necessary for successful entry and progression in careers; and conduct policy studies to determine how to ensure effective dissemination and implementation of the results of Education and Work programs and projects, and to determine directions for new activities.

N. Educational Equity Group: Responsible for carrying out a program of research and development activities which will assist schools in providing more adequate education for many students who have been limited in their choice of educational programs because of their home, language, culture, ethnicity, sex, or economic status.

SEC. 12.30 *Vested and delegated authority.* The Director of the National Institute of Education has program authority directly vested in him by the Education Amendments of 1972, as amended as well as certain delegated program authorities as follows:

(A) In order to accomplish the functions set forth in section 12.20, section 408(a) of GEPA authorizes the Director of the Institute (1) to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of the agency; (2) in accordance with those provisions of Title 5, United States Code, relating to the appointment and compensation of personnel and subject to such limitations as are imposed in part A of GEPA to appoint and compensate such personnel as may be necessary to enable the agency to carry out its functions; (3) to accept unconditional gifts or donations of services, money, or property (real, personal, or mixed; tangible or intangible); (4) without regard for section 3648 of the Revised Statutes of the United States (31 U.S.C. 529), to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary for the conduct of the agency; (5) with funds expressly apropriated for such purpose, to construct such facilities as may be necessary to carry out functions vested in him or in the agency of which he is head, and to acquire and dispose of property; and (6) to use services of other Federal agencies and reimburse such agencies for such services.

(B) Pursuant to the Delegations of Authorities, dated June 19, 1973, and approved by the President on July 6, 1973, from the Director-designate of the Office of Economic Opportunity (OEO) to the Secretary of Health, Education, and Welfare, the Secretary's redelegation of July 11, 1973 to the Assistant Secretary for Education, and the Assistant Secretary's redelegation, the Director of the National Institute of Education is authorized to administer those grants, contracts, or other agreements made or entered into which constitute the program described in paragraph three (3) clause five (5) of that document ("educational voucher demonstrations and other projects designed to study or test ways to improve educational opportunities for the disadvantaged.")

SEC. 12.40 *Order of succession.* In the absence of the Director or in the event that there is a vacancy in that office, the Deputy Director shall serve as Acting Director. In the event that both the Director and Deputy Director are absent or there is a vacancy in both offices, the following shall serve as Acting Director in the order indicated: Associate Director for Administration and Management;

Associate Director for Planning, Budget and Program Analysis.

CASPER W. WEINBERGER,
*Secretary of Health, Education, and Welfare.*

MAY 12, 1975.

[FR Doc.75-13219 Filed 5-19-75;8:45 am]

## SOCIAL SECURITY ADMINISTRATION

### Organizational Location of the Provider Reimbursement Review Board; Correction

In FR Doc. 75-8174 appearing at page 14350 in the FEDERAL REGISTER of March 31, 1975 (Volume 40, Number 62), the third line of paragraph 3 in section 4-02-30 is corrected to read as follows: "Education, and Welfare or his delegate, on."

Dated: May 12, 1975.

THOMAS S. MCFEE,
*Deputy Assistant Secretary for Management Planning and Technology.*

[FR Doc.75-13212 Filed 5-19-75;8:45 am]

## OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH

### Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research provisionally scheduled for May 23 and 24, 1975, in Conference Room 10, C Wing, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014 and announced in the FEDERAL REGISTER on Tuesday May 6, 1975, Vol. 40.

Dated: May 16, 1975.

CHARLES U. LOWE,
*Executive Director, National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research.*

[FR Doc.75-13342 Filed 5-19-75;8:45 am]

# ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

## COMMITTEE ON RULEMAKING

### Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Rulemaking of the Administrative Conference of the United States, to be held at 10 a.m., June 5, 1975, in the offices of The Administrative Conference of the United States, 2120 L St., NW, Suite 500, Washington, D.C. 20037.

The Committee will meet to hold preliminary discussions with Professor Edward A. Tomlinson on the use of the Federal Register and with Professor Barry Boyer on the new FTC trade regulation rulemaking requirements. The Committee will also discuss Professor Stephen F. Williams' report, "Hybrid Rulemaking: The Evolution of Notice-and-Comment Procedures Under Section 553 of the Administrative Procedure Act."

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least one day in advance. Members of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this Committee meeting contact Lynda S. Zengerle, 202-254-7065. Minutes of the meeting will be available on request.

RICHARD K. BERG,
*Executive Secretary.*

MAY 14, 1975.

[FR Doc.75-13199 Filed 5-19-75;8:45 am]

# NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-488; 50-489; 50-490]

## DUKE POWER CO. (PERKINS NUCLEAR STATION, UNITS 1, 2 AND 3)

### Order for Prehearing Conference

The Atomic Safety and Licensing Board will hold a prehearing conference on June 13, 1975, at 10 a.m. in the Davie County Courthouse (Square), Mocksville, N.C. 27028. Representatives of the parties will attend and members of the public may do so.

This prehearing conference is to be held in connection with the application of the Duke Power Company for issuance of a construction permit for the proposed Perkins Nuclear Station, Units 1, 2 and 3 for which notice of hearing was published on July 19, 1974, in 39 F.R. 26470 and will consider the matters set forth in 10 CFR 2.752 including simplification of the issues, the obtaining of stipulations and admissions of fact, identification of witnesses, the setting of a hearing schedule and such other matters as may aid in the orderly disposition of the proceeding.

The evidentiary hearing, at which the parties present evidence and persons making limited appearances make statements, will be held in the future at a time to be set by the Board. Limited appearances will not be heard at this conference.

*It is so ordered.*

Dated at Bethesda, Maryland, this 12th day of May, 1975.

ATOMIC SAFETY AND LICENSING BOARD,
FREDERIC J. COUFAL,
*Chairman.*

[FR Doc.75-13129 Filed 5-19-75;8:45 am]

[Docket Nos. 50-491; 50-492; 50-493]

## DUKE POWER CO. (CHEROKEE NUCLEAR STATION, UNITS 1, 2 AND 3)

### Order for Prehearing Conference

The Atomic Safety and Licensing Board will hold a prehearing conference on June 12, 1975, at 10 a.m. in the Cherokee County Courthouse, East Smith Street, Gaffney, S.C. 29340. Representatives of the parties will attend and members of the public may do so.

This prehearing conference is to be held in connection with the application of the Duke Power Company for issuance of a construction permit for the proposed Cherokee Nuclear Station, Units 1, 2 and 3 for which notice of hearing was published on July 19, 1974, in 39 F.R. 26470 and will consider the matters set forth in 10 CFR 2.752 including simplification of the issues, the obtaining of stipulations and admissions of fact, identification of witnesses, the setting of a hearing schedule and such other matters as may aid in the orderly disposition of the proceeding.

The evidentiary hearing, at which the parties present evidence and persons making limited appearances make statements, will be held in the future at a time to be set by the Board. Limited appearances will not be heard at this conference.

*It is so ordered.*

Dated at Bethesda, Maryland, this 12th day of May, 1975.

ATOMIC SAFETY AND LICENSING BOARD
FREDERIC J. COUFAL,
*Chairman.*

[FR Doc.75-13130 Filed 5-19-75;8:45 am]

[Docket No. 50-315]

## INDIANA AND MICHIGAN ELECTRIC CO. AND INDIANA AND MICHIGAN POWER CO. (DONALD C. COOK NUCLEAR PLANT UNIT 1)

### Issuance of Amendment to Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 5 to Facility Operating License No. DPR-58 issued to Indiana and Michigan Electric Company and Indiana and Michigan Power Company. The amendment revises the Technical Specifications for operation of the Donald C. Cook Nuclear Plant Unit 1 located in Berrien County, Michigan, and is effective as of its date of issuance.

The amendment changes certain Technical Specifications to clarify their intent, to correct proofreading errors, to make specifications consistent with Standard Technical Specifications being developed for other plants, and to correct inadvertent restrictions on plant operation.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings required by the Act and the Commission's rules and regulations in 10 CFR Chapter I. These findings are set forth in the license amendment. Prior public notice of this amendment is not required because the amendment does not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendment dated April 23, 1975, (2) Amendment No. 5 to License No. DPR–58, with Change No. 5, and (3) the Commission's related safety evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the St. Joseph Public Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Maryland this 14th day of May 1975.

For the Nuclear Regulatory Commission.

KARL KNIEL,
*Chief, Light Water Reactors Branch 2–2, Division of Reactor Licensing.*

[FR Doc.75–13132 Filed 5–19–75;8:45 am]

---

[Docket No. 50–331]

## IOWA ELECTRIC LIGHT AND POWER CO. ET AL.

### Issuance of Amendment to Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 8 to Facility Operating License No. DPR–49 issued to Iowa Electric Light and Power Company, Central Iowa Power Cooperative and Corn Belt Power Cooperative which revised Technical Specifications for operation of the Duane Arnold Energy Center, located in Linn County, Iowa. The amendment is effective as of its date of issuance.

The amendment permits changes to the Technical Specifications that would modify limiting conditions for operation and surveillance requirements for installed filters in the standby gas treatment system and in the control room air treatment system.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment is not required since the amendment does not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendment dated January 28, 1975 and supplement dated March 5, 1975 (2) Amendment No. 8 to License No. DPR–49, with Change No. 9 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Cedar Rapids Public Library, 426 Third Avenue, SE, Cedar Rapids, Iowa 52401.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Maryland, May 13, 1975.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
*Chief, Operating Reactors Branch #3, Division of Reactor Licensing.*

[FR Doc.75–13135 Filed 5–19–75;8:45 am]

---

[Docket No. 50–320]

## METROPOLITAN EDISON CO. ET AL. (THREE MILE ISLAND NUCLEAR STATION, UNIT 2)

### Availability of Applicants' Environmental Report Supplement 2, Operating License Stage

Pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in Appendix D to 10 CFR Part 50, Metropolitan Edison Company, Jersey Central Power & Light Company, and Pennsylvania Electric Company have jointly filed the Environmental Report Supplement 2, Operating License Stage, dated February 28, 1975 in support of their application to operate the Three Mile Island Nuclear Station, Unit 2, located in Londonderry Township, Dauphin County, Pennsylvania. Notice of receipt of the application was published in the FEDERAL REGISTER on May 28, 1974 (39 FR 18497). Notice of availability of the applicants' Environmental Report dated December 10, 1971 was published in the FEDERAL REGISTER on June 24, 1972.

The Environmental Report Supplement 2, Operating License Stage, updates the discussion of environmental considerations related to the operation of the proposed facility set forth in the Environmental Report dated December 10, 1971, as amended, and indicates the results of ongoing monitoring programs. Both documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., 20555, and at the Government Publications Section, State Library of Pennsylvania, Box 1601 (Education Building), Harrisburg, Pennsylvania, 17126. Copies of the Environmental Report Supplement 2, Operating License Stage, are also being made available at the Pennsylvania State Clearinghouse, Governor's Budget Office, 624 Main Capitol Building, Harrisburg, Pennsylvania, 17120, and at the Tri-County Regional Planning Commission, 2001 N. Front Street, Harrisburg, Pennsylvania 17102.

After the Environmental Report Supplement 2, Operating License Stage, has been analyzed by the Commission's Division of Reactor Licensing staff, a draft environmental statement will be prepared. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft statement, with a request for comments from interested persons on the draft statement. The summary notice will also contain a statement to the effect that comments of Federal agencies and State and local officials will be made available when received. The draft environmental statement will focus on any matters which differ from those previously discussed in the Final Environmental Statement dated December, 1972. Upon consideration of comments submitted with respect to the draft environmental statement, the staff will prepare a final environmental statement, the availability of which will be published in the FEDERAL REGISTER.

For further details, see the application to operate the Three Mile Island Nuclear Station, Unit 2 dated April 4, 1974, and amendments thereto; the Commission's Draft Detailed Statement dated June, 1972; and the Final Environmental Statement dated December, 1972; all of which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Government Publications Section, State Library of Pennsylvania, Box 1601 (Education Building), Harrisburg, Pennsylvania 17126.

Dated at Rockville, Maryland, this 13th day of May, 1975.

For the Nuclear Regulatory Commission.

WM. H. REGAN, JR.,
*Chief, Environmental Projects Branch 4, Division of Reactor Licensing.*

[FR Doc.75–13133 Filed 5–19–75;8:45 am]

---

[Docket Nos. 50–352, 50–353]

## PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 & 2)

### Order Extending Construction Completion Dates

Philadelphia Electric Company is the holder of Construction Permits CPPR–106 and CPPR–107 issued by the Commission on June 19, 1974. These permits authorize the construction of the Limerick Generating Station, Units 1 & 2, presently under construction at the Company's site. This site is located on the Schuylkill River, near Pottstown, in Limerick Township, Montgomery County, Pennsylvania.

On September 10, 1974, Philadelphia Electric Company filed a request for an extension of the earliest and latest construction completion dates for these units.

Philadelphia Electric Company gave as reasons for the schedule change a reduction in their planned construction program by approximately $600 million for the five-year period 1974–1978 due to (1) high interest rates, (2) extremely tight credit, (3) the severely depressed stock

market, and (4) uncertain economic conditions. This action involves no significant hazards consideration. Good cause has been shown for extension of the earliest and latest construction completion dates for Unit 1 to October 1, 1979 and April 1, 1981, respectively. Good cause has also been shown for extension of the earliest and latest construction completion dates for Unit 2 to March 1, 1981 and April 1, 1982, respectively. The bases for the extension of these dates is set forth in a staff evaluation, dated May 13, 1975.

*It is hereby ordered* That the earliest and latest completion date for CPPR–106 be extended from:

Earliest: April 1, 1979 to October 1, 1979.
Latest: October 1, 1979 to April 1, 1981.

and that the earliest and latest completion date for CPPR–107 be extended from:

Earliest: September 1, 1980 to March 1, 1981.
Latest: March 1, 1981 to April 1, 1982.

Date of Issuance: May 13, 1975.

For the Nuclear Regulatory Commission.

RICHARD C. DEYOUNG,
*Assistant Director for Light Water Reactors Group 1, Division of Reactor Licensing.*

[FR Doc.75–13131 Filed 5–19–75;8:45 am]

## REGULATORY GUIDE

### Issuance and Availability

The Nuclear Regulatory Commission has issued a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineat techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 5.32, Revision 1, "Communication with Transport Vehicles," describes radiotelephone equipment and systems, and procedures for their use, that are acceptable to the NRC staff for complying with the Commission's regulations regarding radiotelephone communication in connection with road or rail shipments of special nuclear material. This revision reflects comments received from the public and other factors.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed (listed below) or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section.

Regulatory Guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, D.C. Requests for single copies of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides should be made in writing to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone requests cannot be accommodated. Regulatory Guides are not copyrighted and Commission approval is not required to reproduce them.

Other Division 5 Regulatory Guides currently being developed include the following:

Mass Calibration Techniques for Nuclear Material Control
Calibration and Error Estimation Methods for Nondestructive Assay
Management Review of Materials and Plant Protection Programs and Activities
Protection of Nuclear Power Plants Against Industrial Sabotage
Measurement Control Program for Special Nuclear Material Control and Accounting
Monitoring Transfers of Special Nuclear Material
Considerations for Determining the Systematic Error of Special Nuclear Material Accounting Measurement
Interior Intrusion Alarm Systems
Preparation of Uranyl Nitrate Solution as a Working Standard
Shipping and Receiving Control of Special Nuclear Materials
Barrier Design and Placement
Nondestructive Assay of U–235 Content of Unpoisoned Low-Enrichment Uranium Fuel Rods
Methods for the Accountability of Uranium Dioxide
Internal Security Audit Procedures
Standard Format and Content for the Physical Protection Section of a License Application (For Facilities Other Than Nuclear Power Plants)
Nondestructive Assay of Plutonium-Bearing Fuel Rods
Training and Qualifying Personnel for Performing Measurement Associated with the Control and Accounting of Special Nuclear Material
Auditing of Measurement Control Program
Reconciliation of Statistically Significant Shipper-Receiver Differences
Prior Measurement Verification
Verification of Prior Measurements by NDA
Nondestructive Assay of High-Enrichment Uranium Scrap by Active Neutron Interrogation
Control and Accounting for Highly Enriched Uranium in Waste
Considerations for Determining the Random Error of Special Nuclear Material Accounting Measurement
Use of Closed Circuit TV for Area Surveillance
Preparation of Working Calibration and Test Materials for Analytical Laboratory Measurement Control Programs—Part I: Plutonium Nitrate Solutions

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 12th day of May 1975.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
*Acting Director,*
*Office of Standards Development.*

[FR Doc.75–13134 Filed 5–19–75;8:45 am]

[Docket Nos. 50–266, 50–301]

## WISCONSIN ELECTRIC POWER CO. AND WISCONSIN MICHIGAN POWER CO.

### Proposed Issuance of Amendments to Facility Operating Licenses

The Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–24 and DPR–27 issued to Wisconsin Electric Power Co. and Wisconsin Michigan Power Co. (the licensees) for operation of the Point Beach Nuclear Plant Units Nos. 1 and 2, located in the Town of Two Creeks, Manitowoc County, Wisconsin.

In accordance with the licensees' application for license amendments dated March 28, 1975, the proposed amendments would add revisions to the Technical Specifications relating to the use of six new spent fuel storage racks and two existing racks which would be relocated within the spent fuel storage facility. The proposed revisions to the Technical Specifications would (1) place restrictions on spent fuel storage to limit the decay heat input to the spent fuel water and (2) restrict the use of the two relocated spent fuel storage racks which would be seismically unrestrained. When installed, the new spent fuel storage racks would provide increased storage capacity by utilizing a closer design center-to-center spacing between fuel assemblies. The proposed modifications would increase the spent fuel storage capacity from 206 to 399 fuel assemblies.

Prior to issuance of the proposed license amendments, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By June 19, 1975, the licensee may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of the amendment to the subject facility operating license. Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of § 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition for leave to intervene must set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the petitioner's contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of this FEDERAL REGISTER notice and § 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Bruce W. Churchill, Esquire, Shaw, Pittman, Potts, Trowbridge & Madden, Barr Building, 910 17th Street, NW. Washington, D.C. 20006, the attorney for the licensee.

A petition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts on which the petitioner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or licensing board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see the application for amendment dated March 28, 1975, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. and at the Document Department, University of Wisconsin—Stevens Point Library, Stevens Point, Wisconsin 54481. The license amendment and the Safety Evaluation, when issued, may be inspected at the above locations and a copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Maryland this 13th day of May 1975.

For The Nuclear Regulatory Commission.

GEORGE LEAR,
*Chief Operating Reactors Branch #3 Division of Reactor Licensing.*

[FR Doc.75-13193 Filed 5-19-75;8:45 am]

## ADVISORY COMMITTEE ON REACTOR SAFEGUARDS' SUBCOMMITTEE ON CLINCH RIVER BREEDER REACTOR

### Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards' Subcommittee on Clinch River Breeder Reactor will hold a meeting on June 4, 1975 in room 1062, 1717 H Street, NW, Washington, DC 20555. The purpose of this meeting will be to develop information for consideration by the ACRS in its review of the combined application of the Tennessee Valley Authority (TVA) and Project Management Corporation (PMC) for a permit to construct this nuclear power plant. The facility will be located in Oak Ridge, Tennessee. The plant is to use a liquid metal fast breeder reactor and is to have a gross capacity of 380 MW(e).

The agenda for the subject meeting shall be as follows:

*Wednesday, June 4, 1975, 9:00 a.m. until the conclusion of business.* The Subcommittee will hear presentations by representatives of the NRC Staff and the TVA and/or PMC and will hold discussions with these groups pertinent to the review of the combined application of the TVA and PMC for a permit to construct the Clinch River Breeder Reactor Plant.

In connection with the above agenda item, the Subcommittee will hold Executive Sessions, not open to the public at 8:30 a.m. and at the end of the day to consider matters relating to the above application. These sessions will involve an exchange of opinions and discussion of preliminary views and recommendations of Subcommittee members and internal deliberations for the purpose of formulating recommendations to the ACRS.

I have determined, in accordance with Subsection 10(d) of Pub. L. 92-463, that the above-noted Executive Sessions will consist of an exchange of opinions and formulation of recommendations, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b). Further, any non-exempt material that will be discussed during the above closed sessions will be inextricably intertwined with exempt material, and no further separation of this material is considered practical. It is essential to close such portions of the meeting to protect the free interchange of internal views, to avoid undue interference with agency or Subcommittee operation.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by mailing 25 copies thereof, postmarked no later than May 28, 1975 to the Executive Secretary, Advisory Committee on Reactor Safeguards, Nuclear Regulatory Commission, Washington, D.C., 20555, Attn: Mr. T. G. McCreless. Such comments shall be based upon the Preliminary Safety Analysis Report for this facility and related documents on file and available for public inspection at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555, and the Oak Ridge Public Library, Circulation Center, Oak Ridge, Tenn. 37830, and, also, at the Lawson McGee Public Library, 500 W. Church Street, Knoxville, Tenn. 37902.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement and shall set forth reasons justifying the need for such oral statement and its usefulness to the Subcommittee. To the extent that the time available for the meeting permits, the Subcommittee will receive oral statements during a period of no more than 30 minutes at an appropriate time, chosen by the Chairman of the Subcommittee between the hours of 10:00 a.m. and 11:00 a.m.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Chairman of the Subcommittee who is empowered to apportion the time available among those selected by him to make oral statements.

(d) Information as to whether the meeting has been cancelled or rescheduled and in regard to the Chairman's ruling on requests for opportunity to present oral statements, and the time allotted, can be obtained by a prepaid telephone call on June 3, 1975 to the Office of the Executive Secretary of the Committee (telephone 202/634-1374, Attn: Mr. T. G. McCreless) between 8:15 a.m. and 5:00 p.m., Eastern Time.

(e) Questions may be propounded only by members of the Subcommittee and its consultants.

(f) Seating for the public will be available on a first-come, first-served basis.

(g) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(h) Persons desiring to attend portions of the meeting where proprietary information, other than plant security information, is to be discussed may do so by providing to the Executive Secretary, Advisory Committee on Reactor Safeguards, 1717 H Street, NW., Washington, D.C. 20555, seven days prior to the meeting, a copy of an executed agreement with the owner of the proprietary information to safeguard this material.

(i) A copy of the transcript of the open portion of the meeting will be available for inspection on or after June 6, 1975 at the Nuclear Regulatory Commission's Public Document Room, 1717 H St., NW, Washington, DC. 20555 and within approximately nine days at the Oak Ridge Public Library, Circulation Center, Oak Ridge, Tenn. 37830 and at the Lawson McGhee Public Library, 500 W. Church Street, Knoxville, Tenn. 37902. Copies of the transcript may be reproduced in the Public Document Room or may be obtained from Ace Federal Reporters, Inc., 415 Second Street, NE, Washington, DC. 20002 (telephone 202/547-6222) upon payment of appropriate charges.

(j) On request, copies of the minutes of the meeting will be made available for inspection at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, DC. 20555 after September 4, 1975. Copies may be obtained upon payment of appropriate charges.

Dated: May 16, 1975.

CHASE R. STEPHENS,
*Acting Advisory Committee Management Officer.*

[FR Doc.75-13269 Filed 5-19-75;8:45 am]

## ADVISORY COMMITTEE ON REACTOR SAFEGUARDS' SUBCOMMITTEE ON ST. LUCIE NUCLEAR GENERATING STATION, UNIT 1

### Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards' Subcommittee on St. Lucie Nuclear Generating Station, Unit 1, will hold a meeting on June 4, 1975 in Room 1046 at 1717 H St. NW., Washington, D.C. The purpose of this meeting will be to develop information for consideration by the ACRS in its review of the application of the Florida Power and Light Company for a permit to operate this nuclear power plant. The facility is located in St. Lucie County, Florida, about halfway between Fort Pierce and Stuart on the East Coast.

The agenda for the subject meeting shall be as follows:

*Wednesday, June 4, 1975, 9:00 a.m. until the conclusion of business.* The subcommittee will hear presentations by representatives of the NRC Staff and the Florida Power and Light Company and will hold discussions with these groups pertinent to its review of the application of the Florida Power and Light Company for a permit to operate the St. Lucie Station, Unit 1.

In connection with the above agenda item, the Subcommittee will hold Executive Sessions, not open to the public, at 8:30 a.m. and at the end of the day to consider matters relating to the above application. These sessions will involve an exchange of opinions and discussion of preliminary views and recommendations of Subcommittee members and internal deliberations for the purpose of formulating recommendations to the ACRS.

In addition to the Executive Sessions, the Subcommittee may hold closed sessions with representatives of the NRC Staff and Applicant for the purpose of discussing privileged information concerning plant physical security and other matters related to plant design, construction and operation, if necessary.

I have determined, in accordance with subsection 10(d) of Pub. L. 92-463, that the above-noted Executive Sessions will consist of an exchange of opinions and formulation of recommendations, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b) and that a closed session may be held, if necessary, to discuss certain documents and information which are privileged and fall within exemption (4) of 5 U.S.C. 552(b). Further, any none-exempt material that will be discussed during the above closed sessions will be inextricably intertwined with exempt material, and no further separation of this material is considered practical. It is essential to close such portions of the meeting to protect the free interchange of internal views, to avoid undue interference with agency or Subcommittee operation, and to avoid public disclosure of proprietary information.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by mailing 25 copies thereof, postmarked no later that May 27, 1975 to the Executive Secretary, Advisory Committee on Reactor Safeguards, Nuclear Regulatory Commission, Washington, D.C. 20555. Such comments shall be based upon the Final Safety Analysis Report for this facility and related documents on file and available for public inspection at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement and shall set forth reasons justifying the need for such oral statement and its usefulness to the Subcommittee. To the extent that the time available for the meeting permits, the Subcommittee will receive oral statements during a period of no more than 30 minutes at an appropriate time, chosen by the Chairman of the Subcommittee between the hours of 10:00 a.m. and 11:00 a.m. on June 4, 1975.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Chairman of the Subcommittee who is empowered to apportion the time available among those selected by him to make oral statements.

(d) Information as to whether the meeting has been cancelled or rescheduled and in regard to the Chairman's ruling on requests for opportunity to present oral statements, and the time allotted, can be obtained by a prepaid telephone call on June 3, 1975 to the Office of the Executive Secretary of the Committee (telephone 202/634-1393, Attn: Mr. Gary Quittschreiber) between 8:15 a.m. and 5:00 p.m., Eastern Time.

(e) Questions may be propounded only by members of the Subcommittee and its consultants.

(f) Seating for the public will be available on a first-come, first-served basis.

(g) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(h) Persons desiring to attend portions of the meeting where proprietary information, other than plant security information, is to be discussed may do so by providing to the Executive Secretary, Advisory Committee on Reactor Safeguards, 1717 H Street, NW., Washington, D.C. 20555, seven days prior to the meeting, a copy of an executed agreement with the owner of the proprietary information to safeguard this material.

(i) A copy of the transcript of the open portion of the meeting will be available for inspection on or after June 6, 1975 at the Nuclear Regulatory Commission's Public Document Room 1717 H Street, NW., Washington, D.C. 20555 and within approximately nine days at the Indian River Junior College Library, 3209 Virginia Avenue, F. Pierce, Florida 33450. Copies of the transcript may be reproduced in the Public Document Room or may be obtained from Ace Federal Reporters, Inc., 415 Second Street, NE., Washington, D.C. 20002 (telephone 202/547-6222) upon payment of appropriate charges.

(j) On request, copies of the minutes of the meeting will be made available for inspection at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 after September 4, 1975. Copies may be obtained upon payment of appropriate charges.

Dated: May 16, 1975.

CHASE R. STEPHENS,
*Acting Advisory Committee Management Officer.*

[FR Doc.75-13268 Filed 5-19-75;8:45 am]

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN INDIA

#### Entry or Withdrawal From Warehouse for Consumption

MAY 13, 1975.

Under the Bilateral Cotton Textile Agreement of August 6, 1974, between the Governments of the United States and India, the Government of India has undertaken to limit exports of cotton textiles and cotton textile products to the United States to certain designated levels. Pursuant to this agreement, an administrative mechanism has been established which is intended to preclude

circumvention of the licensing system for exports to the United States of cotton textiles and cotton textile products produced or manufactured in India. The purpose of this notice is to announce the implementation of this administrative mechanism.

Effective on June 19, 1975, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products, produced or manufactured in India and exported to the United States from India on and after March 15, 1975, for which the Government of India has not issued an appropriate export visa, will be prohibited.

The visa will be a stamped marking in blue ink on the front of the invoice (Special Customs Invoice Form 5515, successor document, or commercial invoice, when such form is used) and will bear the signature of the official issuing the visa.

Further, pursuant to Article 12, paragraph 3, of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, the Governments of the United States and India have established a procedure to exempt from the levels of restraint of the aforementioned bilateral agreement certified hand-loomed and folklore products. To qualify for exemption, shipments of such items, exported to the United States on and after March 15, 1975, must be accompanied by a certification issued by the Government of India, in addition to the aforementioned textile export visa. The certification will also be a stamped marking in blue ink on the front of the invoice (Special Customs Invoice Form 5515, successor document, or commercial invoice, when such form is used). It will include the signature and title of the official issuing the certification; identify the items exempted; indicate the date the certification was signed and certified; and carry the certificate number. A list of the officials authorized to issue textile export visas and certifications for exempt items is published below. Facsimiles of the visa and certification stamps and a list of exempt items are published as enclosures to the letter to the Commissioner of Customs.

Interested parties are advised to take all necessary steps to assure that cotton textiles and cotton textile products, produced or manufactured in India and exported to the United States, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the stated visa and certification requirements.

There is published below a letter of May 13, 1975 from the Chairman of the Committee for the Implementation of Textile Agreements, to the Commissioner of Customs, implementing this administrative mechanism.

ALAN POLANSKY,
*Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance, U.S. Department of Commerce.*

GOVERNMENT OF INDIA OFFICIALS AUTHORIZED TO ISSUE VISAS AND CERTIFICATES FOR EXEMPT COTTON TEXTILE ITEMS EXPORTED TO THE UNITED STATES

R. C. Abbi
A. Abraham
R. L. Agarwal
S. N. Agarwal
P.A.N. Basharat Ahmad
H. Ahmed
J. M. Ahmed
B. V. Alur
K. C. Angirish
J.V.S.S. Anjaneyulu
J. K. Arora
S. K. Arora
D. C. Bagchi
S. C. Baisya
U. L. Ballal
S. K. Bandopadhyay
M. L. Banerji
H. M. Basu
K. Basu
T. K. Basu
N. S. Bhadran
R. K. Bhagotra
V. B. Bhambri
M. R. Bhandari
R. D. Bhatnagar
S. K. Bhatnagar
P. Bhowmik
B. K. Biswas
Chadrashekhar Biswas
A. K. Chakraborty
K. Chakraborty
S. P. Chakraborty
T. Chaterjee
N. K. Chatterjee
S. N. Chatterjee
P. K. Chattopadhyay
S. Chaudhuri
G. S. Chauhan
Chikkamuniyappa
K. V. Chitnis
P. P. Chumble
S. P. Dadlani
V. Dasappa
R. K. Dasgupta
B. R. Dass
M. R. Dass
K. K. Datta
S. K. Datta
R. V. Dave
A. K. Deb
A. K. Dhar
A. B. Dutta
A. K. Dutta
M. R. Pansalkar
D. S. Gahlot
K. K. Gandhi
A. K. Ghosh
D. B. Ghosh
D. K. Ghosh
T. K. Ghosh
N. D. Gianchandani
B. A. Goel
B. H. Gopalakrishna
M. Gopalan
P. Gopalan
U. N. Gopalkrishna
Biswanath Gope
T. K. Goswami
A. K. Guharay
R. N. Guhathakurtha
K. C. Gupta
L. R. Gupta
R. K. Gupta
R. S. Gupta
D. T. Hadagali
R. C. Jain
N. K. Jhingan
K. T. John
G. M. Kamra
K. S. Kansia
P. K. Karunakaran
J. D. Katiyar
P. R. Khedkar
B. R. Kowshik
P. Krishnan
V. Krishnan
H. V. Prasanna Kumar
M. S. Vasantha Kumar
P. R. Kwatra
Ram Singh Lamba
R. Lekshmanan
S. N. Mahata
M. M. Maheshwari
D. R. Maira
A. Majumdar
P. K. Majumdar
M. S. Mandal
P. K. Mandal
K. Mathew
J. B. Mazumder
R. L. Mehndru
A. M. Mirza
B. K. Mitra
J. Mitra
G. Murli Mohan
C. S. Mokashi
V. P. Mokashi
N. C. Mondal
V. G. Morab
G. P. Mukherjee
A. K. Mukherjee
B. Mukherjee
G P. Mukherjee
J. K. Mukherjee
G. N. Murty
T. S. Muthukrishnan
R. K. Nadar
S. Nag
K. Nagajapati
V. Nagarajan
R. V. Nandrekar
T. Narayanan
T. S. Narayanan
N. K. Nayyar
K. S. Padmanabhan
K. V. Padmanabhan
R. C. Pal
R. M. Panchaksharaiah
A. S. Parameswaran
S. R. Patil
T. K. Paul
K. Sreedharan Pillai
V. S. Pillai
B. N. K. Prasad
S. V. Prasad
M. L. Premi
S. L. Radhakrishnan
K. R. Rajagopalan
M. G. Rajan
S. Soundara Rajan
V. Ramachandran
V. P. Ramalingam
R. Ramanathan
S. Ramiah
G. Ranganath
K. R. Ranganathan
A. S. Rama Rao
B. V. Venkata Rao
C. S. Nagojee Rao
K. Narayana Rao
M. R. Rama Rao
T. N. Lakshman Rao
T. Ravindran
R. Rengaraja
Arun Roy
G. P. Saha
P. K. Saha
C. S. Rao Sahib
K. B. Sakpal
P. K. Sanyal
J. C. Sarkar
K. Sathyanarayana
C. V. Savale
R. C. Saxena
P. J. Sebastian
A. K. Sen
P. R. Sen
V. K. Seth
T. V. Shanmugham
N. Shanthamurthy
B. D. Sharma
R. K. Sharma
N. S. Shivashankar
K. K. Shukla
Harbhajan Singh
L. S. Singh
Virinder Singh
S. K. Sinha
P. Sivan
B. Sivaraman
S. Sivasankaran
Sohanlal
K. Somadevan
B. M. Somasekhar
T. Somasekharan
M. N. Somasundaram
S. C. Sood
V. K. Sood
C. Subramaniam
G. S. V. Subramanyam
K. Sugavanam
M. S. Sumant
P. S. Surendranath
S. C. Suri
H. S. Swami
M. M. Syal
S. Naryanan Thampy
K. V. Thuthija
D. V. Tyagi
H. K. Umashankar
S. D. Vaidya
J. Vaidyanathan
V. Velmurugan
S. V. Venkatesh
R. K. Verma
K. Vidyanta
R. Vijendrachar
A. N. Vittal
B. Wadhawan
S. K. Walia
P. S. Warang

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

*Commissioner of Customs*
*Department of the Treasury*
*Washington, D.C.*

MAY 13, 1975.

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, pursuant to paragraph 18 of the Bilateral Cotton Textile Agreement of August 6, 1974, between the Governments of the United States and India, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective on June 19, 1975, and until further notice, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1 through 64, produced or manufactured in India and exported to the United States on and after March 15, 1975, for which the Government of India has not issued an appropriate visa, fully described below.

The visa will be a stamped marking in blue ink on the front of the invoice (Special Customs Invoice Form 5515, successor document, or commercial invoice, when such form is used) and will bear the signature of the official issuing the visa.

In addition, properly certified hand-loomed and folklore products shall be exempt from the levels of restraint established pursuant to the bilateral agreement. To qualify for exemption, goods exported on and after March 15, 1975 shall be accompanied by a certification issued by the Government of India. The certification shall be a stamped marking in blue ink on the front of the invoice (Special Customs Invoice Form 5515, successor document, or commercial invoice, when such form is used). It will include the signature and title of the official issuing the certification; identify the items exempted; indicate the date the certification was signed and certified; and carry the certificate number. Facsimiles of the visa and the certification for exemption are enclosed. Also enclosed is the list of exempt items.

In addition to the certification stamp, each shipment of hand-loomed and folklore products will also be accompanied by the aforementioned visa.

All merchandise covered by an invoice which has an exempt certification but contains both exempt and non-exempt textile items will be prohibited entry.

You are further directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of cotton textiles and cotton textile products, produced or

manufactured in India and exported to the United States from India, notwithstanding the designated shipment or shipments do not fulfill the aforementioned visa and certification requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

Hand-loomed and folklore products which have been certified exempt from the levels of restraint of the Bilateral Cotton Textile Agreement of August 6, 1974, between the Governments of the United States and India, should be reported in accordance with the instructions transmitted in the letter of March 7, 1975.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on February 3, 1975 (40 FR 5010).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of India and with respect to imports of cotton textiles and cotton textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provision of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ALAN POLANSKY,

*Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance, U.S. Department of Commerce.*

## FACSIMILES OF VISAS

GOVERNMENT OF INDIA

.....

Certificate No.

EXEMPTED ITEMS

.....

Description

.....19...

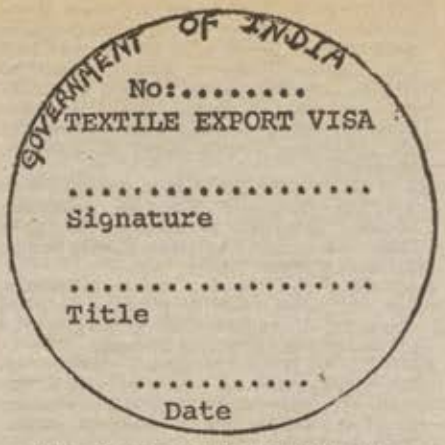
Certified on

.....

Authorized Signature

.....

Title




HAND-LOOMED AND FOLKLORE PRODUCTS

These are traditional Indian products, cut, sewn, or otherwise processed and fabricated by hand in cottage units of the cottage industry. Indian traditional dresses and other products are made of hand-printed and/or hand-painted cotton textiles, including Kalamakari, Batik, Tie-dye with or without traditional embroideries with wooden beads, glass beads, conch shells, mirrors, phulkari work and applique work. They also include items made of fabrics having extra weft ornamentation of cotton, silk, zari, wool, or any other fiber yarn.

1. Kurtha—A loose-fitting tunic, almost straight, in short, medium and long sizes. Some typical examples of Kurtha are: Kathiawar mirrored kurtha, wooden beaded Delhi kurtha, Delhi embroidered kurtha, Bandini kurtha, Lucknow chikan kurta, Madras short kurtha, Sangner printed kurta, Phulkari kurta, etc.

2. Churidar Pyjama or Churidar set—A pair of trousers, loose at waist, with either drawn string or hooks and tapering to a tight fit at ankle. It is traditionally a Moghul costume, worn by Indian women since 16th century, along with a kurta and Dupatta (an oblong scarf).

3. Jawahar Jacket—A loose-fitting waist coat, with or without buttons, traditionally worn over kurtas or kameez by men and women.

4. Pherron—A full length dress loose and longer than the kurta with long loose sleeves worn originally by Kashmiris. Intricate embroidery depicting floral designs is done around the neck of this costume.

5. Angharkha—A traditional dress of Moghul times, open down the front with decorative string or ribbon, used to tie at the sides or centre. (This also includes Angharkha of ribbed cotton worn in Rajasthan).

6. Bagal Bendini—A garment similar to Angharkha, short or long, with a wrap-around effect and tied at the sides.

7. Ghagras/Lahngas—Long, wide skirt with drawn string or hooks. A garment usually reaching up to or below ankles.

8. Pavadai—A long wide shirt similar to Ghagras often in two-piece ensemble, as an accessory worn with saree or dupatta.

9. Choli—A short blouse worn on festive occasions by the tribals of Kuch and Rajasthan.

10. Lungi or Lungi set—A long garment worn as a wrap-around the lower half of the body, with or without a kurta, or a loose-fit blouse or a choli.

11. Salwar/Gararra—Loose-fit trousers, legs may be straight or baggy at the thighs. This also includes Gararra which is a straight trouser up to the knee and down below, shaped like a Ghagra, with frills etc.

12. Dupatta—A scarf usually about 4 ft. long, wrapped by women along with kurta and churidar. This also includes other types of scarves worn in varied sizes, the characteristics being the same as above.

13. Ohdhari—An oblong cloth about 6 to 7 ft. long and 3 to 4 ft. wide with overall embroidery or a woven jacquard weave with traditional designs like himroo shawl or made up of a fabric decorated with cotton/silk/wool/zari or any other fibre yarn used to cover the body.

14. Chola—An ankle-length, loose fit, long Kurta traditionally worn by religious priests.

15. Safa—Headwear made up of printed or embroidered fabrics.

16. Aba—An overgarment, close fit at the upper part, and a Ghagra type skirt touching up to ankles.

17. Burka—Overgarment worn by Muslim women to cover overhead to ankles.

18. Jama A long kurta traditionally worn by a special class of people.

19. Patka—A long traditional stole with Indian designs ornamented with art work of various types.

20. Tamba/Tambi—Loose fit trousers usually worn in North India.

21. Thallis—Totobags, purses, pouch bags and similar accessories to traditionally Indian dresses.

22. Toran—A long embroidered strip of cloth elegantly embroidered with plain or applique work embroidery, used for decorating the entrance doors of Indian residences. This represents a wide variety of fine embroidered pieces connected with folk art, particularly from Kathiawar in Gujarat (West Coast of India).

23. Phulkari—Decorative, embroidered, rough-spun cotton fabric with close darning stitch employed with strands of untwisted silk to make the flower-like embroidery.

24. Thombai—Cylindrical hanging with hand-made applique work of hand-printed/hand-painted/hand-embroidered fabrics. These are traditionally used in South Indian temples as decorative hangings from ceilings or in doorways for gala affairs.

25. Puri Chatta—Flat, highly decorative umbrella with applique work.

26. Gabba—Embroidered floor covering using waste rags. Usually embroidered or made in applique work on old woolen blanket or jute base with cotton backing peculiar to Kashmir region.

27. Shamiana—Canopy or awning used as ceiling decoration.

28. Kalamkari—Hand painted/printed with wax resist wall pieces depicting mythological characters.

29. Chakla—Wall hangings with folk embroidery, with or without mirror work, framed and unframed. The stitches are interspersed and interplaced.

30. Batik wall pieces—Wall hangings made of cotton fabrics hand painted with batik technique. The designs are usually mythological narrations.

31. Chahdani Posh—A protective covering used normally in rural areas to keep tea or coffee pots warm.

32. Takia Gilaf—A cushion cover in oblong, square, round or other shape using indigenous materials and motifs.

33. Chandni/Gaddiposh—A decorative floor spread, also used sometimes as cover on wooden Takhat (sort of Divan).

34. Temple Hangings—Made of handwoven, hand-painted/printed traditional textiles with Indian motifs.

35. Gulubahdk—Traditionally decorative piece of cloth worn round the neck, with Indian traditional art work.

36. Kamarbandh—Traditional decorative item worn around the waist.

37. Mathapatti—A decorative piece used to decorate the forehead in varying length and width.

38. Bazuband—A decorative piece worn around the arm.

[FR Doc.75-12946 Filed 5-19-75;8:45 am]

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 753]

### COMMON CARRIER SERVICES INFORMATION [1]

### Domestic Public Radio Services Applications Accepted for Filing [2]

MAY 12, 1975.

Pursuant to §§ 1.227(b)(3) and 21.30 (b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the attached list, must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cut-off dates are set forth in the alternative—applications will be entitled to consideration with those listed in the appendix if filed by the end of the 60 day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

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

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

21546-CD-AL-75, David W. Gustafson, Consent to Assignment of License from David W. Gustafson, Assignor to Answer Iowa, Inc., Assignee. Station: KFJ900, Minneapolis, Minnesota.

21547-CD-P-(3)-75, James W. Corn d.b.a. Omnicom (KOP914), C.P. to delete facilities operating on 152.03 MHz at Loc. #1: 3200 Clark Street, Missoula, Montana; and to change antenna system, replace transmitter and establish standby facilities operating on 152.03 & 152.12 MHz at Loc. #2: TV Mountain, 9 miles north of Missoula, Montana.

21548-CD-P-75, WJBC Communications Corporation (KSA746), C.P. for additional standby facilities to operate on 152.15 MHz. at Loc. #2: Watterson Towers South, Normal, Illinois.

21549-CD-P-75, Car-Tel Communications, Inc. (KUC960), C.P. to relocate facilities operating on 454.075 MHz to Hwy. #34, 4 miles West of Newnan, Georgia.

21550-CD-P-(2)-75, Advanced Electronics, Inc. (New), C.P. for a new station to operate on 152.09 and 152.18 MHz to be located at Sacrifice cliff, 2 miles SE. of Billings, Montana.

21551-CD-P-75, United Telephone Mutual Aid Corporation (New), C.P. for a new 1-way station to operate on 158.10 MHz. to be located at 411 Seventh Avenue, Langdon, North Dakota.

21552-CD-P-75, United Telephone Mutual Aid Corporation (New), C.P. for a new one-way station to operate on 158.10 MHz to be located 50 ft. South of Walhalla City, Water Tower, NW¼, S29, T163N, R56W, Walhalla, North Dakota.

21553-CD-P-(2)-75, Texoma Mobilfone, Inc. (KLB524 & KLB523), C.P. to replace transmitter, change antenna system and relocate facilities operating on 152.18 MHz. to be located 1 mile South of Highway 82, 2 miles East of Gainesville, Texas; and also to consolidate existing facilities of KLF524 under KLF523 operating on 152.15 MHz. to be located same as above.

21554-CD-P-75, Talton Communications Corporation (KUC904), C.P. to relocate facilities operating on 152.24 MHz. to Landline Road, Selma, Alabama.

21555-CD-P-(2)-75, Talton Communications Corporation (KTS209), C.P. to relocate facilities operating on 152.18 MHz. and for additional facilities to operate on 152.09 located at Landline Road, Selma, Alabama.

21556-CD-P-75, James D. and Lawrence D. Garvey d.b.a. Radiofone (KSV974), C.P. for additional facilities to operate on 454.275 MHz. to be located at 700 Poydras St., New Orleans, Louisiana.

21557-CD-P-75, James D. and Lawrence D. Garvey d.b.a. Radiofone (KRS632), C.P. for additional facilities operating on 152.12 MHz. at Loc. #2: 700 Poydras St., New Orleans, Louisiana.

21558-CD-P-77, Airsignal International, Inc. (KOA796), C.P. to relocate facilities and change antenna system operating on 35.58 MHz. at Loc. #1: 4636 S.W. Council Crest Drive, Portland, Oregon.

21559-CD-P-75, McClellanville Telephone Company, Inc. (New), C.P. for a new 1-way station to operate on 158.10 MHz. to be located Near intersection of Hwy. U.S. 17 and 45, 0.5 mile NW of McClellanville, South Carolina.

21560-CD-AL-75, Yakima Telephone Answering Service, Inc., Consent to Assignment of License from Yakima Telephone Answering Service, Assignor to Robert S. Ditton d.b.a. Mobilefone Northwest, Assignee. Station: KTS216, Yakima, Washington.

21561-CD-P-75, Charles L. Escue (KSV947), C.P. for additional facilities to operate on 43.22 MHz at Loc. #3: Birmingham, Alabama.

21562-CD-P-(2)-75, Radio Relay Corp., Illinois (KSC645), C.P. for additional facilities to operate on 35.58 MHz at Loc. #10: 4800 S. Chicago Beach Dr., Chicago, Illinois; and Loc. #11: 171 Hart Road, Batavia, Illinois.

21563-CD-P-75, New England Telephone & Telegraph Company (KCA207), C.P. to change antenna system and relocate facilities operating on 454.625 MHz. to be located 4.2 miles West of Andover, Massachusetts.

21564-CD-AL-(2)-75, Tidewater Telephone Company, Consent to Assignment of License from Tidewater Telephone Company, Assignor to Continental Telephone Company of Virginia, Assignee. Stations: KIY 767, Warsaw, Virginia and KIY768, Kilmarnock, Virginia.

21565-CD-AL-75, Commonwealth Telephone Company of Virginia, Consent to Assignment of License from Commonwealth Telephone Company of Virginia, Assignor to Continental Telephone Company of Virginia, Assignee. Station: KIY597, Haymarket, Virginia.

21566-CD-AL-(2)-75, First Colony Telephone Company, Consent to Assignment of License from First Colony Telephone Company, Assignor to Continental Telephone Company of Virginia, Assignee. Stations: KIM907, Haymarket, Virginia and KIJ361, Amherst, Virginia.

MAJOR AMENDMENT

21190-CD-P-(2)-75, Dakota Radio Paging, Inc., Sioux Falls, South Dakota (KQZ777). Amend to change base frequency 152.09 MHz to 152.15 MHz and mobile frequency 158.55 MHz to 158.61 MHz at Location #2, Water tower, 2 miles SSE of Sioux Falls (Lincoln), South Dakota. All other particulars are to remain the same as reported on PN #744 dated March 10, 1975.

6807-C2-P-(2)-70, (New), Mobile Radio Telephone Service, Inc., Monroe, Utah (Air-Ground). Amend to change control/repeater frequencies from 454.025, 454.150, and 454.325 MHz to 75.42, 75.46, and 75.50 MHz for control; and from 459.825 and 459.950 MHz to 72.96 and 72.98 MHz for repeater. All other particulars of operation remain as reported in PN #489 dated April 27, 1970.

CORRECTION

21110-CD-P-75, Michigan Bell Telephone Company (KQK548), Correct call sign to read (KQK578). All other particulars are to remain the same as reported on PN #740 dated February 10, 1975.

INFORMATIVE

It appears that the following applications may be mutually exclusive and subject to the Commission's Rules regarding Ex Parte presentations by reason of potential electrical interference.

Answerite Professional Telephone Service (New), 21648-C2-P-(4)-74, Tampa, Florida.

Peacock Radio Service, (KIJ357), 20376-CD-P-(2)-75, Clearwater, Florida.

RURAL RADIO

60335-CR-P-75, Nolan G. Lacey (New), C.P. for a new subscriber station to operate on 157.950 MHz. to be located 21 miles WNW. of Cut Bank, Montana.

60336-CR-P/L-75, Southwestern Bell Telephone Company (KVD61), C.P. for additional facilities to operate on 157.77, 157.83, 157.98 and 158.07 MHz located 17.2 miles NW. of Crane, Texas.

POINT TO POINT MICROWAVE RADIO SERVICE

3435-CF-P-75, The Mountain States Telephone and Telegraph Company (KPR35), 107 East 1st North Street, Price, Utah. Lat. 39°36'08" N. Long. 110°48'30" W. C.P. to add antenna system and freq. 2128.0V MHz towards Soldier Summit, Utah on azimuth 317°/41'.

[1] All applications listed in the appendix are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations and other requirements.

[2] The above alternative cut-off rules apply to those applications listed in the appendix as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio and Local Television Transmission Services (Part 21 of the rules).

3433–CF–P–75, Same (KPR36), Soldier Summit, 8 miles NW of Helper, Utah. Lat. 39°-45'22" N. Long. 110°59'24" W. C.P. to add antenna system and freqs. 2178.0V MHz towards Price, Utah on azimuth 137°/34'; add 2162.0V MHz towards Soldier Summit, Utah via passive reflector.

3471–CF–P–75, Same (New), 115 Center Street, Scofield, Utah. Lat. 39°43'25" N. Long. 111°09'36" W. C.P. for a new station on 2112.0V MHz via passive reflector towards Soldier Summit, Utah.

3486–CF–P–75, General Telephone Company of Florida (KYJ44), 201 South Gall Blvd., Zephyrhills, Florida. Lat. 28°13'39" N. Long. 82°10'46" W. C.P. to change antenna system and add freqs. 5945.2H and 6004.5H, 6063.8H, 6123.1H, and 5974.8V MHz towards a new point of communication at San Antonio, Florida on azimuth 313°/31'.

3493–CF–R–75, Hawaiian Telephone Company (KUQ93), Location: Temporary fixed-State of Hawaii. Renewal of Radio Station License (Developmental) expiring May 23, 1975. Term: May 23, 1975 to May 23, 1976.

3495–CF–P–75, Wiggins Telephone Association (New), Near telephone office, Briggsdale, Colorado. Lat. 40°38'02" N. Long. 104°19'38" W. C.P. for a new station on freq. 2128.0H MHz towards Crow Valley Hill, Colorado on azimuth 319°/19'.

3513–CF–P–75, The Ponderosa Telephone Company (KNL20), Central Office, O'Neals, California. Lat. 37°07'39" N. Long. 119°-41'39" W. C.P. to change antenna system and location, replace transmitters on freqs. 6256.5H and 6404.8H MHz towards Fresno, California via passive reflector; change emission and power.

3507–CF–P–75, The Ohio Bell Telephone Company (KQM38), 3526 Ridge Road, Warren, Ohio. Lat. 41°12'30" N. Long. 80°46'-55" W. C.P. to change alarm system, transmitter, protection ratio and freq. 11365 MHz to 6308.4V MHz towards Youngstown, Ohio on azimuth 147°/13'.

3508–CF–P–75, Same (KQM39), 3715 Southern Blvd., Youngstown, Ohio. Lat. 41°03'-41" N. Long. 80°39'25" W. C.P. to change alarm center, transmitter, protection ratio; and freq. 10915 MHz to 6056.4V MHz towards Warren, Ohio on azimuth 327°/118'.

3498–CF–P–75, New England Telephone and Telegraph Company (KCK73), Dodge Mountain Road, Rockaland, Maine. Lat. 44°08'01" N. Long. 69°08'00" W. C.P. to construct a new tower and transfer existing antenna towards Vinalhaven, Maine.

3499–CF–P–75, New England Telephone and Telegraph Company (KCK87), 45 Forest Avenue, Portland, Maine. Lat. 43°39'21" N. Long. 70°15'52" W. C.P. to change frequencies 11225.0V, 11345.0H, 11505.0H, and 11545.0V MHz to 11265.0H, 11305.0V, 11425.-0H, and 11585.0H MHz toward Gray, Maine on azimuth 343°57'; replace transmitters and change power.

3500–CF–P–75, Same (KCK89), on Dutton Hill, 2.6 miles SW. of Gray, Maine. Lat. 43°50'55" N. Long. 70°20'28" W. C.P. to change frequencies 10895.0V, 11015.0H, 11055.0V, and 11175.0H MHz to 10775.0H, 10935.0H, 11095.0H, and 11135.0V MHz toward Portland, Maine on azimuth 163°54'; change 6308.4H and 6367.7H MHz to 6286.2H and 6345.5H MHz toward Bowdoin, Maine on azimuth 43°41'; replace transmitters and change power.

3501–CF–P–75, Same (KCO96), Bowdoin, on Whitten Hill, 4.9 miles NW. of The Village of Bowdoin Center, Maine. Lat. 44°06'07" N. Long. 70°00'17" W. C.P. to change frequencies 6056.4H and 6115.7H MHz to 6034.2H and 6093.5H MHz toward Gray, Maine on azimuth 223°55'; change 6071.2V and 6130.5H MHz to 5974.8V and 6152.8V MHz toward Vassalboro, Maine on azimuth 39°25'; replace transmitters and change power.

3502–CF–P–75, Same (KOC97), Vassalboro, on Telco Hill, 3 miles NE. of the Village of East Vassalboro, Maine. Lat. 44°28'52" N. Long. 69°34'07" W. C.P. to change frequencies 6323.3V and 6382.6V MHz to 6226.9V and 6404.8V MHz toward Bowdoin, Maine on azimuth 219°43'; change 6352.9H and 11115.0V MHz to 10795.0V and 11155.0H MHz toward Augusta, Maine on azimuth 224°03'; replace transmitters and change power.

3503–CF–P–75, Same (KZI41), On Burnt Hill, 0.8 mile NW. of Augusta, Maine. Lat. 44°-19'16" N. Long. 69°47'02" W. C.P. to change frequencies 6100.9H and 11645.0V MHz to 11245.0V and 11605.0H MHz toward Vassalboro, Maine on azimuth 43°54'; replace transmitters and change power.

3972–CF–P–75, RCA Alaska Communications, Inc. (WAH417), Donnelly Dome, White Alice Communication Site at Mile 248 Richardson Hwy., 145 miles South of Delta Junction, Alaska. Lat. 63°47'14" N. Long. 145°51'42" W. C.P. to change antenna system and frequency 2128.0V MHz toward Pump Station #9, Alaska to 2168.0H MHz toward a new point of communication at Delta Junction, Alaska on azimuth 13°-16'; replace transmitter and change power.

3973–CF–P–75, Same (New), White Alice Communication Site, 1/10 mile SE. of Delta Junction, Alaska. Lat. 64°02'15" N. Long. 145°43'37" W. C.P. for a new station on frequency 2118.0H MHz toward Donnelly Dome, Alaska on azimuth 193°23.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

The Following applications for Modifications of License were filed to correct coordinates:

3524–CF–ML–75, (KAA65), Homestead, Iowa. Change from Lat. 41°45'38" N. Long. 91°-50'55" W. to read Lat. 41°45'39" N. Long. 91°50'45" W.

3528–CF–ML–75, (KAB26), Prospect Valley, Colorado. Change from Lat. 40°04'31" N. Long. 104°17'23" W. to read Lat. 40°04'25" N. Long. 104°17'01" W.

3529–CF–ML–75, (KAB27), Fort Morgan, Colorado. Change from Lat. 40°23'25" N. Long. 103°42'47" W. to read Lat. 40°23'32" N. Long. 103°42'30" W.

3533–CF–ML–75, (KAC31), Ogallala, Nebraska. Change from Lat. 41°10'58" N. Long. 101°39'58" W. to read Lat. 41°11'01" N. Long. 101°40'19" W.

3537–CF–ML–75, (KAC39), Columbus, Nebraska. Change from Lat. 41°18'30" N. Long. 97°20'43" W. to read Lat. 41°18'21" N. Long. 97°20'56" W.

3546–CF–ML–75, (KAC69), Matfield Green, Kansas. Change from Lat. 38°08'53" N. Long. 96°26'06" W. to read Lat. 38°08'40" N. Long. 96°26'13" W.

3547–CF–ML–75, (KAC70), Halls Summit, Kansas. Change from Lat. 38°20'19" N. Long. 95°40'21" W. to read Lat. 38°20'06" N. Long. 95/40'27" W.

3548–CF–ML–75, (KAC71) Worden, Kansas. Change from Lat. 38°47'22" N. Lopg. 95°26'11" W. to read Lat. 38°47'07" N. Long. 95°26'09" W.

3568–CF–ML–75, (KAK74), Sebeka, Minnesota. Change from Lat. 46°34'10" N. Long. 95°07'05" W. to read Lat. 46°34'17" N. Long. 95°07'15" W.

3571–CF–ML–75, (KAL47), Cape Girardeau, Missouri. Change from Lat. 37°23'12" N. Long. 89°38'46" W. to read Lat. 37°23'16" N. Long. 89°38'36" W.

3581–CF–ML–75, (KAM48), Mullinville, Kansas. Change from Lat. 37°32'24" N. Long. 99°28'02" W. to read Lat. 37°32'10" N. Long. 99°27'59" W.

3582–CF–ML–75, Cullison, Kansas. Change from Lat. 37°34'33" N. Long. 98°55'36" W. to read 37°34'17" N. Long 98°55'42" W.

3586–CF–ML–75, (KAN21), Winslow, Iowa. Change from Lat. 41°37'24" N. Long. 96°-24'48" W. to read Lat. 41°37'30" N. Long. 96°25'06" W.

3587–CF–ML–75, (KAN23), Griswold, Iowa. Change from Lat. 41°15'45" N. Long. 95°-13'58" W. to read Lat. 41°15'28" N. Long. 95°13'58" W.

3588–CF–ML–75, (KAN90), La Veta Pass, Colorado. Change from Lat. 37°36'30" N. Long. 105°14'09" W. to read Lat. 37°36'17" N. Long. 105°14'16" W.

3593–CF–ML–75, (KAO46), Minneapolis, Kansas. Change from Lat. 39°06'49" N. Long. 97°49'09" W. to read Lat. 39°06'39" N. Long. 97°49'07" W.

3596–CF–ML–75, (KAO49), Beattie, Kansas. Change from Lat. 39°56'58" N. Long. 96°-24'26" W. to read Lat. 39°57'01" N. Long. 96°24'56" W.

3599–CF–ML–75, (KAO54), Leon, Iowa. Change from Lat. 40°47'23" N. Long. 93°-35'11" W. to read Lat. 40°47'25" N. Long. 93°35'33" W.

3605–CF–ML–75, (KAR43), Pierceville, Kansas. Change from Lat. 37°48'22" N. Long. 100°38'58" W. to read Lat. 37°48'36" N. Long. 100°39'07" W.

3609–CF–ML–75, (KAR49), Eads, Colorado. Change from Lat. 38°29'03" N. Long. 102°-45'09" W. to read Lat. 38°29'08" N. Long. 102°45'23" W.

3615–CF–ML–75, (KAR76), Buxton, North Dakota. Change from Lat. 47°35'57" N. Long. 97°14'01" W. to read Lat. 47°35'56" N. Long. 97°13'39" W.

3616–CF–ML–75, (KAR78), Pisek, North Dakota. Change from Lat. 48°18'41" N. Long. 97°46'48" W. to read Lat. 48°18'43" N. Long. 97°47'11" W.

3617–CF–ML–75, (KAR79), Olga, North Dakota. Change from Lat. 48°45'51" N. Long. 97°58'01" W. to read Lat. 48°45'42" N. Long. 97°58'25" W.

3623–CF–ML–75, (KAS85), Cedarwood, Colorado. Change from Lat. 38°01'30" N. Long. 104°29'38" W. to read Lat. 38°02'02" N. Long. 104°29'20" W.

3626–CF–ML–75, (KAY72), Atlanta, Kansas. Change from Lat. 37°27'02" N. Long. 96°-44'28" W. to read Lat. 37°26'49" N. Long. 96°44'33" W.

3628–CF–ML–75, (KAZ59), La Junta, Colorado. Change from Lat. 37°54'10" N. Long. 103°25'38" W. to read Lat. 37°54'15" N. Long. 103°26'12" W.

3629–CF–ML–75, (KAZ60), Frick, Colorado. Change from Lat. 37°39'50" N. Long. 102°-53'04" W. to read Lat. 37°39'55" N. Long. 102°53'39" W.

3635–CF–ML–75, (KBI32), Red Wing, Colorado. Change from Lat. 37°43'51" N. Long. 105°27'29" W. to read Lat. 37°44'10" N. Long. 105°27'17" W.

3636–CF–ML–75, (KBI34), South Fork, Colorado. Change from Lat. 37°43'24" N. Long. 106°33'59" W. to read Lat. 37°43'34" N. Long. 106°33'53" W.

3638–CF–ML–75, (KB140), Dove Creek, Colorado. Change from Lat. 37°45'43" N. Long. 108°51'43" W. to read Lat. 37°45'32" N. Long. 108°51'46" W.

3644–CF–ML–75, (KBT52), Woods, Kansas. Change from Lat. 37°15'44" N. Long. 101°-00'43" W. to read Lat. 37°15'31" N. Long. 101°00'46" W.

3683–CF–ML–75, (KKC91), Lone Man Mtn., Texas. Change from Lat. 30°04'36" N. Long. 98°05'03" W. to read Lat. 30°04'37" N. Long. 98°05'18" W.

3688–CF–ML–75, (KKH70), Wayne, Oklahoma. Change from Lat. 34°55'52" N. Long. 97°22'12" W. to read Lat. 34°56'05" N. Long. 97°21'54" W.

3689–CF–ML–75, (KKH71), Norman, Oklahoma. Change from Lat. 35°12'07" N. Long. 97°35'55" W. to read Lat. 35°12'06" N. Long. 97°36'02" W.

3694–CF–ML–75, (KKK43), Coweta, Oklahoma. Change from Lat. 35°58'52" N. Long. 95°37'44" W. to read Lat. 35°58'39" N. Long. 95°37'42" W.

3695–CF–ML–75, (KKK44), Ketchum, Oklahoma. Change from Lat. 36°34'02" N. Long. 95°01'17" W. to read Lat. 36°34'02" N. Long. 95°01'23" W.

3696–CF–ML–75, (KKK45), Pryor, Oklahoma. Change from Lat. 36°18'40" N. Long. 95° 24'34" W. to read Lat. 36°18'35" N. Long. 95°24'57" W.

3705–CF–ML–75, (KKO38), Vega, Texas. Change from Lat. 35°07'48" N. Long. 102°15'58" W. to read Lat. 35°07'53" N. Long. 102°15'44" W.

3708–CF–ML–75, (KKP83), Santa Rosa, New Mexico. Change from Lat. 35°03'04" N. Long. 104°56'15" W. to read Lat. 35°03'04" N. Long. 104°56'34" W.

3713–CF–ML–75, (KKP98), Lindale, Texas. Change from Lat. 32°32'16" N. Long. 95°22'27" W. to read Lat. 32°32'28" N. Long. 95°22'25" W.

3718–CF–ML–75, (KKT66), Crosby, Texas. Change from Lat. 29°53'47" N. Long. 95°00'28" W. to read Lat. 29°54'01" N. Long. 95°00'35" W.

3721–CF–ML–75, (KKX58) Rincon, New Mexico. Change from Lat. 32°41'46" N. Long. 107°03'47" W. to read Lat. 32°41'44" N. Long. 107°05'31" W.

3723–CF–ML–75, (KKZ89), Seguin, Texas. Change from Lat. 29°29'01" N. Long. 97°53'07" W. to read Lat. 29°29'02" N. Long. 97°52'49" W.

3724–CF–ML–75, (KLC41), Shiner, Texas. Change from Lat. 29°28'03" N. Long. 97°14'29" W. to read Lat. 29°28'01" N. Long. 97°14'19" W.

3737–CF–ML–75, (KLS80), Kiwoa, Oklahoma. Change from Lat. 34°37'45" N. Long. 95°54'54" W. to read Lat. 34°37'48" N. Long. 95°55'04" W.

3745–CF–ML–75, (KLS91), Woodson, Texas. Change from Lat. 33°03'12" N. Long. 98°54'03" W. to read Lat. 33°03'11" N. Long. 98°53'53" W.

3746–CF–ML–75, (KLS97), Albany, Texas. Change from Lat. 32°52'17" N. Long. 99°26'11" W. to read Lat. 32°52'12" N. Long. 99°26'00" W.

3747–CF–ML–75, (KLS98), Stamford, Texas. Change from Lat. 32°52'04" N. Long. 99°51'30" W. to read Lat. 32°52'04" N. Long. 99°51'34" W.

3754–CF–ML–75, (KLT27), Orla, Texas. Change from Lat. 31°49'45" N. Long. 103°57'12" W. to read Lat. 31°49'32" N. Long. 103°56'53" W.

3759–CF–ML–75, (KLV83), Henryetta, Oklahoma. Change from Lat. 35°25'36" N., Long. 96°02'20" W. to read Lat. 35°25'44" N., Long. 96°02'30" W.

3772–CF–ML–75, (KLW21), Noble, Oklahoma. Change from Lat. 35°09'39" N., Long. 97°22'07" W. to read Lat. 35°09'40" N., Long. 97°22'36" W.

3774–CF–ML–75, (KOB27), Pratts Pass, Utah. Change from Lat. 40°49'54" N., Long. 111°39'26" W. to read Lat. 40°49'43" N., Long. 111°39'13" W.

3776–CF–ML–75, (KOB29), Evanston, Wyoming. Change from Lat. 41°17'06" N., Long. 110°46'15" W. to read Lat. 41°16'58" N., Long. 110°46'52" W.

3777–CF–ML–75, (KOB61), Church Butte, Wyoming. Change from Lat. 41°24'57" N., Long. 110°05'03" W. to read Lat. 41°24'43" N., Long. 110°05'03" W.

3778–CF–ML–75, (KOB63), Rock Springs, Wyoming. Change from Lat. 41°39'23" N., Long. 109°09'42" W. to read Lat. 41°39'22" N., Long. 109°09'29" W.

3779–CF–ML–75, (KOB64), Bitter Creek, Wyoming. Change from Lat. 41°42'45" N., Long. 108°35'00" W. to read Lat. 41°43'23" N., Long. 108°35'21" W.

3780–CF–ML–75, (KOB65), Creston, Wyoming. Change from Lat. 41°45'00" N., Long. 107°49'32" W. to read Lat. 41°44'40" N., Long. 107°49'46" W.

3785–CF–ML–75, (KOU96), Teapot, Wyoming. Change from Lat. 43°07'10" N., Long. 106°18'30" W. to read Lat. 43°07'15" N., Long. 106°18'55" W.

3786–CF–ML–75, (KOU99), Fort McKinney, Wyoming. Change from Lat. 44°14'06" N., Long. 106°41'57" W. to read Lat. 44°13'55" W.

3788–CF–ML–75, (KOY56), Miles City, Montana. Change from Lat. 46°29'26" N., Long. 105°39'47" W. to read Lat. 46°29'31" N., Long. 105°37'41" W.

3790–CF–ML–75, (KOY60), Pompey's Pillar, Montana. Change from Lat. 46°01'57" N., Long. 107°58'20" W. to read Lat. 46°01'51" N., Long. 107°58'32" W.

3800–CF–ML–75, (KPZ20), Tieton, Washington. Change from Lat. 46°42'57" N., Long. 121°06'20" W. to read Lat. 46°43'02" N., Long. 121°05'59" W.

3466–CF–P–75, West Texas Microwave Company. (KLU86), 4.5 miles West Aledo, Texas. Lat. 32°41'38" N. Long. 97°40'29" W. C.P. to replace transmitter, to change power and to change antenna system on path to Mineral Wells.

3467–CF–P–75, Same (KLU87), Mineral Wells, Texas. Lat. 32°48'53" N. Long. 98°06'13" W. C.P. to change antenna system, to replace transmitter and to change power on path to Brackeen Ranch, Texas.

3468–CF–P–75, Same (KLU88), Brackeen Ranch, Texas. Lat. 32°46'43" N. Long. 98°-29'10" W. C.P. to replace transmitter and to change power on paths to Breckenridge and Graham, Texas.

3469–CF–P–75, Same (KLU89), Breckenridge, Texas. Lat. 32°45'33" N. Long. 98°55'43" W. Mod. of C.P. (2084–CF–MP–75) to change polarities to 5974.8H MHz, 6063.8H MHz, 6152.8V MHz, and 6034.2H MHz on path to Eastland, Texas; to replace transmitters, and to change power on paths to Cisco, Davis Ranch, Albany and Eastland, all in Texas.

3470–CF–P–75, Same (KLU91), Davis Ranch, 8.0 miles West of Albany, Texas. Lat. 32°-42'17" N. Long. 99°25'26" W. C.P. to replace transmitters and to change power on paths to Clyde and Estes Ranch, Texas.

3401–CF–MP–75, Western Union Telegraph Company (WAU208), Los Angeles #2 (KJOI–TV), California. Lat. 34°07'08" N. Long. 118°23'30" W. Mod. of C.P. (1792/2498–CF–P–75) (a) to change point of communication to Los Angeles (CBS–TV Center), California, on azimuth 148°18'; (b) to change antenna system; and (c) to change alarm center location.

3402–CF–MP–75, Same (WAU253), CBS–TV Center, First and Genesee Avenues, Los Angeles, California. Lat. 34°04'29" N. Long. 118°21'31" W. Mod. of C.P. (2504–CF–P–75) (a) to relocate station to foregoing coordinates and (b) to change azimuth toward point of communication at Los Angeles #2 (KJOI–TV), California, to 328°19', frequency unchanged (11565H MHz).

[FR Doc.75–13241 Filed 5–19–75;8:45 am]

---

[Docket No. 20463; File No. BR–3690]

## NEW SOUTH RADIO, INC.

### Memorandum Opinion and Order Designating Application for Hearing on Stated Issues

In the matter of application of New South Radio, Inc., Tuscaloosa, Alabama, for renewal of license of WACT, Tuscaloosa, Alabama.

1. The Commission has before it for consideration (i) the above-captioned application for renewal of license for Station WACT, Tuscaloosa, Alabama; (ii) a petition to deny the application filed by John Bivens and Steven Suitts individually and as representatives of the Civil Liberties Union of Alabama (petitioners); (iii) an opposition to the petition to deny filed by the licensee; (iv) a reply filed by petitioners; and (v) various other related pleadings.[1]

BACKGROUND OF THE PROCEEDING

2. The proceeding has become somewhat complex in view of the number of pleadings which have been filed. Therefore, we will set forth a brief resume of the history of the proceeding to facilitate a clearer understanding of the matters which have been raised by the parties and our final disposition of those matters.

3. The license for WACT–AM was last renewed on April 1, 1970 for a term ending April 1, 1973. New South Radio, Inc., licensee herein, timely filed application for renewal of the license for Station WACT–AM on December 20, 1972.

4. Section 309(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 309(d)(1), provides that any party in interest may file a petition to deny any application filed with the Commission, including a license renewal application. Pursuant to § 1.580(i) of the Commission's rules, 47 CFR 1.580(i), a petition to deny a timely filed license renewal application must be filed on or before the first day of the last full calendar month preceding the expiration date of the station's license being challenged. Here, petitioners submitted their challenge to the WACT license renewal application at 5:03 p.m. on March 1, 1973. The Commission's business hours are from 8:00 a.m. until 4:30 p.m. At that time in 1973, documents could be accepted for filing with the Commission up to 5:00 p.m. of any business day. Thus, the petition was filed three minutes late, and the Secretary of the Commission indicated that the petition could not be stamped as received until the opening of business on March 2, 1973. Subsequently, on March 12, 1973, petitioners filed for a motion for acceptance of the late petition. On March 27, 1973, the licensee filed its opposition to petitioners' motion, and petitioners filed their reply to that opposition on April 9, 1973.

5. In support of their motion to accept the petition as a timely filed document, petitioners argue that two related events

---

[1] Also before us are the following pleadings: Petitioners' motion for acceptance of their petition to deny filed three minutes late on March 12, 1973; the licensee's opposition to that motion filed March 27, 1973; petitioners' reply to that opposition filed April 9, 1973; petitioners' motion to strike licensee's amendment to the subject application filed June 11, 1973; the licensee's opposition to that motion to strike filed June 27, 1973; and petitioners' reply to the opposition filed July 9, 1973.

combined to prevent timely filing; and that acceptance by the Commission does not prejudice the licensee. On February 28, 1973, just one day before the deadline for the filing of petitions to deny against Alabama license renewal application, petitioner Steven Suitts met with Clyde W. Price, president of the licensee, and Mr. Suitts advised Mr. Price for the first time that a petition to deny would be filed against WACT–AM. On March 1, 1973, Mr. Suitts requested of Mr. Price a fourteen-day continuance for the filing of the group's petition to deny. Mr. Price communicated his unwillingness to agree to the extension. Later that afternoon, meanwhile, counsel for petitioners was assembling the necessary papers for the filing of additional petitions to deny against eight other Alabama licensees. On March 1, 1973, counsel set aside the processing of the instant petition upon learning from petitioners that a continuance might be agreed to by Mr. Price. However, when counsel learned that no continuance would be forthcoming, an attempt was made to file the petition with the Commission before 5:00 p.m. That attempt failed by three minutes and now petitioners move that the Commission accept the petition as having been timely filed. The licensee notes that the petition as filed was not only three minutes late, but was also lacking the required affidavit in support of its contents.[2]

6. The timely filing of a complete legal document is a requirement that must be preserved to insure the orderly functioning of this agency. However, our regulations are not so inflexible as to inhibit actions which may seek to further the public interest. Accordingly, the cut-off dates for filing petitions to deny can be extended upon a proper showing of good cause. NAACP–MTCCC Negotiating Committee, 42 FCC 2d 235 (1973) and WSM, Inc., 24 FCC 2d 561 (1970). However, in view of all the surrounding circumstances and the petitioners' degree of non-compliance with our procedural rules, we have decided to grant petitioners' motion to accept its petition to deny as a timely filed document. In no way should the implication arise that this decision signals a shift in the enforcement of our filing requirements; we believe that such a unique factual situation will rarely occur in the future. Additionally, we will accept the documents eventually attached to the petition (see note 2, above) as also being timely filed. Meyer Broadcasting Co., 20 FCC 2d 532 (1969).

7. Petitioners state that the Civil Liberties Union of Alabama is an organization composed in part of persons residing in and around Tuscaloosa who are listeners of WACT. Further, in their individual capacities as petitioners Steven Suitts and John Bivens are listeners of WACT and reside in the station's service area. Accordingly, we find that petitioners have standing in this proceeding as parties in interest within the purview of section 309(d)(1) of the Communications Act of 1934, as amended. Office of Communications of the United Church of Christ v. F.C.C., 359 F. 2d 944 (D.C. Cir. 1969).

8. On March 19, 1973, the Commission wrote the licensee seeking further clarification and additional information regarding certain aspects of this subject application.[3] On April 13 the licensee amended the application in response to the March 19, 1973, Commission letter and on June 11, petitioners filed a motion to strike the contents of the amendment.[4] Petitioners argue that while a licensee may amend its renewal application as a matter of right (see § 1.522(a) of our rules), "it is also clear that at some point, the amendment process becomes subject to abuse" resulting in the licensee's ignoring its obligation to submit complete applications until caught by watchful citizens or the Commission. Stone v. F.C.C., 466 F.2d 320, 322, (D.C. Cir. 1972). Petitioners contend that the licensee abused its privilege by withholding information to meet a possible future challenge. Initially, the licensee's proposed commercial practices in the application were questioned by the Commission in a letter dated February 2, 1973, and were questioned further in the March 19 Commission letter based upon the licensee's first amendment filed February 8. Petitioners point out that this behavior should not escape sanction by the Commission. Petitioners also argue that the licensee has abused its amendment privilege by withholding ascertainment findings of its own until questioned about those efforts by the Commission. The April 13th, amendment provided information regarding racial composition of the community and a complete listing of community needs, which petitioners contend were critical omissions in terms of the licensee's ability to respond to the concerns of the black population of the service area. We will not accept petitioners' argument that the licensee's April 13th amendment be stricken. We stress initially that the licensee's April 13th amendment was filed as a reply to our inquiries and not on the licensee's own motion or in a further response to the petition to deny. Since the Commission generated this amendment, it cannot be stated that the licensee, through the amendment, is attempting to upgrade a deficient application. Further, we do not feel that this amendment represents a pattern of dilatory conduct by the licensee, Stone, supra at page 332, nor does our acceptance of it amount to allowing belated upgrading after a challenge has been initiated. As will be noted below, however, the licensee's April 13th amendment fails to provide sufficient information to remedy all the shortcomings of the WACT ascertainment of community needs.

ASCERTAINMENT

9. Petitioners allege that the licensee's ascertainment of community needs is deficient since it fails to provide a demographic breakdown of the community showing its ethnic composition as required by questions 9 and 10 of the Primer on Community Ascertainment, 27 FCC 2d 650 (1971). Also, the licensee's survey of community leaders is deficient since only five, or 9% of those interviewed, were black while blacks comprise 24 percent of the population served by WACT. Petitioners contend that the licensee has not met the Primer's requirement of listing all of the significant community needs uncovered by its survey. In addition, petitioners state that the licensee has failed to meet the Commission's requirements by not listing the specific needs it intends to cover in its proposed programming and has not related its programming to ascertained needs.

10. In response to the Commission letter of March 19, 1973, the licensee amended its application on April 13, and argues that the amendment supplies sufficient information to resolve both the Commission's and petitioners' concerns regarding community ascertainment. The amendment includes a demographic breakdown of WACT's service area showing a 26 percent black population. The licensee states that its amended survey covers all significant black groups in Tuscaloosa and that of those community leaders surveyed, 11 percent were black. The licensee also states that it is now aware that all the needs brought out in its survey of community leaders, not merely a representative sample, must be reported and therefore amends its list of needs.[5] Petitioners respond by stating that the licensee's amended survey fails to correct the underrepresentation of blacks and fails to indicate the specific programs which will deal with specific needs ascertained.

11. We have examined the material before us and find that the licensee has provided a demographic breakdown of the community showing its ethnic composition which is sufficient to satisfy the requirements of the Primer, supra. With regard to the allegation that the licensee has failed to interview an adequate number of minority leaders, we must emphasize that there is no exact formula for determining the correct number of community leaders to be surveyed. All that the Commission requires is a survey of a representative cross-section of community leaders. Here, the licensee has satisfied that requirement by consulting with

[2] The petition as filed also was missing a monitoring study, though reference to same was made in the body of the petition.

[3] By letter dated February 2, 1973, the Commission pointed out certain errors in the licensee's logging practices and requested clarification of WACT's commercial practices. The licensee, on February 8, 1973, amended its application in response to our request. The March 19 Commission letter requested ascertainment information and an explanation for the licensee's deviation from its 1970 proposed commercial policy.

[4] The licensee's opposition to the motion to strike was filed on June 27, 1973, and petitioners replied thereto on July 9, 1973.

[5] These needs include: Need for more doctors, the lack of pride, the need for more black policemen and firemen, the need for improved paving of the streets and the need for a detention center for delinquents.

a number of minority group leaders representing various groups within Tuscaloosa's black community. Since licensees have broad discretion in selecting from among the leaders of each significant segment within the community, the Commission declines to substitute its judgment for that of broadcast licensees in the absence of specific evidence of abuse of that discretion in selecting leaders to be interviewed or the omission of a significant segment of his service area. WSBC Broadcasting Company, 34 FCC 2d 651, 653 (1972). Merely pointing to the fact that the percentage of minority community leaders interviewed does not equal the minority population percentage fails, without more, to raise a substantial or material question of fact regarding the representativeness of a licensee's ascertainment survey. Ben. L. Parker, 48 FCC 2d 603 (1974) and Westinghouse Broadcasting Company, Inc., 48 FCC 2d 1123 (1974). Petitioners have made no showing which would raise a substantial or material question of fact surrounding the licensee's ascertainment surveys themselves.

12. However, upon review of all the materials before us, we must agree with petitioners that the licensee has failed to follow the guidelines set forth in Question and Answer 29 of the Primer, supra, linking broadcast matter with ascertained community problems. The purpose of the whole ascertainment process and the policy behind the issuance of the Primer was an effort to

> * * * aid broadcasters in being more responsive to the problems of their communities, add more certainty to their efforts in meeting Commission standards, make available to other interested parties standards by which they can judge applications for stations licensed to their community and aid our staff in applying our standards uniformly. (Primer, supra at 651)

While we have approved the licensee's ascertainment survey methods, finding them to have resulted in a representative sampling of needs and interests in WACT's service area, we are unable to conclude that the proposed programming for WACT will in fact address those ascertained needs and interests. There has been no attempt made, either in the application or in the licensee's opposition, to set out the community problems which will be treated by any of the proposed programming. Without this required linking, we are unable to address petitioners' allegations that WACT's proposed programming fails to serve the public interest; we cannot grant a renewal of WACT's license unless this issue is resolved.[6] Accordingly, we find that petitioners have raised a substantial and material question of fact regarding the adequacy of the licensee's proposed programming that will require an administrative hearing for its resolution.

*Employment*

13. Petitioners allege that the licensee has discriminated in the hiring of blacks, citing WACT's FCC Form 395 for 1973 which shows that of the nine employees, none is black, while the station's service area includes a high percentage of blacks. In addition, they see no indication that the station has adopted training programs or review practices which would insure a real opportunity for equal employment and promotion. Petitioners contend that the licensee's Equal Employment Opportunity Program is a paraphrasing of the Commission's own statement of the necessary features of such a program, without any indication that it does in fact have a training program for prospective or actual employees.

14. The licensee responds by pointing to its EEO program as set out in its renewal application, claiming that the Commission must have found its program adequate since Commission letters on two occasions regarding its license renewal application made no mention of employment practices or policies. Moreover, the licensee reiterates its pledge to follow its EEO program of non-discrimination in hiring. The licensee also contends that it has not discriminated in the past, and outlines its affirmative but unsuccessful efforts to hire a black employee. Further, the licensee maintains that with eight full-time and three part-time employees it would be impracticable for it to engage in a training program since it has neither the facilities, personnel nor money to effectively accomplish such training.[7]

15. In response, the petitioners argue that the results of WACT's recruitment efforts, not its stated intentions, should guide the Commission in judging the licensee's compliance with its EEO program. They assert that WACT has failed to provide affirmative evidence of the absence of qualified or qualifiable blacks in its service area or that it has made a thorough effort to locate black employees.

16. The Commission rules, § 73.125, provide in part that equal opportunity in employment shall be afforded by all licensees to all qualified persons, and no persons shall be discriminated against in employment because of race, color, religion, national origin or sex. Our rules also maintain that an equal employment opportunity program shall be established by each licensee for each station it is licensed to operate and said program shall set forth a positive continuing program of specific practices designed to assure equal opportunity in every aspect of station employment policy and practice. Thus, the rules embody two concepts: non-discrimination and affirmative action. Licensees must not only ensure employment neutrality with regard to race, color, religion, national origin and sex, but also must make additional positive efforts to recruit, employ and promote qualified minority group members. As part of a licensee's affirmative action obligation, particularly in cases where its employment statistics fall outside a zone of reasonableness, the licensee must modify or supplement its recruitment practices and policies in an effort to locate and encourage the candidacy of qualified minorities. Employment Policies and Practices—Florida, 44 FCC 2d 735 (1974).

17. In interpreting our rules, we have stated that directly proportional employment of minorities is not required as we do not believe that equal employment opportunity practices will necessarily result in the employment of any minority group in direct proportion to its percentage of the community population. *Report and Order in Docket Number 18244*, 23 FCC 2d 430, 431 (1971). The Courts have also concurred in this view by recognizing that non-proportionate minority group employment at a station does not necessarily evidence discrimination. Bilingual Bicultural Coalition of Mass Media, Inc., v. F.C.C. 429 F. 2d 656 (D.C. Cir. 1974) and Chuck Stone v. F.C.C., 466 F. 2d 316 (D.C. Cir. 1972). However, highly disproportionate representation of minorities employed by a licensee in relation to their presence in the workforce might raise a question warranting further inquiry in the absence of affirmative efforts to modify the imbalance. In the instant case, WACT employed nine full-time and three part-time employees, one of whom was black, as of November 1973.[8] Its minority employment percentage of total work-force, amounting to 8.3% in an SMSA of 24.2%, parallels the minority employment percentage reviewed by the Court in Chuck Stone v. F.C.C., supra. However, that fact alone does not demonstrate compliance with our EEO rules and policies, for as the Court has recently said:

> * * * Stone represented an initial effort not a final codification. While we did not endorse the statistical challenge raised in Stone, we did not signal satisfaction with the status quo on employment discrimination.
>
> Bilingual Bicultural Coalition of Mass Media, Inc. v. F.C.C., supra at 659.

18. Upon full review of WACT's equal employment policies and practices, however, we believe that petitioners have failed to raise a substantial or material question of fact. In the past, absent complaint, we have chosen not to analyze the year-to-year figures in female and minority employment profiles of licensees with less than 10 full-time employees, for the reason that statistical comparisons

[6] In our review of the usbject application's proposed programming section, we gave the licensee the benefit of the doubt in an attempt to make the required linkage between its ascertained problems and the programs WACT proposed in response. We were unable to accomplish this linkage without assuming facts which we could not properly assume. Ultimately, therefore, the licensee must provide these necessary facts in a hearing before complete resolution of the issue is possible.

[7] By a supplement to its opposition pleading submitted November 8, 1973, the licensee advised the Commission that in mid-September it hired a black female, Mrs. Charles Woods, to perform secretarial and bookkeeping duties of WACT-AM.

[8] At the time the instant petition was filed, WACT employed no minority persons. Its 1974, FCC Form 395 lists ten full-time employees (one black) and fifteen full and part-time employees (two blacks).

become distorted when numbers are small. See Triple X Broadcasting Company, Inc., FCC 75-243 released March 6, 1975, and Alabama Educational Television Commission, 50 FCC 2d 461, 474 (1974). Of course, each licensee with five or more employees is required to file an EEO Program as Section VI of its renewal application. Here, WACT's affirmative action program appears designed to assure that all persons, regardless of race or origin, will be afforded an equal opportunity to acquire employment and advancement.[9] Finally, the licensee has demonstrated that it has pursued and is actively continuing a course of recruitment to acquire full-time minority employees, including: contacting black employees at other area stations; contacting the Alabama State Employment Service, the University of Alabama, the Alabama Broadcasters Association and area colleges with predominantly minority enrollment. We would expect that the continued operation of this affimative action program would result in additional employment and promotion of minorities in the future, when opportunities to either hire or promote arise. Only if it is found that no additional efforts were undertaken to recruit, employ, and promote minority persons, or that efforts undertaken are clearly insufficient, which is not the case here, would additional administrative action to secure compliance with the Commission's rules be appropriate.

PAST PROGRAMMING

19. Petitioners allege that WACT has failed to provide adequate programming service to blacks in its service area.[10] They object to the news coverage given to the black community of Tuscaloosa, arguing that the station limits such coverage to reports of alleged criminal acts committed by blacks. They also allege that the licensee's list of 18 typical and illustrative programs broadcast during the past license term (Exhibit F) with one exception, gave no indication of featuring any black participants or discussion of topics of particular concern to the black community. The one program which petitioners view as being directly significant to the black community—"Emancipation Proclamation Commemorative Service"—was, according to petitioners, inadequate to demonstrate substantial service to the black community since it was a one-hour, one-time-only broadcast. Petitioners argue that the licensee has failed to meet its 1970 programming promises relating to news and public affairs, having promised 20 hours of news and public affairs and 260 PSA's each week, but actually broadcasting only 15 hours and 10 minutes of news and public affairs and 205 PSA's during the composite week.[11] Petitioners note that the licensee's failure in this area is even more flagrant in light of the fact that the licensee did not meet its proposed total hours of operation, thereby raising the percentage of deficient performance.

20. Petitioners also allege that the licensee has failed to follow its 1970 commercial policies and maintains a consistent practice of overcommercialization. In its 1970 composite week, the licensee exceeded its 18-minute normal limit for commercials per hour 24 times and in seven hourly segments exceeded its 23-minute outer limit for commercials per hour. In Exhibit M of its 1970 renewal application, the licensee promised not to exceed the 18-minute limit more than 10% of its broadcast hours and again set a 23-minute limit which it promised never to exceed. Petitioners maintain that the licensee's 1973 renewal application reveals a blatant disregard of those 1970 proposals: the licensee exceeded the 18-minute limit 23 times in the composite week and exceeded its 23-minute outer limit 15 times. Despite the licensee's reiteration in its 1973 renewal application of the 23-minute "outer limit" pledge, petitioners allege that while they were monitoring WACT on February 2, 1973, the licensee ran 24:33 minutes of commercial matter between 6:00 a.m. and 7:00 a.m. and 23:55 minutes of commercial matter between 8:00 a.m. and 9:00 a.m. (The licensee has not challenged these figures.) This, they maintain, demonstrates that the licensee continues to violate its own commercial policy pledges to the Commission. Finally, petitioners allege that the licensee's "Ask the authority" program—wherein an "authority" answers listener questions regarding various aspects of gardening—constitutes a program length commercial. In their view, the "authority" does little more than promote his own commercial interests and the program as a whole represents a subordination of programming in the public interest to salability. Moreover, according to petitioners, the licensee fails to disclose to the listener that the authority is the proprietor of a lawn and pet store who promotes his own products.[12] The petitioners cite this program as raising a question as to whether there is an inconsistency in the licensee's representation to the Commission in regard to the maximum amount of commercial matter to be broadcast by WACT in the coming license term.

21. In opposition to the allegations made by petitioners, the licensee maintains that all newsworthy items are broadcast without regard to race. It lists among its news sources the services of United Press International, a black news "stringer" from Birmingham and the news releases of Stillman College (a predominantly black institution) to support its claimed lack of bias in news reporting. Additionally, the licensee lists programs and announcements, other than news, which it maintains serve the entire community, including its black residents.

22. The licensee explains that the composite week contained 83 hours and 15 minutes of programming instead of the 90 hours proposed in 1970 due to several "short days." Accordingly, these short days also account for its failure to meet its proposed hours of programming in news, public affairs and number of PSA's during the composite week. The licensee points out, however, that its percentage of proposed news, public affairs and "other" programs in 1970 was nearly equalled in the 1970 composite week. The licensee adds that its news programming was less than proposed due to the sale of commercial time which reduced newscasts from the five minutes originally allocated to three minutes. The licensee also maintains that the public affairs programming of the station is not adequately portrayed by the composite week, as many of the public affairs programs previously aired did not occur in the composite week, resulting in an apparent reduction in actual programming.

23. As for the commercial policies of WACT, the licensee points to a Commission letter of March 19, 1973, in which reference was made to the hourly segments where the licensee exceeded the 18 minutes-per-hour commercial limit, noting the licensee's explanation of the excess for four of the six days involved. Since this letter asked for additional information concerning proposed commercial policy of the station, but did not request further explanation of past commercials broadcast, the licensee assumes that the Commission is

n

| | 1970 proposals | | 1973 composite week | |
|---|---|---|---|---|
| | Hours and minutes | Percent | Hours and minutes | Percent |
| News | 12:00 | 13.3 | 9:15 | 11.1 |
| P.A. | 8:00 | 8.8 | 5:55 | 7.1 |
| Other | 20:00 | 22.2 | 21:22 | 25.8 |
| Total hours per week | 90 | | 83:15 | |

[9] The allegation that the licensee lacks a training program is not material, since such a program is not required by our rules. Report and Order in Docket Number 18244, supra.

[10] Petitioners also argue that there are a number of indications that the licensee has an "affirmative policy of avoiding programming that is likely to serve the black community." Petitioners' one example of this policy has been denied by the licensee in an affidavit. We find petitioners' conclusion to be hardly supported by this one incident. Moreover, petitioners' allegation fails to conform to our pleading requirements in that specific allegations of fact are missing. We hold that petitioners' bare allegation of a conscious policy of program discrimination by the licensee, supported (without affidavit) by one disputed example, does not raise a substantial or material question of fact.

[12] Our examination of petitioners' own transcript of the licensee's "Ask the Authority" for February 7, 1973, reveals that the authority was, in fact, identified as the proprietor of the Spiller Field and Garden Shop. (Attachment C, page 3, Reply to the Opposition to Petition to Deny.)

satisfied with its prior explanations and therefore there is no further need to respond to petitioners' allegations in this regard. In the amendment, submitted April 13, 1973, the licensee states that the traffic girl will be given instructions not to insert more than 18 commercial minutes within any hour and that if a situation arises where she must place up to 20 minutes (or 22 minutes in the case of political announcements) within an hour, she will first check with the Program Director before exceeding the 18-minute limit. The Program Director will then check the particular calendar week to determine that such additional commercials are consistent with policy of not permitting 18 minutes in more than 10% of the hours broadcast in any week. The Program Director will be instructed to report to Clyde W. Price, president of the licensee, any possible conflicts with this policy. Any questions will be resolved to insure adherence to the commercial policy. Finally, all personnel will will be instructed not to insert any last minute commercials in any segment without obtaining prior approval of the Program Director. The licensee also denies that the program, "Ask the Authority," constitutes a program length commercial. In its view a good portion of the program is devoted to answering questions relating to gardening and pets. If a listener asks the authority whether a particular product is available at his store, he will state whether it is or it isn't or he will suggest other stores where the product is available. The licensee states that whenever mention is made of items for sale at the authority's store, such references are logged as commercial. Moreover, such references have not amounted to the entire content of the program.

24. In reply to the licensee's opposition pleading, petitioners' argue that the licensee has failed to cite a specific instance of news coverage of the black community or give a specific example of a news report by its black news "stringer." Petitioners see the fact that the licensee employs a black news stringer as unresponsive to their allegation that WACT fails to provide adequate coverage of news events in the black community of either Birmingham or Tuscaloosa. Petitioners argue that news coverage of Stillman College is inadequate to demonstrate that the licensee has provided continuing news coverage of the black community in its service area. Petitioners maintain that during the week in which they monitored WACT, only two events involving local blacks were broadcast. Both events allegedly took place outside the black community served by the station and involved criminal acts. These results, they assert, dispute the licensee's contention that adequate news coverage of the black community is provided and demonstrate that the licensee unnecessarily mentions the racial identity of persons involved in criminal acts. Petitioners argue that the licensee's list of programs and assurances to the Commission that such programs are of interest to blacks is inadequate without examples showing how such programs insure responsiveness to the needs of blacks in its service area. In particular, petitioners monitored the licensee's "Community Bulletin Board" program yet heard no predominantly black organization making use of the program, nor did they hear an announcement informing listeners how to get on the program. While the licensee states that blacks have appeared on its programs, petitioners state that their monitoring disclosed such appearances to be an insignificant percentage of the total broadcasts. They allege that none of the licensee's PSA's directed to ethnic groups was for a predominantly black group. In conclusion, petitioners argue that the licensee has failed to refute their charge that the black community receives no program service of particular interest to it or especially directed to black residents. Petitioners fail to find any indication that within the programs broadcast the licensee "is making an effort to assure that they are responsive to the needs of black people." (Reply, page 11 A.) [13]

25. Touching on the promise versus performance allegation, petitioners do not agree that the variances are slight: i.e., 1970 news and public affairs proposals of 20 hours per week compared with only 15 hours 10 minutes (15:10) broadcast during the composite week. Additionally, petitioners argue that the licensee's explanation for its performance during the composite week, is, in effect, an admission that the composite week is not reflective of its actual program service; namely but for the "short days" it would have met its 1970 proposals. These excuses cannot now be raised since the renewal application provides the licensee with every opportunity to fairly present its program service.[14] Petitioners further argue that the licensee's present failure to adhere to its 1970 commercial policies is merely a continuation of overcommercialization that extends back to 1964. In that year, the licensee set forth a commercial policy limiting commercial matter to not more than 18 minutes per hour and, with certain seasonal and political exceptions, an outer limit of 23 minutes per hour. Further, the licensee stated that the 18-minute commercial limit would not be exceeded during more than 10% of the station's total weekly hours of operation. Finally, the licensee proposed never to exceed its outer limit of 23 minutes. In its 1967 composite week, there were 24 hours in which the licensee exceeded 20 minutes of commercials per hour (over 20% of its total hours of operation during that week.) In five of those hours, the licensee exceeded 30 minutes per hour. These deviations were explained, and the licensee pledged to adhere to the same commercial policy it had prior to the February 8th amendment. (See note 3, above.) However, in 1970 the 18-minute limit was exceeded 25% of the composite week hours (including seven segments over 23 minutes). In the 1973 composite week, the 18-minute outer limit was exceeded in 15 hourly segments. Additionally, petitioners point to their monitoring of WACT on February 8th, noting that during that period of time the 18-minute limit was exceeded 10 times, "plainly over 10% of the hours broadcast during the monitored week." (Nine of those 10 hours exceeded the licensee's 23-minute outer limit.) [15]

26. In reviewing a licensee's past programming performance several fundamental concepts must be adhered to. A licensee's primary obligation is to serve the public interest of the community as a whole. In our 1960 Programming Policy Statement, 25 FR 7291, 20 RR 1901 (1960), we stated that the licensee should consider the tastes, needs and desires of its service area in developing his programming, and should exercise conscientious efforts not only to ascertain them, but also to carry them out as well as he reasonably can. Of course, in fulfilling that obligation, he may choose, in his good faith discretion, to present particular programs designed to meet the specific problems of identifiable groups within the service area. The amount of

[13] Petitioners' analysis of the licensee's appendix containing 54 letters—purporting to show that the station has been the voice for all the citizens, including blacks—suggests that 80% of the letters predate the current license term and 30% predate the 1967 license term. Of the 13 that do relate to the service of WACT during the current license term, eight involve letters of appreciation, guest appearances, acknowledgement for appearances or the civic activities of Clyde Price. Not one of the remaining letters comes from a predominantly black organization and therefore, according to petitioners, such letters do not conclusively demonstrate service to the black community. We agree with petitioners that these support letters add little of value to the licensee's application. Our concern focuses upon the licensee's past programming efforts, and it is upon that record we measure service to the public.

[14] While "short days" allegedly account for the low news and public affairs during the composite week, petitioners point out that the licensee fails to list any programs that it was unable to broadcast on these short days. Additionally, petitioners point out that had the licensee met its proposed hours of operation (i.e., 90), its five hours and fifty minutes of public affairs programming would have amounted to only 6.6% instead of 7.1% of its total programming. Similarly, its nine hours and fifteen minutes of news would have been only slightly more than 10%, instead of 11.1% of its total programming. Petitioners find the licensee's admission that news proposals could not be met due to overcommercialized newscasts both "astounding" and a further indication that the licensee "subordinate(s) the public interest to commercial gain." (Reply, page 30)

[15] Petitioners observe that these figures do not include commercial matter carried on "Ask the Authority." Including those commercials would raise to 15 the number of hours the 18-minute limit was exceeded (and would raise to 14 the number of hours the 23-minute limit was exceeded). Although some of these allegations represent new matter in the Reply, this becomes immaterial in light of our treatment of the petition as an informal objection.

such specifically-oriented programming need not be correlated to the representation of a particular group or groups in the population. Rather, it is a function of the licensee's evaluation of the relative importance of all of the problems of the entire service area. Chuck Stone v. F.C.C., supra, and Capitol Broadcasting Company, 38 FCC 2d 1135 (1965). And in making that evaluation, a licensee is allowed broad discretion to use his good faith judgment. While we have in the past stated that the major portion of a station's programming may be directed to the public as a whole rather than to individual racial groups within that public, we also recognize that the problems of minorities cannot be ignored. Radio Marion, Incorporated, FCC 75–296 released March 26, 1975. We do believe that in order to serve the public interest, a licensee must address some of the needs and interests present in its community, as discovered in its ascertainment survey. And in this programming a licensee must take into consideration the problems of significant minorities in the area he is licensed to serve. Time-Life Broadcasting Corp., 33 FCC 2d 1081, 1093 (1972).

27. We have carefully reviewed WACT's application for renewal of license, the amendments to that application and the various pleadings before us. We conclude that the licensee has made a reasonable and good faith effort to meet its programming obligations to its community during the past license term. We also conclude that petitioners' allegations clearly fall short of the specific allegations of fact supported by affidavits from person or persons with personal knowledge sufficient to show that a grant of the application would be prima facie inconsistent with the public interest. 47 U.S.C. section 309(d)(1). Radio Marion, Incorporated, supra. Accordingly, petitioners' allegations have failed to present a prima facie question of fact to which the licensee must respond. Compare Storz Broadcasting Company, 48 FCC 2d 1223 (1974). Contrary to petitioners' allegations, it appears that WACT has provided meaningful programming designed to meet the needs and interests of the whole community, and that a portion of the station's programming also served to meet the needs and interests of the black community. WACT broadcast a variety of programs to meet community needs and interests, and petitioners have presented no information to indicate that the station failed to make a reasonable and good faith determination of which problems merited treatment, or failed to present programming that was responsive to those problems. A review of the application reveals that WACT's overall programming reasonably met the problems, needs and interest of its service area and, in the absence of specific factual allegations to show abuse of discretion, or that the programming failed to meet community needs, the Commission will not disturb the licensee's programming judgment. Storer Broadcasting Company, 41 FCC 2d 792 (1971).

28. Specifically, during the 1970–1973 license term, WACT presented two different daily local programs constituting a forum for the discussion and presentation of a variety of local community issues, including issues relevant to the minority community. Until January 1, 1972, the licensee broadcast "Breakfast at the Stafford" (daily, 9:00 a.m.–10:00 a.m.) which featured discussions and interviews centering on local topics. This program also featured individuals and topics from the black community. While the licensee has not provided us with a complete list of either the topics or the interviewees featured on the programs, information that was supplied clearly overcomes petitioners' allegation that the licensee failed to program in the public interest. From January 1, 1972, through the balance of the license term, WACT presented "Getting It Said" (daily 9:00 a.m.–10:00 a.m.) which retained the format of a daily community topic as the basis of discussion with a local community member, but added the opportunity for public participation through telephone calls to the station while the program was being aired. Both programs provided a forum for members of the local minority community (as well as the general public) and presented programming in an effort to meet a wide variety of community needs and interests. Moreover, both programs featured blacks either as interviewees or, in the case of "Getting It Said," participants in the daily discussions. It seems clear to us that these programs provided ample opportunity for both black participation and discussion of topics of particular concern to the black community. Finally, the licensee has listed other programs that dealt with local community issues on a reasonable basis, thereby providing further evidence of its efforts to address the needs and interests of the community as a whole, including minority needs and interests. "Washington Window" (30 minutes on Sundays) presented interviews with nationally known public figures on issues of national concern. "Community Billboard" (seven times daily) provided a forum for local community and civic organizations to announce items of interest to their members and the public. And "Employment Service News" (three times daily) presented announcements of job opportunities available in WACT's service area. In conclusion, we find that petitioners have failed to allege specific facts to establish that the applicant's past programming was inadequate to deal with community problems or that it failed to deal with any significantly expressed problem. As previously noted, the station's programming dealt with a variety of problems of interest to the community in general and the minority community in particular. Accordingly, a review of WACT's past programming efforts raises no substantial or material question of fact.

2. As noted, petitioners also fault the licensee for its alleged failure to cite specific instances of news coverage of the black community, and for its failure to provide a forum for the discussion of minority topics. We do not expect nor endorse separate programming for minorities and majorities, so long as service to the entire community takes reasonable account of its diverse elements. Radio Marion, Incorporated, supra. There is ample evidence to support the licensee in its conclusion that the public interest, including that of some service to minorities, has been met through WACT's programming. Additionally, the licensee has set down the sources for its news and its policy of journalistic neutrality. Without specific showings from petitioners that the licensee has ignored minority news events, either in bad faith or in an unreasonable manner, this agency will not require further explanation from the licensee in the face of merely conclusory allegations. To do so would be simply to second-guess the broadcaster's news judgment in a manner threatening to his freedom as a journalist. Taft Broadcasting Co., 38 FCC 2d 770 (1972). While petitioners attack the licensee's alleged failure to present more minority news events, we are not persuaded from the information supplied by petitioners, that any such failure can be remedied by the Commission. Petitioners' monitoring occurred after the license term expired and the results of it were reported to the Commission for the first time in petitioners' reply pleading, without chance for licensee comment. While exclusion of news coverage of a particular group does disserve the public interest, and raises a question as to the licensee's qualifications for renewal, Radio Station WSNT, Inc., 27 FCC 2d 993 (1971), petitioners here simply conclude without explanation that the licensee has excluded minority events, and put the burden on the licensee to rebut. "(W)e will not interfere with the exercise of the licensee's news judgment where, as here, there is no showing that the licensee consistently and unreasonably ignored matters of public concern." WOIC, Inc., 39 FCC 2d 355, 367 (1973). See also Hunger in America, 20 FCC 2d 143 (1969).

30. In view of our finding that the licensee's past programming reasonably served the public interest, petitioners' arguments comparing the licensee's composite week performance percentages against its 1970 proposals fail to raise a substantial or material question of fact. A licensee has considerable discretion in programming choices as long as its programming meets the needs of the community. Columbia Broadcasting System, Inc., FCC 75–149, released February 19, 1975. Essentially, petitioners assert that failure to program in virtually the exact amounts previously proposed should raise questions regarding a licensee's past performance.[14] This Commission's rejection

[14] See Paragraph 19 and note 9, supra, showing that licensee decreased total non-entertainment from proposed 40 out of 90 weekly hours (44.3%) in 1970 to an actual 36:32 out of 83:15 (44%) weekly hours in 1973.

of such assertions has been upheld by the courts. RadiOhio, Inc., 38 FCC 2d 721 (1973) aff'd sub nom. Columbus Broadcasting Coalition v. F.C.C., 505 F.2d 320 (D.C. Cir. 1974). Similarly, we find no merit in petitioners' argument that the licensee is attempting to remedy its allegedly deficient past performance by lowering its 1973 programming proposals in public service programming. Our examination of those 1973 proposals reveals that the only category in which the licensee proposes to reduce its public service programming is in news, and then only by 2.2% from its 1970 proposals. Such a minor variation—particularly where total non-entertainment remains so high in proportion—fails to raise any substantial or material question of fact.

31. Finally, we believe that the licensee's commercial practices—and promises to the Commission thereupon—do warrant further inquiry. As set out above, petitioners have recounted in great detail WACT's past commercial proposals and the alleged violations of these policies during subsequent license terms. Additionally, petitioners have set forth data indicating that the licensee's 1973 commercial policies are currently being violated. We note that petitioners' monitoring of WACT's commercial practices coincides with the licensee's letter of February 8, 1973, wherein continued observance of a more strict commercial policy is promised. The licensee's only response in the pleadings is yet another promise for future compliance with its self-selected commercial policies. Petitioners' data is never challenged or questioned. In view of the licensee's repeated disregard for the commercial representations made to the Commission—and the degree of divergence therefrom—we find issues requiring resolution. Accordingly, we will seek further information in an administrative hearing, not only on the licensee's past and proposed commercial policies, but concerning possible misrepresentations as well.

32. Also before us is a transcript of the "Ask the Authority" program aired February 7, 1973, which has not been questioned or challenged in any way by the licensee. Logs for the composite week list the following commercial announcements as having been aired during "Ask the Authority:"

| Date | Total spots (in seconds) | Spiller spots (in seconds) [1] |
|---|---|---|
| Feb. 1, 1972 | 110 | 20 |
| Aug. 16, 1971 | 140 | 20 |
| Mar. 18, 1972 | 90 | 30 |
| Apr. 28, 1972 | 90 | 20 |
| Jan. 27, 1972 | 150 | 30 |
| Dec. 1, 1971 | 80 | 20 |

[1] On each day of the composite week, Spiller Field and Garden Shop's spots were aired before any other. As noted above, the authority is the owner and operator of Spiller Field and Garden Shop.

We have recently stated in our Public Notice Concerning the Applicability of Commission Policies on Program-Length Commercials, 44 FCC 2d 985, 986 (1974):

> The fact that an interested commercial entity sponsors a program, the content of which is related to the sponsor's products or services does not, in and of itself, make a program entirely commercial. The situation which causes the Commission concern is where a licensee quite clearly broadcasts program matter which is designed primarily to promote the sale of a sponsor's product or services, rather than to serve the public by either entertaining or informing it. The primary test is whether the purportedly noncommercial segment is so inter-woven with . . . the sponsor's advertising . . . to the point that the entire program constitutes a single commercial promotion for the sponsor's products or services. This test will be construed strictly and the determination that a program is entirely commercial will be reached only when the facts clearly justify that conclusion.

33. Applying that test to the information before us, we find a substantial and material question of fact concerning both the existence of a program length commercial and the accuracy of the licensee's logging practices. From the information available to us, we can reasonably assume that the February 7, 1973 transcript is an accurate representation of a typical "Ask the Authority" program and that the composite week logs reflect typical licensee logging practices regarding the commercial content of "Ask the Authority" as recognized by WACT. From the language of the transcript, the program appears designed, arguably, to promote the sale of Spiller products and services. While the licensee claims that the primary purpose of the program is to instruct and inform the public on the various aspects of gardening and pets, our reading of this one program reveals cross referencing, to a large degree, between this purpose and the authority's vocation. In addition to our concern that "Ask the Authority" may amount to a program length commercial, the licensee's logging practices hardly seem to reflect the actual commercial content of this program. Assuming, as we have throughout, that both the transcript and the composite week logs are typical, a substantial and material question of fact is presented as to whether one 20-second spot per program from Spiller Field and Garden Shop accurately measures reality.[2] From our present perspective, we cannot resolve that issue in the licensee's favor without further exploration in an evidentiary hearing. Accordingly, we will seek further information surrounding the licensee's logging practices concerning the "Ask the Authority" program and further information regarding the primary thrust of this program, be it commercial totally or instructional as the licensee argues.

[2] Petitioners' transcript of the February 7, 1973 "Ask the Authority" broadcast reveals that seventeen persons called into the program in responding to eight of them, Mr. Spiller specifically mentioned products available at his store. During the course of the program, there occur twelve separate, specific references to products or services sold by Mr. Spiller. The transcript is eleven pages long and on eight of the pages, Mr. Spiller announces products or services available at his shop.

34. Accordingly, *It is ordered*, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the above-captioned license renewal application, is designated for hearing at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine whether New South Radio, Inc.'s programming for the 1973–1976 license term will reasonably meet the community needs and interests for WACT's service area as ascertained by the licensee.

(2) To determine whether New South Radio, Inc. misrepresented to the Commission its plans regarding the maximum amounts of commercial matter to be contained in any sixty minute period of time and during any typical broadcast week.

(3) To determine whether New South Radio, Inc., through the broadcast of "Ask the Authority," has violated the Commission's policy against the broadcast of a program length commercial.

(4) To determine whether New South Radio, Inc. has accurately logged the commercial content of its "Ask the Authority" program.

(5) To determine whether, in light of the evidence adduced pursuant to the foregoing issues, a grant of the subject license renewal application would serve the public interest, convenience and necessity.

35. *It is further ordered*, That petitioners' "Motion for Acceptance of Petition to Deny Filed Three Minutes Late" is granted and their "Motion to Strike Amendment" is denied.

36. *It is further ordered*, That the petition to deny the aforementioned license renewal application, filed by John Bivens and Steven Suitts individually and as representatives of the Civil Liberties Union of Alabama is granted.

37. *It is further ordered*, That John Bivens and Steven Suitts individually and as representatives of the Civil Liberties Union of Alabama, are hereby named as parties respondent to the hearing ordered herein.

38. *It is further ordered*, That in accordance with section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence, shall be on the parties respondent as to Issues (1) through (4). The burden of proceeding with respect to Issue (5), as well as the burden of proof with respect to all of the issues herein, shall be upon New South Radio, Inc.

39. *It is further ordered*, That, to avail themselves of the opportunity to be heard, New South Radio, Inc., and the parties respondent, pursuant to § 1.221 (c) of the Commission's rules, in person or by attorney, shall within twenty (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 the Order.

40. *It is further ordered*, That New South Radio, Inc. shall, pursuant to § 311(a)(2) of the Communications Act

of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rules, and shall advise the Commission of the publication of such notice as required by § 1.594 (g) of the rules.

Adopted: April 23, 1975.

Released: May 9, 1975.

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

[FR Doc.75-13242 Filed 5-19-75;8:45 am]

---

[Docket Nos. 20471, 20472; File Nos. BPH-9023, BPH-9301]

## UPPER ROCK ISLAND COUNTY HOLDING CO. AND KSST, INC.

### Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Upper Rock Island County Holding Co., East Moline, Illinois (requests: 101.3 mHz, Channel No. 267, 50 kW(H&V), 500 feet) (Docket No. 20471; File No. BPH-9023); KSTT, Inc., East Moline, Illinois (requests: 101.3 mHz, Channel No. 267, 50 kW(H&V), 500 feet) (Docket No. 20472; File No. BPH-9301) for construction permits.

1. The Commission, by the Chief of the Broadcast Bureau, acting pursuant to delegated authority, has before it the two above-captioned applications, which are mutually exclusive in that they seek the same channel in East Moline, Illinois.

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.

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which 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 § 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 § 1.594(g) of the rules.

Adopted: May 13, 1975.

Released: May 14, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
*Chief, Broadcast Bureau.*

[FR Doc.75-13240 Filed 5-19-75;8:45 am]

---

# FEDERAL ENERGY ADMINISTRATION

## RETAIL DEALERS ADVISORY COMMITTEE

### Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given that the Retail Dealers Advisory Committee will meet Monday, June 16, 1975, at 9:30 a.m. in Room 305, Regional Conference Room B, J. W. McCormack Post Office Building, Post Office & Courthouse, Boston, Massachusetts.

The Committee was established to provide the Federal Energy Administration with technical and timely information on a wide range of business activities associated with the retailing of gasoline and diesel fuel.

The agenda for the meeting is as follows:

1. Discussion of Extension of the Emergency Petroleum Allocation Act of 1973.
2. Discussion of Market Shares.
3. Remarks from the Floor—10 Minute Rule.
4. Discussion of Branded Dealer Problems (Margins).
5. Discussion of Priority Projects.
a. Surplus Product.
b. Market Force vs. Allocation and Conservation.
c. Entitlements—Their Effects in the Market Place and an Updated Review.
d. EPA Controls—How Much of a Burden Are They and Are They Effective.
e. Change of Supplier During Base Period.
f. Acquiring Product For New Locations and an Increase in Base Period Volume.
g. Tank Wagon Prices vs. Rack Prices.

The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lois Weeks, Advisory Committee Management Officer, (202) 961-7022 at least 5 days before the meeting and reasonable provisions will be made for their appearance on the agenda.

Further information concerning this meeting may be obtained from the Advisory Committee Management Office.

Minutes of the meeting will be made available for public inspection at the Federal Energy Administration, Washington, D.C.

Issued at Washington, D.C. on May 15, 1975.

ROBERT E. MONTGOMERY, Jr.,
*General Counsel.*

[FR Doc.75-13186 Filed 5-15-75;12:00 pm]

---

# FEDERAL POWER COMMISSION

[Docket No. G-8606, etc.]

## CONTINENTAL OIL CO. ET AL.

### Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

MAY 9, 1975.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 29, 1975, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

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 all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where 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 Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. and date filed | Applicant | Purchaser and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| G-8606..... 4-10-75 [1] | Continental Oil Co., P.O. Box 2197, Houston, Tex 77001. | Tennessee Gas Pipeline Co., a Division of Tenneco Inc., South Crowley Field, Acadia Parish, La. | [2] 59.021377 | 15.025 |
| G-11762..... CF 4-11-75 | Sun Oil Company (successor to Graham-Michaelis Drilling Co.), P.O. Box 2880, Dallas, Tex. 75221. | Northern Natural Gas Co., Harper Ranch Field, Clark County, Kans. | 18.0 | 14.65 |
| CI61-1024..... D 4-23-75 | Mobil Oil Corp. (Operator), et al., 3 Greenway Plaza East, Suite 800, Houston, Tex. 77046. | Natural Gas Pipeline Co. of America, North Custer City Field, Custer County, Okla. | Leases expired. | ..... |
| CI68-1124..... D 4-18-75 | Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001. | Natural Gas Pipeline Co. of America, Zieber Well, South Taloga Field, Dewey County, Okla. | [3] | ..... |
| CI75-621..... (G-3982) F 4-14-75 | Blackwood & Nichols Co., Ltd. (successor to Northeast Blanco Development Corp.), 2013 First National Center, Oklahoma City, Okla. 73102. | El Paso Natural Gas Co., Blanco Field, San Juan and Rio, Arriba Counties, N. Mex. | [4] 29.23<br>[5] 53.98<br>[6] 62.8852 | 15.025<br>15.025<br>15.025 |
| CI75-623..... A 4-21-75 [7] | Exxon Corp., P.O. Box 2180, Houston, Tex. 77001. | Northern Natural Gas Co., Yates Casinghead Gas Plant, Pecos County, Tex. | [8,9] 25.5 | 14.65 |
| CI75-624..... A 4-21-75 | Cities Service Oil Co., P.O. Box 300, Tulsa, Okla. 74102. | Panhandle Eastern Pipe Line Co., Acreage in Morton County, Kans. | [10] 51.7776 | 14.65 |
| CI75-625..... A 4-21-75 | Helmerich & Payne, Inc., 1579 East 21 St., Tulsa, Okla. 74114. | Michigan Wisconsin Pipe Line Co., Mocane-Laverne Field, Beaver County, Okla. | [10] 54.889 | 14.73 |
| CI75-627..... A 4-16-75 | Sun Calvert Co., P.O. Box 2880, Dallas, Tex. 75221. | Arkansas Louisiana Gas Co., Kinta Field, Haskell County, Okla. | [11,12] 74.95 | 14.65 |
| CI75-628..... F 4-16-75 | Austral Oil Co., Inc.,[13] 2700 Exxon Bldg., Houston, Tex. 77002. | El Paso Natural Gas Co., Acreage in Lea County, N. Mex. | 17.10 | 14.65 |
| CI75-630..... A 4-18-75 | Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001. | Panhandle Eastern Pipe Line Co., South Taloga Field, Dewey County, Okla. | [10] 50.7236 | 14.65 |
| CI75-631..... A 4-23-75 | Cities Service Oil Co., P.O. Box 300, Tulsa, Okla. 74102 | Kansas-Nebraska Natural Gas Co., Inc. Acreage in Pawnee County, Kans. | [10] 25.0 | 14.65 |
| CI75-632..... A 4-24-75 | Monsanto Co. (Operator), et al., 1300 Post Oak Tower, 5051 Westheimer, Houston, Tex. 77027. | Transwestern Pipeline Co., Thompson No. 1 Well, Dewey County, Okla. | [10] 54.5909 | 14.65 |
| CI75-633 A 4-24-75 | MRT Exploration Co., 9900 Clayton Rd., St. Louis, Mo. 63124. | Mississippi River Transmission Corp., Waskom Field, Harrison County, Tex. | [14] 55.8303 | 14.65 |

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

[1] Request for authorization to continue sale of gas under a renegotiated and extended contract which had expired, with rate change.
[2] Includes 7.0 cents per Mcf tax adjustment and is subject to upward and downward Btu adjustment.
[3] The Zieber well pressure declined to the point that it is unable to produce into the pipeline of purchaser.
[4] Rate in effect subject to refund in Docket No. R172-82.
[5] Rate in effect subject to refund in Docket No. R175-69, effective on Apr. 21, 1975.
[6] Rate in effect subject to refund in Docket No. R175-116, effective on Sept. 21, 1975.
[7] Applicant proposes to cover its own interest in the sale of natural gas heretofore authorized to be made by Marathon Oil Co.
[8] Subject to upward and downward Btu adjustment; estimated upward adjustment is 2.28 cents per Mcf; price includes 1.5 cents per Mcf gathering allowance.
[9] Applicant is willing to accept a certificate in accordance with Opinion No. 662.
[10] Subject to upward and downward Btu adjustment.
[11] Applicant is willing to accept a certificate in accordance with sec. 2.56a of the Commission's General Policy and Interpretations.
[12] Includes 4.95 cents per Mcf tax reimbursement and is subject to upward and downward Btu adjustment.
[13] Successor to Petroleum Corp. of Texas (CS70-37), Reserve Oil & Gas Co. (CS66-72), Albert Gackle (CS66-10), W. K. Byrom (CS66-37), Frank Bateman (CI63-273), Getty Oil Co. (G-6264), Atlantic Richfield Co. (G-4541), Ralph L. Clarke and Atlantic Richfield Co. (G-13263).
[14] Includes 4.1127 cents per Mcf State production tax and 0.9946 cents per Mcf gathering allowance.

[FR Doc.75-13004 Filed 5-19-75;8:45 am]

---

[Docket No. CI61-636, etc.]

## CONTINENTAL OIL CO. ET AL.

### Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

MAY 13, 1975.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 6, 1975, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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 all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where 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 Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

| Docket No. and date filed | Applicant | Purchaser and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| CI61-636..... D 4-21-75 | Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001. | Transwestern Pipeline Co., Bell Lake Field, Lea County, N. Mex. | (*) | (*) |
| CI62-31..... E 4-23-75 | Sun Oil Co. (successor to Forest Oil Corp.), P.O. Box 2880, Dallas, Tex. 75221. | Colorado Interstate Gas Co., a Division of Colorado Interstate Corp., Patrick Draw Field, Sweetwater County, Wyo. | [1] 23.6811 | 14.65 |
| CI62-385..... E 4-29-75 | Sun Oil Co. (successor to Forest Oil Corp.). | Colorado Interstate Gas Co., a Division of Colorado Interstate Corp., Patrick Draw Field, Sweetwater County, Wyo. | [1] 23.6811 | 14.65 |
| CI72-651..... C 4-25-75 | Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001. | Panhandle Eastern Pipe Line Co., Brock "A" 1 Well, Hemphill County, Tex. | [2] 50.7230 | 14.65 |
| CI75-639..... A 4-28-75 | Monsanto Co., 1300 Post Oak Tower, 5051 Westheimer, Houston, Tex. 77027. | Transwestern Pipeline Co., Nash Federal No. 1 Well, Eddy County, N. Mex. | [2] 54.9016 | 14.65 |
| CI75-640..... A 4-28-75 | Amoco Production Co., Security Life Bldg., Denver, Colo. 80202. | Mountain Fuel Supply Co., Brady Area, Sweetwater County, Wyo. | [3] 59.758 | 14.73 |
| CI75-641..... A 4-25-75 | Marathon Oil Co., 539 South Main St., Findlay, Ohio 45840. | Texas Eastern Transmission Corp., Eugene Island Area, Block 349, offshore Louisiana. | [3] [4] $1.44 | 15.025 |
| CI75-642..... A 4-25-75 | Louisiana Land Offshore Exploration Co., Inc., 225 Baronne St., P.O. Box 60350, New Orleans, La. 70160. | Texas Eastern Transmission Corp., Block 349, Eugene Island Area, offshore Louisiana. | [3] [4] $1.44 | 15.025 |
| CI75-643..... A 4-25-75 | Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001. | El Paso Natural Gas Co., Basin Dakota Field, Rio Arriba County, N. Mex. | [2] 56.3856 | 15.025 |
| CI75-644..... A 4-28-75 | Sohio Petroleum Co., 1100 Penn Tower, Oklahoma City, Okla. 73118. | Northern Natural Gas Co., Drinkard Field, Lea County, N. Mex. | [4] 54.5151 | 14.65 |
| CI75-645..... A 4-30-75 | Lone Star Producing Co., 301 South Harwood St., Dallas, Tex. 75201. | Natural Gas Pipeline Company of America, Acreage in Sutton County, Tex. | [7] 62.97 | 14.65 |
| CI75-646..... A 4-30-75 | Union Texas Petroleum, a Division of Allied Chemical Corp., P.O. Box 2120, Houston, Tex. 77001. | Transwestern Pipeline Co., Burton Flat Field, Eddy County, N. Mex. | [3] 54.1511 | 14.65 |
| CI75-647..... A 4-30-75 | Arkla Exploration Co., P.O. Box 1734, Shreveport, La. 71151. | Arkansas Louisiana Gas Co., Witcherville Field, Sebastian County, Ark. | [2] 51.3 | 14.65 |
| CI75-648..... A 5-2-75 | Mitchell Energy Offshore Corp., 3900 One Shell Plaza, Houston, Tex. 77002. | Natural Gas Pipeline Co. of America, 23-L Field, offshore Jefferson County, Tex. | [4] 60.0 | 14.65 |
| CI75-649..... A 5-2-75 | Sun Oil Co., P.O. Box 2880, Dallas, Tex. 75221. | Mississippi River Transmission Corp., Mills Ranch Field, Wheeler County, Tex. | [3] 54.8357 | 14.65 |
| CI75-651..... A 5-5-75 | Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221. | Tennessee Gas Pipeline Co., a Division of Tenneco Inc., West Cameron Block 177, offshore Louisiana. | [3] 52.02 | 15.025 |
| CI75-652..... A 5-5-75 | Texas Pacific Oil Co., Inc., 1700 One Main Place, Dallas, Tex. 75250. | Northern Natural Gas Co., Drinkard Field, Lea County, N. Mex. | [2] 51.0 | 14.65 |
| CI75-653..... A 5-5-75 | Diamond Shamrock Corp., P.O. Box 631, Amarillo, Tex. 79173. | Arkansas Louisiana Gas Co., South Pocola Field, LeFlore County, Okla. | [3] 51.0 | 14.73 |

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

*Leases have ceased to produce or never were productive.
[1] Includes 0.5211 cents per Mcf tax reimbursement.
[2] Subject to upward and downward Btu adjustment.
[3] Includes 5.611 cents per Mcf upward Btu adjustment, 2.147 cents per Mcf tax reimbursement and 1.0 cent per Mcf gathering allowance.
[4] Applicant is willing to accept a certificate in accordance with sec. 2.56a of the Commission's General Policy and Interpretations.
[5] Includes 4.3642 cents per Mcf tax reimbursement and is subject to upward and downward Btu adjustment.
[6] Includes 10.3007 cents per Mcf upward Btu adjustment.
[7] Subject to upward and downward Btu adjustment; includes 4.12 cents per Mcf tax reimbursement and 1.402 cents per Mcf gathering allowance.

[FR Doc.75-13065 Filed 5-19-75;8:45 am]

[Docket No. CP75-325]

## CABOT CORP.

### Application

MAY 13, 1975.

Take notice that on April 21, 1975, Cabot Corporation (Applicant), P.O. Box 1101, Pampa, Texas 79065, filed in Docket No. CP75-325 an application pursuant to section 1(c) of the Natural Gas Act for an exemption from the provisions of the Natural Gas Act, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Applicant states that it owns and operates a pipeline system in Carson and Gray Counties, Texas, which it uses to gather and transport natural gas obtained from third parties, as well as gas produced by Applicant from its own wells, for delivery and consumption in Applicant's plants and facilities in the area and for delivery, sale and consumption in a Celanese Corporation chemical plant for the account of Pioneer Natural Gas Company. Applicant further states that approximately 1,500 Mcf per day of the natural gas so gathered and transported is received from Transwestern Pipeline Company (Transwestern) under an exchange agreement certificated by the Commission in the proceeding in Docket No. CP68-93. The gas received from Transwestern is said to be commingled with the other gas in Applicant's system and comprises a part of the deliveries to Applicant's plants and facilities and to the Celanese Plant. Applicant asserts that all of the gas gathered and transported by Applicant in its pipeline system, including the volumes received from Transwestern, is transported and ultimately consumed entirely within Texas.

Applicant states that it is in the process of replacing a portion of the subject system and is requesting that the exemption issued cover these replacement facilities also.

Applicant requests the instant exemption solely for the above-described facilities and operations, including the transportation and sale of the gas received by Applicant from Transwestern. The application does not pertain to Applicant's sales of natural gas to pipeline companies in West Virginia and in the Southwest.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 23, 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). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to

make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75-13115 Filed 5-19-75;8:45 am]

---

[Docket No. E-9415]

## CENTRAL ILLINOIS PUBLIC SERVICE CO.

### Proposed Changes in FPC Electric Service Tariffs

MAY 14, 1975.

Take notice that Central Illinois Public Service Company (CIPS) on May 1, 1975 tendered for filing Rate Schedule W-2 for wholesale electric service to municipalities. CIPS states that the proposed tariff would increase revenues from jurisdictional sales and service by $656,215, based on the 12-month period ending May 31, 1975.

CIPS states that the proposed tariff will become effective June 1, 1975 and applicable for service being provided to the municipalities upon the expiration of the effective period for the rates and charges currently specified in the various agreements between the Company and the municipalities.

CIPS states that copies of the filing were served upon the Company's jurisdictional customers. CIPS states that none of the municipalities has indicated any objection to this filing.

CIPS included in the submittal of this proposed rate increase a motion to incorporate by reference under Section 35.19 of the Commission's rules and regulations material previously submitted to the Commission, according to CIPS, in Docket No. E-9138 in lieu of resubmission. CIPS states that this material includes the following:

1. Statements A to L for Period I (12 months ending June 30, 1974).
2. Statements A to L for Period II (12 months ending June 30, 1975).
3. CIPS Exhibit 2.0 (testimony of William F. Grant, Comptroller and Assistant Secretary, and attached affidavit of William F. Grant).
4. CIPS Exhibit 4.0 (testimony of L. Sanford Reis, attached Schedules 1 through 27, and attached affidavit of L. Sanford Reis).
5. Working papers supporting Statements A to O for Period II.

CIPS motion also included a request to use the test periods utilized in Docket No. E-9138 for the proceeding in Docket No. E-9415.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 23, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75-13221 Filed 5-19-75;8:45 am]

---

[Docket No. CP75-299]

## CITIES SERVICE GAS CO. v. W. D. GREENSHIELDS, INC.

### Notice of Withdrawal

MAY 14, 1975.

Cities Service Gas Co. v. W. D. Greenshields, and W. D. Greenshields, Inc.

On April 25, 1975, Cities Service Gas Company filed a withdrawal of its Petition for a Declaratory Order filed March 7, 1975, in the above-designated matter.

Notice is hereby given that pursuant to § 1.11(d) of the Commission's rules of practice and procedure, the withdrawal of the above petition shall become effective May 27, 1975.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75-13222 Filed 5-19-75;8:45 am]

---

[Docket No. RP74-4]

## CITIES SERVICE GAS CO.

### Notice of Conference

MAY 14, 1975.

Take notice that on Tuesday, May 20, 1975, a conference of all interested persons in the above-referenced docket will be convened at 10:00 a.m. in Room No. 3401 at the offices of the Federal Power Commission, North Building, 825 North Capitol Street, NE, Washington, D.C. 20426.

The conference will be held pursuant to § 1.18 (Conferences, Offers of Settlement) of the Commission's rules of practice and procedure (18 CFR 1.18). Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene by order of the Commission, such attendance at the conference will not be deemed to authorize such intervention as a party in the proceedings.

In accordance with the provisions of § 1.18 of the rules, all parties will be expected to come fully prepared to discuss the merits of all issues concerning the lawfulness of Cities Service Gas Company's proposed tariff changes, any procedural matters preparatory to a full evidentiary hearing, or to make commitments with respect to such issues and any offers of settlement or stipulations discussed at the conference. Failure to attend the conference shall constitute a waiver of all objections to stipulations and agreements reached by the parties in attendance at the conference.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75-13223 Filed 5-19-75;8:45 am]

---

[Docket No. E-9430]

## DUKE POWER CO.

### Notice of Contract Supplement

MAY 14, 1975.

Take notice that Duke Power Company (Duke) tendered for filing on May 7, 1975, a supplement to Duke's Electric Power Contract with Lockhart Power Company (LPC).

Duke states that aforementioned Electric Power Contract is on file with the Commission as Duke Power Company Rate Schedule FPC No. 252.

Duke states that Exhibit A-1, Delivery Point No. 1, dated February 10, 1975, provides for an increase in contract demand from 10,000 kw to 12,000 kw; and Exhibit A-1, Delivery Point No. 2, dated February 10, 1975, provides for an increase in contract demand from 22,000 kw to 33,000 kw. Duke states that both changes were made at the request of the customer.

Duke states that service will be billed on Schedule 10. Duke states that no new facilities have been installed to provide the service described in the Exhibits.

Duke states that a copy of the filing was mailed to LPC.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 29, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75-13224 Filed 5-19-75;8:45 am]

---

[Docket No. E-9431]

## DUKE POWER CO.

### Contract Supplement

MAY 14, 1975.

Take notice that Duke Power Company (Duke) tendered for filing on May 7, 1975, a supplement to Duke's Electric Power Contract with Surry-Yadkin Electric Membership Corporation.

Duke states that this Electric Power Contract is on file with the Commission as Duke Power Company Rate Schedule FPC No. 140.

Duke states that the five Exhibits A are dated October 9, 1974, and provide for an increase in designated kw demand as follows:

| Delivery point No. | Designated kilowatts | |
|---|---|---|
| | Present | Proposed |
| 1 | 11,000 | 12,000 |
| 2 | 2,200 | 2,500 |
| 3 | 11,000 | 12,000 |
| 4 | 4,000 | 5,000 |
| 5 | 2,000 | 2,500 |

Duke states that these changes were made at the request of the customer.

Duke states that the contract with the Rural Electric Cooperatives served by Duke provides for service at all delivery points, plus any new delivery points to be added in the future, in one contract, by Exhibits A attached to the contract. Duke states that this contract contains an "all requirements" provision, and there is no Contract Demand at any delivery point. Exhibit A therefore shows only "designated kilowatts", "location" and other information. Duke states that when the character of the service changes at a given Delivery Point, Exhibit A is superseded by A–1, A–2, etc.

Duke proposes an effective date for the Exhibits A of June 20, 1975.

Duke states that its facilities are adequate to serve the increased designated kilowatts at Delivery Points No. 1, 2, 3, and 5. To serve the revised Exhibit A–4 agreement for the increased designated kilowatts for Delivery Point No. 4, Duke states that it proposes to increase its metering capacity.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 29, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75–13225 Filed 5–19–75;8:45 am]

[Docket No. E–8911]

## GULF POWER CO.

### Further Extension of Procedural Dates

MAY 13, 1975.

On April 30, 1975, the Cooperatives (Intervenors) filed a motion to extend the procedural dates fixed by order issued August 13, 1974, as most recently modified by notice issued February 28, 1975, 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 procedural dates in the above matter are modified as follows:

Service of Intervenors' Testimony, June 16, 1975.

Service of Company Rebuttal, July 14, 1975.

Hearing, July 22, 1975 (10 a.m. e.d.t.).

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75–13116 Filed 5–19–75;8:45 am]

[Docket No. E–9427]

## KANSAS GAS & ELECTRIC CO.

### Filing of Letter Agreement

MAY 14, 1975.

Take notice that on April 22, 1975, Kansas Gas & Electric Company (KG&E), tendered for filing copies of a letter agreement dated December 11, 1974 which supplements the Electric Interconnection Contract between Westen Power Division of Central Telephone and Utilities Corporation and Kansas Gas and Electric Company dated June 28, 1960, designated FPC Rate Schedule 101. KG&E states that the Letter Agreement provides for the sale by KG&E of 50 megawatts of La Cygne Unit No. 1 Participation Power for a twelve month period running from the requested effective date of July 1, 1975. KG&E further states it (KG&E) desires to sell the 50 megawatts of capacity to reduce its excess reserves and that Central Telephone and Utilities Corporation desires to purchase this capacity.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure. All such petitions or protests should be filed on or before May 27, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75–13226 Filed 5–19–75;8:45 am]

[Docket No. E–9426]

## KANSAS POWER AND LIGHT CO.

### Proposed Changes in Rates and Charges

MAY 13, 1975.

Take notice that on May 5, 1975, The Kansas Power and Light Company (Kansas) tendered for filing a newly executed renewal contract dated February 10, 1975, with the city of Marion, Kansas for wholesale electric service to that community. Kansas states that this is a renewal of a similar contract dated May 25, 1964, and designated KPL Rate Schedule FPC No. 70. The proposed effective date is July 1, 1975. According to Kansas, the net billing for the twelve months succeeding the proposed change in agreements was $171,655.85. In addition, Kansas states that copies of the contract have been mailed to the city of Marion and the State Corporation Commission of Kansas.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 27, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75–13117 Filed 5–19–75;8:45 am]

[Docket No. E–9425]

## KENTUCKY UTILITIES CO.

### Filing of Contract

MAY 12, 1975.

Take notice that on May 5, 1975, the Kentucky Utilities Company (KU) tendered for filing a contract for electric service to the City of Nicholasville, Kentucky at a new delivery point. KU states that the proposed Contract provides for delivery at 69,000 volts, billing on Rate Schedule WPS–73 which is on file with this Commission. The Company has requested that the Commission waive the notice requirement and allow the aforementioned rate schedule to become effective as of October 24, 1974.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 27, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75–13118 Filed 5–19–75;8:45 am]

[Docket No. CP74–92]

## McCULLOCH INTERSTATE GAS CORP.

### Amendment to Application

MAY 14, 1975.

Take notice that on April 17, 1975, McCulloch Interstate Gas Corporation (Applicant), 10880 Wilshire Boulevard, Los Angeles, California 90024, filed in

Docket No. CP74-92 an amendment to its application filed in the subject docket on October 5, 1973, pursuant to section 7(c) of the Natural Gas Act requesting authorization for the transportation of gas[1] by setting forth an enlarged area from which gas would be produced for transportation by Applicant for the account of Colorado Interstate Gas Company, a Division of Colorado Interstate Corporation (CIG), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that its application in this proceeding contemplates transportation of gas by Applicant for CIG's account from volumes produced in a limited area of Converse County, Wyoming, as described in the agreement between the two parties dated September 5, 1973. Applicant further states that on November 29, 1974, it executed an amendatory agreement with CIG which enlarges said production area by the addition of 54 sections in the Anadarko Fox area, Converse County, Wyoming.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before May 29, 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. Persons who have heretofore filed petitions to intervene, notices of intervention or protests to the granting of the application in this proceeding need not file again.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75-13227 Filed 5-19-75;8:45 am]

[Docket No. E-9140]

## NEW ENGLAND POWER CO.

### Application To Change Suspended Rate Schedule

MAY 14, 1975.

Take notice that on May 5, 1975, New England Power Service Company filed on behalf of New England Power Company (NEPCO), an application under § 35.17 (b) of the Regulations under the Federal Power Act for permission to change its rate schedule Rate R-9 at this docket which is under suspension by order of the Commission issued December 31, 1974. The R-9 filing proposed both an increase in the level of the rate in NEP CO's wholesale tariff and a major redesign of the wholesale rate structure. The company claims it is requesting this change upon complaint of its non-affiliated wholesale customers. The company claims further that this proposed change does not affect the level of the R-9 rate increase. An effective date of June 1, 1975, is proposed, which is the same date that NEPCO's suspended rates are scheduled to go into effect. NEPCO states that this filing does not represent a settlement of the rate design issue.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 27, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75-13119 Filed 5-19-75;8:45 am]

[Docket No. E-9411]

## OKLAHOMA GAS AND ELECTRIC CO.

### Filing of Agreement

MAY 13, 1975.

Take notice that on April 30, 1975, Oklahoma Gas and Electric Company (OG&E) tendered for filing an agreement between OG&E and the Public Service Company of Oklahoma (PSCO). OG&E states that the agreement provides for the sale by OG&E of 100,000 kilowatts of Contract Capacity and accompanying energy to PSCO from June 1, 1975 to May 31, 1976 and for the sale by PSCO to OG&E of 100,000 kilowatts of Contract Capacity and accompanying energy from June 1, 1976 to May 31, 1977. PSCO concurrently filed a Certificate of Concurrence.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, DC. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 27, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75-13120 Filed 5-19-75;8:45 am]

[Docket No. E-9410]

## OKLAHOMA GAS AND ELECTRIC CO.

### Filing of Agreement

MAY 13, 1975.

Take notice that on April 30, 1975, Oklahoma Gas and Electric Company (OG&E) tendered for filing an agreement to provide electric service to the Town of Mannford, Oklahoma (Mannford). The proposed effective date is June 1, 1975. OG&E states that it will provide service under its standard Resale Rate Schedule, PN-1.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 27, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75-13121 Filed 5-19-75;8:45 am]

[Docket No. E-9409]

## OKLAHOMA GAS & ELECTRIC CO.

### Filing of Agreement

MAY 13, 1975.

Take notice that on April 30, 1975, Oklahoma Gas & Electric Company (OG&E) tendered for filing an agreement between OG&E and the City of Kingfisher, Oklahoma (Kingfisher). OG&E states that Kingfisher will be provided electric service under OG&E's standard Resale Rate Schedule PN-1. OG&E states that it anticipates beginning service on August 1, 1975.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 27, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this

[1] Notice of the application was published in the FEDERAL REGISTER on October 30, 1973 (38 FR 29927). On June 10, 1974, Applicant received temporary authority to perform the transportation service for which authorization is sought in its application.

filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretray.*

[FR Doc.75-13122 Filed 5-19-75;8:45 am]

[Docket Nos. RP71-119, RP74-31-25]

## PANHANDLE EASTERN PIPE LINE CO. AND OKIE PIPE LINE CO.

### Proposed Stipulation and Agreement in Settlement of Proceeding

MAY 14, 1975.

Take Notice that on January 8, 1973, Okie Pipe Line Company (Okie) filed a petition for extraordinary relief pursuant to § 1.7(b) of the Commission's rules of practice and procedure requesting relief from the natural gas curtailments imposed under the provisions of the presently effective 467-B interim plan which was filed by Panhandle Eastern Pipe Line Company (Panhandle) on November 6, 1973.

Okie owns and operates a gas liquids pumping station located at Liberal, Kansas. The station operates a stand-by natural gas powered engine used to pump liquids in the event of failure of primary electric pumps. Okie also owns homes at Liberal Station used by company employees, each of which relies upon natural gas for heating and cooking. Panhandle is the source of supply of Liberal Station.

In its petition Okie alleges that it was advised by Panhandle that pursuant to its effective curtailment plan that deliveries to the Liberal Station would be completely curtailed during the course of the winter months.

Okie asserts in its petition that the projected curtailment creates an emergency at its Liberal Station. If auxiliary power is needed, there would be no alternative source to turn to at this station. In addition, Okie's employees will have no source of heating during the winter.

In its petition it further reflects that it requires varying volumes during the course of the different months with a maximum monthly volume of 3,530 Mcf in January and a minimum volume of 1200 Mcf in the month of August.

A formal hearing with respect to this matter commenced and was terminated on April 23, 1975. During the course of this hearing, the participating parties tendered the following Stipulation and Agreement to the Presiding Administrative Law Judge for certification to the Commission in the hope that this proceeding could be resolved in this manner:

1. The following natural gas requirements of the Okie Pipe Line Company for heating and other residential purposes at its Liberal Pumping Station shall be considered as Category 1 volumes and shall be subject to curtailment along with other Category 1 volumes: January 1000; February 800; March 800; April 600; May 500; June 300; July 300; August 300; September 450; October 450; November 450; December 700.

2. The natural gas requirements of the Okie Pipe Line Company at its Liberal Pumping Station for:

(a) Emergency standby pumping purposes in the event of actual failure of its primary electric pump or actual electrical power failure, and for

(b) Actual peak pumping periods shall be considered Category 2 deliveries. Category 2 volumes taken for emergency standby pumping purposes shall be made available by Panhandle Eastern Pipe Line Company in an amount not to exceed 100 Mcf per day for the duration of each equipment failure or power failure. In respect topeak pumping volumes, Okie shall be limited to an amount not to exceed 100 Mcf per day for no more than 5 days in each of the months of December through March, provided, however, that, such volumes shall be subject to curtailment along with all other Category 2 volumes.

3. To the extent that Okie invokes any part of the provisions of paragraph 2, gas shall be made available by Panhandle Eastern Pipe Line Company upon 24 hours notice by Okie Pipe Line Company of an equipment failure, power failure or peak pumping period.

4. The Okie Pipe Line Company shall file a semi-annual report, verified by an officer of the Company, with the Federal Power Commission each April 1st and October 1st summarizing the gas taken as a result of each power or equipment failure and describing the nature of each such power failure or equipment failure and the volumes taken and repaid.

5. Okie shall be required to repay all volumes taken pursuant to the provisions of paragraph 2 hereof from the volumes of gas allocated to Okie under Panhandle's effective curtailment plan so that all extraordinary relief volumes are repaid annually by October 31st of each year except as to volumes taken in October which shall be repaid the following year.

6. This stipulation will be continued in effect as long as an interim plan established by a Commission Order of November 6, 1973, in Docket No. RP71-119 remains effective.

7. This stipulation shall not constitute a waiver of any party's rights in Docket No. RP71-119 to contest the categorization of any volumes.

8. This stipulation is made solely to settle issues raised in Okie Pipe Line Company's petition for extraordinary relief and is without prejudice to its rights to apply for extraordinary relief in any new or additional curtailment plan put into effect by Panhandle Eastern Pipe Line Company (Tr. 32-36).

The participating parties indicated that there were no present objections to the Stipulation and Agreement. They did, however, request to be afforded the opportunity to indicate the existence of objections in the event that such a course of action subsequently became necessary. It was decided that this could be accomplished by providing all interested persons with an opportunity to make comment as provided for in a Notice relating to the proposed Stipulation and Agreement to be issued at a subsequent date (Tr. 13). The Presiding Judge certified this proposed Stipulation and Agreement along with the record developed in this proceeding to the Commission on May 1, 1975.

Any interested persons or parties desiring to be heard with respect to this Stipulation and Agreement should on or before June 16, 1975, file with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, comments indicating its support or opposition to this proposal.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75-13228 Filed 5-19-75;8:45 am]

[Docket No. CP75-322 and CP75-327]

## SOUTHWEST GAS CORP.

### Application

MAY 14, 1975.

Take notice that on April 30, 1975, Southwest Gas Corporation (Applicant), P.O. Box 1450, Las Vegas, Nevada 89101, filed in Docket No. CP75-322 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a compressor station on its northern Nevada transmission system for the purpose of adding to that system main line capacity so as to protect and provide reliable service to the Applicant's present and future northern Nevada priority 1 and 2 customers, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

The application states that Applicant's three existing compressor stations have experienced a gradual increase over recent years in the amount of hours each is out of service, due to both scheduled and unscheduled outages, and that simultaneously, the number of priority 1 and 2 customers Applicant serves in the northern Nevada area has steadily increased. The application further states that to insure reliable service to its present and future priority 1 and 2 customers through the 1976-1977 heating season the proposed compressor station is essential.

The proposed facility will consist of one 3830 horsepower packaged gas turbine unit together with necessary accessory equipment which will be placed on Applicant's northern Nevada transmission system at a site approximately 164 miles from the Idaho-Nevada border in Pershing County, Nevada. The estimated cost of the facility is $1,667,800, to be financed with working funds, supplemented as required by short-term borrowings.

Take further notice that on May 2, 1975, Applicant filed in Docket No. CP75-327 an application pursuant to section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas under an amendment of the proration of impaired deliveries subsection of the force majeure provisions of its FPC Gas

Tariff, Original Volume No. 1, all as more fully set forth in the application in Docket No. CP75–327, which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authority to include a Maximum Daily Reliable Quantity (MDRQ) entitlement in the proration of impaired deliveries subsection of the force majeure provisions of its tariff which shall limit volumes of priority 1 and priority 2 gas the buyer is entitled to receive, and represents the maximum daily delivery obligation to the buyer from Applicant's northern Nevada transmission system. Applicant states that the MDRQ entitlements are to be the maximum volumes that it will be obligated to deliver to both its resale customers and its distribution systems at any time pursuant to requested change.

Applicant states the reason for this volumetric limitation is that it is approaching its reliable capacity for the northern Nevada transmission system and presently lacks the financial resources to construct the compressor station in Docket No. CP75–322. Applicant further states that, temporarily, it cannot undertake sufficient long-term financing to pay off its short-term borrowings and to support a construction budget which includes the money for the compressor station.

Applicant states that while the restriction proposed in its application in Docket No. CP75–327 will deny natural gas to premises not previously served, it will not cause any discontinuance, modification or restriction of service to any customer heretofore served by Applicant.

Applicant proposes the following MDRQ entitlements:

| | *Thousand cubic feet* |
|---|---|
| California Pacific Utilities Co. (interstate sale for resale) | 9,338 |
| Sierra Pacific Power Co. (interstate sale for resale) | 47,009 |
| Southwest Gas Corp. (California distribution) | 3,697 |
| Southwest Gas Corp. (Nevada distribution) | 26,737 |

The impact of the volumetric limitation is estimated by Applicant to be the same as the 1974–1975 winter heating season, given the identical degree days, since its transmission facility is limited to available capacity. Applicant asserts that, if no restrictions are imposed immediately as proposed in the application in Docket No. CP75–327, approximately 2,500 priority 1 customers could lose service.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 30, 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, hearings will be held without further notice before the Commission on these applications if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matters finds that grants of the certificates 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 formal hearings are required, further notice of such hearings 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 hearings.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc.75–13229 Filed 5–19–75;8:45 am]

---

[Docket Nos. CI75–45, etc.; Docket No. CP75–316]

## TENNECO OIL CO., ET AL. AND SOUTHERN NATURAL GAS CO.

### Order Consolidating Proceedings, Granting and Denying Motions

MAY 14, 1975.

By order issued April 14, 1975, the Commission, inter alia, consolidated a number of proceedings in Docket No. CI75–45, et al., granted petitions to intervene, ordered a formal hearing, to convene on May 19, 1975, and prescribed procedures to be followed therein.

Subsequent to the issuance of the Commission's April 14, 1975 order, Southern Natural Gas Company (Southern) filed an application in Docket No. CP75–316 seeking a certificate of public convenience and necessity authorizing the transportation of certain volumes of gas for Hunt Oil Company (Hunt) from offshore Louisiana to a point onshore Louisiana, the transportation of certain volumes of gas for Placid Oil Company and others (Placid Group) from a point near Southern's Shadyside Compressor Station to the tailgate of an ammonia plant in Ascension Parish, Louisiana, and the construction and operation of certain facilities to accomplish the foregoing. On May 1, 1975 Southern filed a motion for consolidation of the instant proceeding with Docket No. CP75–45, et al. which alleged a substantial interrelationship and/or identity of issues with respect to the gas sales, transportation services and facilities applications involved in the presently separate proceedings.

The Commission in considering Southern's motion has taken careful note of the relationship of the issues contained in the instant proceeding to those set forth in Docket No. CP75–45, et al. The present application involves the initial sale of gas by Hunt to Southern in Docket No. CI75–68, the further transportation of offshore reserves by Trunkline Gas Company in Docket No. CP75–149, and Southern's associated application in Docket No. CP75–163, which dockets have previously been consolidated with Docket No. CP75–45, et al. Since the issues of law and fact raised by Southern in the present application are similar to the applications filed in the aforementioned consolidated proceedings and in view of the sufficiency of Southern's motion, we shall, as hereinafter ordered, consolidate the instant proceeding with those listed above.

We have also considered the joint motion filed on May 5, 1975, by Ashland Oil, Inc., Hamilton Brothers Oil Company, Hamilton Brothers Explorations, Ltd., Highland Resources, Inc., Hunt Industries, Hunt Oil Company, Hunt Petroleum Corporation, Kewanee Oil Company, and Placid Oil Company for severance and rescheduling of the hearing and procedural dates. In so doing, we have carefully reviewed the prior findings contained in our order issued April 14, 1975, the length of time movant's application's have been pending in the subject dockets, and the arguments set forth in the instant motion, and have concluded that said motion does not present grounds which constitute persuasive or substantial justification for the Commission action sought therein.

The Commission finds. (1) The proceeding involved in Docket No. CP75–316 contains common questions of law and fact with the proceedings in Docket No. CP75–45, et al., consequently, good cause exists to consolidate this proceeding with Docket No. CP75–45, et al. as alleged in Southern's motion for consolidation.

(2) Good cause exists to modify the procedural date set forth in the Commission's order of April 14, 1975, to the extent that Southern may be permitted additional time within which to serve prepared testimony on all parties.

The Commission orders. (A) The proceeding involved in Docket No. CP75–316 is hereby consolidated with the proceedings in Docket No. CP75–45, et al., for purposes of hearing and decision.

(B) The procedural dates set forth in our order of April 14, 1975, in Docket No. CP75–45, et al., are hereby modified to the extent that Southern shall file and serve their prepared testimony in Docket No. CP75–316 on all parties including the Administrative Law Judge and Commission Staff at the start of the hearing on May 19, 1975, at 10 a.m. (e.d.t.) in a hearing room at the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426.

(C) The motion for severance of Docket No. CI75–59, et al., from Docket No. CP75–45 et al. and the rescheduling

of hearing and procedural dates filed by Ashland Oil, Inc., et al. on May 5, 1975 is hereby denied.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-13230 Filed 5-19-75;8:45 am]

[Rate Schedule Nos. 138, etc.]

## TEXACO INC. ET AL.

### Rate Change Filings

MAY 14, 1975.

Take notice that the producers listed in the Appendix attached hereto have filed proposed increased rates to the applicable new gas national ceiling based on the interpretation of vintaging concepts set forth by the Commission in its Opinion No. 699-H, issued December 4, 1974.

The information relevant to each of these sales is listed in the Appendix below.

Any person desiring to be heard or to make any protest with reference to said filing should on or before May 30, 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). 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 party wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB, *Secretary.*

*Appendix*

| Filing date | Producer | Rate schedule No. | Buyer | Area |
|---|---|---|---|---|
| May 5, 1975 | Texaco Inc., P.O. Box 52332, Houston, Tex. 77052. | 138 | Tennessee Gas Pipeline Co. | Texas Gulf Coast. |
| Do | Amoco Production Co., P.O. Box 3092, Houston, Tex. 77001. | 573 | do | Do. |

[FR Doc.75-13235 Filed 5-19-75;8:45 am]

[Docket No. RP72-64]

## TEXAS GAS TRANSMISSION CORP.

### Further Extension of Procedural Dates

MAY 13, 1975.

On May 5, 1975, Texas Gas Transmission Corporation filed a motion to defer the procedural dates fixed by order issued March 28, 1975, as most recently modified by notice issued April 23, 1975, in the above-designated matter, pending Commission action on a settlement proposal filed May 1, 1975. The motion states that the parties have been notified and have no objection.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Company's Testimony, June 25, 1975.
Service of Intervenor's Testimony, July 9, 1975.

Hearing, July 17, 1975 (10 a.m. e.d.t.).

KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-13123 Filed 5-19-75;8:45 am]

[Docket No. E-9432]

## VERMONT ELECTRIC POWER CO., INC.

### Filing of Purchase Agreement

MAY 14, 1975.

Take notice that on May 8, 1975, the Vermont Electric Power Company, Inc. (Velco), tendered for filing the following rate schedule:

Purchase Agreement for the sale of fifty-five thousand kilowatts (55,000 KW) and related energy from the Vermont Yankee Nuclear Generating Unit in Vernon, Vermont, to the Boston Edison Company (Boston Edison), by the Vermont Electric Power Company, Inc., dated as of January 24, 1975.

Velco states that service under this Agreement began at 11:59 p.m. on January 31, 1975, and terminated at 11:59 p.m. on April 30, 1975. The amount of power to be sold under the contract is estimated at 24 million KwHrs per month, with estimated monthly revenues of $400,000. Velco states that charges paid to it will be credited to Central Vermont and Green Mountain in proportion to the amount of capacity and energy released by them to Velco for this sale, and that therefore there will be no change in overall rate of return for Velco.

Velco requests a waiver of § 35.3 of the Commission's rules and regulations to allow an effective date of February 1, 1975, citing extended contract negotiations with Boston Edison, and no effect upon purchasers of Velco power under other rate schedules if granted.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 27, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-13231 Filed 5-19-75;8:45 am]

[Docket No. R-472]

## GRAND VALLEY TRANSMISSION CO.

### Waivers of report of supply and Requirements

### Findings and Order Granting Waiver

MAY 13, 1975.

By Order No. 489, issued August 24, 1973, in Docket No. R-472 (50 FPC 561), as amended by Order No. 523, issued February 6, 1975, in said docket (53 FPC ), the Commission promulgated § 260.12 of Part 260—Statements and Reports (Schedules), Subchapter G—Approved Form, Natural Gas Act, Chapter I of Title 18 of the Code of Federal Regulations to prescribed FPC Form No. 16, Report of Supply and Requirements, to be filed by natural gas pipeline companies making sales in interstate commerce of natural gas for resale. The Commission stated in Order No. 489 that it would consider requests by any company for waiver of the requirement to file Form No. 16 and would grant such requests upon good cause being shown.

On April 21, 1975, Grand Valley Transmission Company (Grand Valley) filed a request for waiver of the requirement to file Form No. 16 stating that it operates a gathering-type pipeline transporting gas purchased from producers in Utah. Grand Valley sells such gas only to one customer, Northwest Pipeline Corporation (Northwest), for resale. Since Grand Valley sells all of its gas to Northwest, its supply is reflected in Northwest's Form No. 16, and, accordingly, Grand Valley should be excused from filing Form No. 16.

The Commission finds: Good cause having been shown, it is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the request by Grand Valley for waiver of the requirement to file Form No. 16 be granted.

*The Commission orders:* Grand Valley's request for waiver of the requirement to file Form No. 16 is granted subject to further review should Grand Valley's operations change in the future.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-13125 Filed 5-19-75;8:45 am]

# FEDERAL RESERVE SYSTEM

## FIRST COMMUNITY BANCORPORATION

### Order Approving Acquisition of Bank

First Community Bancorporation, Joplin, Missouri ("Applicant"), a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under

section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 90 percent or more of the voting shares of The McDonald County Bank, Pineville, Missouri ("Bank").

The application has been processed by the Federal Reserve Bank of Kansas City, pursuant to authority delegated by the Board of Governors of the Federal Reserve System, under the provisions of § 265.2(f)(24) of the rules regarding delegation of authority.

Notice of the application, affording an opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The Federal Reserve Bank has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the eighteenth largest banking organization in Missouri, controls four operating banks with aggregate deposits of $88.5 million,[1] representing .59 percent of the commercial bank deposits in the State. Acquisition of Bank would increase Applicant's share of deposits only slightly, and would not result in a significant increase in the concentration of banking resources in Missouri. Applicant's ranking among banking organizations in the State would remain unchanged.

Consummation of the proposed acquisition would neither eliminate any significant existing competition nor foreclose the development of potential competition between any of Applicant's subsidiary banks and Bank. Bank ($6.2 million in deposits) is the second largest of five banking organizations in the McDonald County banking market and holds 21.04 percent of the deposits in commercial banks in the market. None of Applicant's subsidiary banks are located in Bank's market area. Current population per banking office ratios suggest that de novo entry is unlikely. Competitive considerations are, therefore, consistent with approval of the application.

The financial and managerial resources and future prospects of Applicant and its subsidiaries and Bank appear satisfactory. Affiliation with Applicant should enable Bank to offer expanded banking services, including improved agricultural lending and trust services. These factors, as they relate to the convenience and needs of the community to be served, lend some weight for approval of the application. It is the Reserve Bank's judgement that consummation of the proposed acquisition is in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Kansas City, pursuant to delegated authority.

[SEAL] JOHN F. ZOELLNER,
*Vice President.*

MAY 9, 1975.

[FR Doc.75-13201 Filed 5-19-75;8:45 am]

[1] All banking data are as of June 30, 1974, and are adjusted to reflect bank holding company acquisitions approved by the Board to date.

## PFISTER, INC.

### Order Approving Formation of Bank Holding Company and Acquisition of a General Insurance Agency

Pfister, Inc., Clifton, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of formation of a bank holding company through acquisition of 92.4 per cent of the voting shares of The First National Bank of Clifton, Clifton, Kansas ("Bank"). Applicant has also applied, pursuant to section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire Pfister Insurance, Clifton, Kansas ("Agency"), a company that engages in the activities of a general insurance agency in a community with a population not exceeding 5,000 persons. Such activities have been determined by the Board to be closely related to banking (12 CFR 225.4(a)(9)(iii)).

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with sections 3 and 4 of the Act (40 FR 12716 (1975)). The time for filing comments and views has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)), and the considerations specified in section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)).

Applicant is a recently organized corporation formed for the purposes of becoming a bank holding company through the acquisition of Bank and of operating as a general insurance agency. Bank (deposits of $2.6 million),[1] the only bank in Clifton, controls approximately 4.3 per cent of total deposits in commercial banks in the relevant banking market,[2] and is the seventh largest of ten banks in the market. Since the proposal represents merely a restructuring of the present ownership of Bank and Agency and Applicant has no present subsidiaries, consummation of the proposal would have no adverse effects on existing or potential competition. Therefore, the Board concludes that competitive considerations are consistent with approval of the application.

The financial condition, managerial resources, and future prospects of Bank are regarded as satisfactory and consistent with approval of the application. The management of Applicant is satisfactory, and Applicant's financial condition and future prospects, which are dependent upon profitable operations by both Bank and Agency, appear favorable. Although Applicant will incur debt in connection with the proposal, its projected income from Bank and the insurance agency activities should provide sufficient revenue to service the debt without impairing the financial condition of Bank. Consummation of the transaction would have no immediate effect on the area's banking convenience and needs; however, some expansion of services may result in the future under the more flexible corporate structure of the holding company. Considerations relating to the convenience and needs of the community to be served, therefore, are regarded as being consistent with approval of the application. It is the Board's judgment that consummation of the proposed transaction would be in the public interest and that the application to acquire Bank should be approved.

Agency is a general insurance agency and conducts its business currently from the premises of Bank in Clifton, a community with a population of less than 5,000. Applicant proposes to engage in these insurance agency activities, pursuant to § 225.4(a)(9)(iii) of Regulation Y, as a result of its acquisition of Agency. Approval of this proposal would enable Applicant to continue to offer Bank's customers a convenient source of insurance services, which factor the Board regards as being in the public interest. Furthermore, it does not appear that Applicant's acquisition of Agency would have any significant effect on existing or future competition, and there is no evidence in the record indicating that consummation of the proposal would result in any undue concentration of resources, unfair competition, conflicts of interest, unsound banking practices or other adverse effects on the public interest.

Based on the foregoing and other considerations reflected in the record, the Board has determined, in accordance with the provisions of section 4(c)(8), that consummation of the proposal with respect to Agency can reasonably be expected to produce benefits to the public that outweigh possible adverse effects and the application to acquire Agency should be approved.

Accordingly, the applications are approved for the reasons summarized above. The acquisition of Bank shall not be made before the thirtieth calendar day following the effective date of this Order. The acquisition of Bank and Agency shall be made not later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Kansas City pursuant to delegated authority. The determination as to Applicant's insurance activities is subject to the conditions set forth in section 225.4(c) of Regulation Y and to the Board's authority to require reports by, and make examinations of, holding

[1] All data are as of June 30, 1974.

[2] The relevant banking market is approximated by the southwest corner of Washington County, the northern third of Clay County, and the northeast corner of Cloud County.

companies and their subsidiaries and to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

By order of the Board of Governors,[3] effective May 12, 1975.

[SEAL] GRIFFITH L. GARWOOD,
*Assistant Secretary of the Board.*

[FR Doc.75-13202 Filed 5-19-75;8:45 am]

## GENERAL ACCOUNTING OFFICE

### REGULATORY REPORTS REVIEW

#### Interstate Commerce Commission; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on May 14, 1975. See 44 U.S.C. 3512 (c) & (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed ICC form are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed form, comments (in triplicate) must be received on or before June 9, 1975, and should be addressed to Mr. Monte Canfield, Jr., Director, Office of Special Programs, United States General Accounting Office, 425 I Street, NW., Washington, D.C. 20548.

Further information may be obtained from the Regulatory Reports Review Officer, 202-376-5425.

INTERSTATE COMMERCE COMMISSION

Request for clearance of an extension without change of the Designation of Agents—Motor Carriers and Brokers, Form BOC-3. The Form is filed by Interstate Commerce Commission regulated carriers to designate an agent to accept service of legal process on behalf of the carrier from any court in any action brought against the carrier in the state named. An agent must be named for each state in or through which a carrier operates. The file is used by the public. Designations are submitted on occasion, as changes occur in operating authority or agent redesignations. Designations are mandatory under the Interstate Commerce Act. Respondent burden is estimated at 15 minutes per form.

NORMAN F. HEYL,
*Regulatory Reports Review Officer.*

[FR Doc.75-13258 Filed 5-19-75;8:45 am]

[3] Voting for this action: Chairman Burns and Governors Mitchell, Sheehan and Coldwell. Absent and not voting: Governors Bucher, Holland and Wallich.

## GENERAL SERVICES ADMINISTRATION

[Wildlife Order 126]

### CAMP ROBERTS MILITARY RESERVATION

#### Transfer of Property

Pursuant to section 2 of Pub. L. 537, Eightieth Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By deed from the United States of America dated November 15, 1974, the property comprising approximately 735 acres of unimproved land identified as a portion of Camp Roberts Military Reservation, Counties of Monterey and San Luis Obispo, California, has been conveyed to the State of California.

2. The above described property was conveyed for wildlife conservation purposes in accordance with the provisions of Section 1 of said Pub. L. 537 (16 U.S.C. 667b), as amended by Pub. L. 92-432.

Dated: May 8, 1975.

W. A. MEISEN,
*AIA, Acting Commissioner, Public Building Service.*

[FR Doc.75-13205 Filed 5-19-75;8:45 am]

### THIRD ANNUAL REPORT OF THE PRESIDENT ON FEDERAL ADVISORY COMMITTEES COVERING CALENDAR YEAR 1974; COMPILATION OF AGENCY SUBMISSIONS

#### Availability of Microfilm

This compilation has been microfilmed and accessioned by the National Archives. It is available for viewing in the reading rooms of the Central Archives (Washington, DC) and the 11 Regional Archives. In addition, copies of the two roll 16mm microfilm set may be ordered at a total cost of $24.00 from the National Archives and Records Service (NEPS), Washington, DC 20408, by requesting Micro Copy No. A-1199.

Dated: May 9, 1975.

JAMES B. RHOADS,
*Archivist of the United States.*

[FR Doc.75-13206 Filed 5-19-75;8:45 am]

## NATIONAL SCIENCE FOUNDATION

### ADVISORY PANEL FOR NEUROBIOLOGY AND ADVISORY PANEL FOR PSYCHOBIOLOGY

#### Joint Meeting

The Advisory Panel for Neurobiology and Psychobiology will hold a joint meeting on June 5 and 6, 1975, at 9 a.m. in Room 517 at 1800 G Street, NW., Washington, DC.

The purpose of these Panels is to provide advice and recommendations as part of the review and evaluation process for specific research proposals that have been assigned to the Neurobiology and the Psychobiology Programs. These Panels function in accordance with the Federal Advisory Committee Act, Pub. L. 92-463.

This meeting will not be open to the public because the Panels will be reviewing, discussing, and evaluating individual research proposals. Also, these proposals contain information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within the exemptions of 5 U.S.C. 552(b) (4), (5), and (6). The closing of this meeting is in accordance with the determination by the Director of the National Science Foundation dated February 21, 1975, pursuant to the provisions of section 10(d) of Pub. L. 92-463.

For further information about either of these Panels, please contact Dr. David Birch, Program Director, Psychobiology Program, or Dr. James Brown, Program Director, Neurobiology Program, Room 333, National Science Foundation, Washington, DC. 20550, telephone (202) 632-4264.

FRED K. MURAKAMI,
*Committee Management Officer.*

MAY 15, 1975.

[FR Doc.75-13165 Filed 5-19-75;8:45 am]

## SECURITIES AND EXCHANGE COMMISSION

[812-3797; Rel. No. 8790]

### 399 FUND

#### Filing of Application for Exemption

MAY 14, 1975.

Notice is hereby given that 399 Fund, 399 Park Avenue, New York, New York, 10022. ("Applicant"), an open-end, nondiversified investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on April 16, 1975 for an order of temporary exemption from the provisions of Section 15(a) of the act to permit Thorndike, Doran, Paine & Lewis, Inc ("TDP&L"), a wholly-owned subsidiary of Wellington Management Company ("WMC"), to render investment advisory services to Applicant after the termination of Applicant's present advisory contract. 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 TDP&L and WMC are parties to an amended investment advisory contract ("Amended Contract") which would ordinarily be in effect until December 1, 1975. TDP&L and WMC have informed Applicant, however, that a controlling block of approximately 32 percent of the outstanding voting securities of WMC will have been sold on May 1, 1975, to certain existing officers

and directors of WMC. Applicants were also informed that such sale is being made in connection with the internalization of the corporate and administrative affairs of the eleven registered investment companies for which WMC acts as investment adviser, manager and underwriter.

Section 2(a)(4) of the Act defines "assignment" to include the transfer of a controlling block of the outstanding voting securities of the assignor by a security holder of the assignor. The Amended Contract provides for its automatic termination in the event of an assignment. Accordingly, upon the sale and transfer of the WMC securities, the Amended Contract will terminate.

Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as an investment adviser of a registered investment company except pursuant to a written contract which must be approved by the vote of the majority of the outstanding voting securities of such registered investment company and must provide for automatic termination in the event of its assignment.

TDP&L has advised Applicant that it is willing to continue to provide investment advice and services pursuant to the Amended Contract, without change or amendment, and, if the temporary exemption requested by the application is granted, to re-execute and readopt the Amended Contract, pending approval by the stockholders of Applicant of new contractual arrangements in such form as the directors and stockholders may approve.

The application states that the Board of Directors of Applicant, none of whom are parties to the Amended Contract and a majority of whom are not interested persons of any such party, has approved the re-execution and readoption of the existing Amended Contract for a period commencing on the date of its assignment and extending until the stockholders of the Applicant shall have approved a new investment advisory contract subject to the granting of the temporary exemption requested by the application.

Applicant further requests that, if appropriate, the Commission make its order retroactive to the date of the assignment.

As a condition of granting the requested temporary exemption, Applicant has undertaken (1) to submit an investment advisory contract for approval by the vote of a majority of the outstanding voting securities of the Applicant at the 1975 annual meeting of Applicant scheduled for October 14, 1975 and no later than on October 17, 1975, and (2) to submit for approval by the holders of a majority of its voting securities, at the same time that the investment advisory contract is submitted, the payment of investment advisory fees during the period of the requested temporary exemption at the rates provided in the readopted Amended Contract.

Applicant asserts that the granting of the application 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 for, among others, the following reasons:

1. The requested temporary exemption would extend for a limited period of time, from the date of the assignment, expected to be May 1, 1975, until the date of Applicant's annual meeting.

2. A continuation of the investment advisory relationship of Applicant and TDP&L on the same basis for a limited period will eliminate any possibility that Applicant would operate for some period of time without an investment advisory contract.

3. Applicant is advised by TDP&L that the assignment of the controlling block of the outstanding voting securities of WMC will not result in any change of the personnel of TDP&L or the investment philosophies and approaches which guide TDP&L in providing its investment advisory services to Applicant and that there will be no change in TDP&L materially affecting the management of Applicant's investments as a consequence of the assignment.

4. If the Application is not granted, the effect will be to require Applicant to hold a special stockholders' meeting to consider and approve a new investment advisory contract. Applicant, it is stated, is a relatively small investment company with net assets at December 31, 1974 of $1,492,178. The judgment of its Board of Directors is that, under the circumstances, it is the prudent course to avoid the holding of a special meeting of the stockholders.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction from any provision of the Act if and to the extent 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 June 9, 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 reasons 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 stated above. Proof of service (by affidavit, or in the 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 under the Act, an order disposing of the application herein 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 or orders issued in the matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

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

[FR Doc.75-13191 Filed 5-19-75;8:45 am]

---

[File No. 500-1]

## PARAMOUNT LEASING CORP.

### Suspension of Trading

MAY 13, 1975.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Paramount Leasing 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 12:45 p.m. (e.d.t.) on May 13, 1975 through midnight (e.d.t.) on May 22, 1975.

By the Commission.

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

[FR Doc.75-13192 Filed 5-19-75;8:45 am]

---

# SMALL BUSINESS ADMINISTRATION

## SAN DIEGO DISTRICT ADVISORY COUNCIL

### Meeting

The Small Business Administration San Diego District Advisory Council will meet at 9 a.m. (p.d.t.), Thursday, June 12, 1975, Small Business Administration, Conference Room at 110 West C Street, Suite 705, San Diego, California 92101, to discuss such business as may be presented by members, the staff of the Small Business Administration, and others attending. For further information, call or write Fred D. Sergent, at the above address, (714) 293-5430.

Dated: May 12, 1975.

ANTHONY S. STASIO,
*Chief Counsel for Advocacy*
*Small Business Administration.*

[FR Doc.75-13209 Filed 5-19-75;8:45 am]

---

# DEPARTMENT OF LABOR

## Office of Secretary

[International Labor Affairs Order No. 1]

## WORKER ADJUSTMENT ASSISTANCE

### Assignment of Responsibility and Designation of Certifying Officers

1. *Purpose.* To assign responsibility and designate officials as certifying of-

ficers to carry out functions required under the worker adjustment assistance provisions of the Trade Act of 1974 (Pub. L. 93-618; hereinafter referred to as the Act) and the implementing regulations published in 29 CFR Part 90.

2. *Background.* Pursuant to the Act and the implementing regulations, the Secretary of Labor must expeditiously process petitions filed by worker groups and promptly reach a determination of whether such groups should be certified as eligible to apply for adjustment assistance. The Act and the regulations also provide for the issuance of subpenas and, when requested by petitioners or other interested parties, public hearings concerning determinations on petitions. Secretary's Order 3-75 (40 FR 17863) delegated general responsibility for administration of the petitioning and determination processes to the Deputy Under Secretary for International Affairs; and the regulations (29 CFR Part 90) authorize persons titled "certifying officers" to issue subpenas, preside at public hearings, make determinations, issue certifications, and perform such other duties as may be required. This order is issued to establish those persons who shall act as certifying officers under the implementing regulations.

3. *Assignment of Responsibility and Designation of Officials.*

a. The following officials of the Bureau of International Labor Affairs are hereby designated as certifying officers under 29 CFR Part 90:

(1) The Deputy Under Secretary for International Affairs;

(2) The Associate Deputy Under Secretary for International Affairs;

(3) The Associate Deputy Under Secretary for Trade and Adjustment Policy;

(4) The Director of the Office of Foreign Economic Policy; and

(5) The Director of International Planning and Evaluation.

b. Persons designated as certifying officers are hereby assigned responsibility to make determinations and issue certifications of eligibility to apply for adjustment assistance, preside at public hearings held under 29 CFR 90.13, issue subpenas under 29 CFR 90.14, issue terminations of certifications of eligibility under 29 CFR 90.17, and make findings of fact concerning determinations, pursuant to 29 CFR 90.16 and 90.17.

c. Any certifying officer who receives the recommendations of the Director of the Office of Trade Adjustment Assistance, pursuant to 29 CFR 90.15, shall generally continue to act as the certifying officer with regard to the particular petition involved until a notice of negative determination or a notice of certification is issued covering the group of workers involved.

4. *Effective Date.* This order is effective immediately.

JOEL E. SEGALL,
*Deputy Under Secretary for International Affairs.*

MAY 13, 1975.

[FR Doc.75-13144 Filed 5-19-75;8:45 am]

## INTERSTATE COMMERCE COMMISSION

### IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY

#### Elimination of Gateway Letter Notices

MAY 14, 1975.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's *Gateway Elimination* Rules (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before May 30, 1975. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

No. MC 5470 (Sub-No. E20) (Correction), filed May 20, 1974, published in the FEDERAL REGISTER April 29, 1975. Applicant: TAJON, INC., R.D. 5, Box 146, Mercer, Pa. 16137. Applicant's representative: Patrick McEligat, 918 Sixteenth St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pig iron, scrap metal, alloys, ores,* and *silicon metals,* in dump vehicles, between points in Arkansas, points in Alabama (except ores from and to points in Colbert and Lauderdale Counties), on the north of a line beginning at the Alabama-Georgia State line, thence along Interstate Highway 85 to Montgomery, thence along U.S. Highway 331 to the Alabama-Florida State line, Louisiana, Mississippi (except ores from and to points in Tishomingo County), Missouri, points in Tennessee on and west of Interstate Highway 65 (except ores from and to points in Wayne and Hardin Counties), and Wisconsin, on the one hand, and, on the other, points in Rhode Island. The purpose of this filing is to eliminate the gateways of a railhead in Conneaut (Ashtabula County), Ohio, and points in Pennsylvania within 60 miles of such railhead (Erie, Pa.). The purpose of this correction is to correct the exception.

No. MC 21170 (Sub-No. E140), filed June 4, 1974. Applicant: BOS LINES, INC., P.O. Box 68, Cedar Rapids, Iowa 52406. Applicant's representative: Gene R. Prohushi (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food products* and commodities exempt from economic regulation pursuant to the provisions of Section 203(b)(c) of the Interstate Commerce Act, in mixed loads with food products, restricted to such commodities as are dealt in by retail, wholesale, and chain grocery stores, from points in that part of Minnesota on, south, and west of a line beginning at the South Dakota-Minnesota State line and extending along U.S. Highway 75 to junction U.S. Highway 212, thence along U.S. Highway 212 to junction U.S. Highway 59, thence along U.S. Highway 59 to junction Minnesota Highway 30, thence along Minnesota Highway 30 to junction U.S. Highway 71, thence along U.S. Highway 71 to junction U.S. Highway 16, thence along U.S. Highway 16 to junction Minnesota Highway 15, thence along Minnesota Highway 15 to the Minnesota-Iowa State line to points in Rhode Island. The purpose of this filing is to eliminate the gateway of the facilities of Ralston Purina located at or near California, Mo.

NOTE.—The authorities mentioned above were purchased by Cedar Rapids Steel Transportation, Co., pursuant to No. MC-F-10199.

No. MC 21170 (Sub-No. E141), filed June 4, 1974. Applicant: BOS LINES, INC., P.O. Box 68, Cedar Rapids, Iowa 52406. Applicant's representative: Gene R. Prohushi (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food products* and commodities exempt from economic regulation pursuant to the provisions of Section 203(b)(c) of the Interstate Commerce Act, in mixed loads with food products, restricted to such commodities as are dealt in by retail, wholesale, and chain grocery stores, from points in that part of Minnesota on, south, and west of a line beginning at the South Dakota-Minnesota State line and extending along U.S. Highway 14 to junction Minnesota Highway 91, thence along Minnesota Highway 91 to junction unnumbered highway, thence along unnumbered highway to junction Highway 59, thence along U.S. Highway 59 to the Minnesota-Iowa State line, to points in that part of New York on and south of a line beginning at the New Jersey-New York State line and extending along New York Highway 17A to junction New York Highway 17A-210, thence along New York Highway 17A-210 to junction New York Highway 210, thence along New York Highway 210 to junction U.S. Highway 9W, thence along U.S. Highway 9W to junction U.S. Highway 6, thence along U.S. Highway 6 to the New York-Connecticut State line. The purpose of this filing is to eliminate the facilities of Ralston Purina Co., located at or near California, Mo.

NOTE.—The authorities mentioned above were purchased by Cedar Rapids Steel Transportation, Co., pursuant to No. MC-F-10199.

No. MC 21170 (Sub-No. E142), filed June 4, 1974. Applicant: BOS LINES, INC., P.O. Box 68, Cedar Rapids, Iowa 52406. Applicant's representative: Gene R. Prohushi (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food products* and

commodities exempt from economic regulation pursuant to the provisions of Section 203(b)(c) of the Interstate Commerce Act, in mixed loads with food products, restricted to such commodities as are dealt in by retail, wholesale, and chain grocery stores, from points in that part of Minnesota on, south, and west of a line beginning at the South Dakota-Minnesota State line and extending along Minnesota Highway 30 to junction Minnesota Highway 91, thence along Minnesota Highway 91 to the Iowa-Minnesota State line, to points in that part of New York on and east of a line beginning at the New Jersey-New York State line and extending along U.S. Highway 209 to junction U.S. Highway 87, thence along U.S. Highway 87 to junction New York Highway 23, thence along New York Highway 23 to junction U.S. Highway 9, thence along U.S. Highway 9 to junction New York Highway 150, thence along New York Highway 150 to junction New York Highway 40, thence along New York Highway 40 to junction New York Highway 197, thence along New York Highway 197 to junction U.S. Highway 4, thence along U.S. Highway 4 to junction New York Highway 28, thence along New York Highway 28 to junction U.S. Highway 87, thence along U.S. Highway 87 to junction New York Highway 73, thence along New York Highway 73 to junction New York Highway 86, thence along New York Highway 86 to junction New York Highway 192, thence along New York Highway 192 to junction New York Highway 30, thence along New York Highway 30 to the United States-Canada International Boundary line. The purpose of this filing is to eliminate the gateway of the facilities of Ralston Purina Co., located at or near California, Mo.

NOTE.—The authorities mentioned above were purchased by Cedar Rapids Steel Transportation, Co., pursuant to No. MC-F-10199.

No. MC 21170 (Sub-No. E143), filed June 4, 1974. Applicant: BOS LINES, INC., P.O. Box 68, Cedar Rapids, Iowa 52406. Applicant's representative: Gene R. Prohushi (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food products* and commodities exempt from economic regulation pursuant to the provisions of Section 203(b)(c) of the Interstate Commerce Act, in mixed loads with food products, restricted to such commodities as are dealt in by retail, wholesale, and chain grocery stores, from points in Minnesota on, south, and west of a line beginning at the South Dakota-Minnesota State line and extending along Minnesota Highway 68, thence along Minnesota Highway 68 to junction U.S. Highway 75, thence along U.S. Highway 75 to junction U.S. Highway 14, thence along U.S. Highway 14 to junction U.S. Highway 59, thence along U.S. Highway 59 to junction Minnesota Highway 30, thence along Minnesota Highway 30 to junction unnumbered highway at Westbrook, thence along unnumbered highway to junction Minnesota Highway 62, thence along Minnesota Highway 62 to junction U.S. Highway 71, thence along U.S. Highway 71 to the Minnesota-Iowa State line, to points in New York on and south of a line (including Long Island, N.Y.) beginning at the New York-New Jersey State line and extending along U.S. Highway 87-287 to junction New York Highway 22, thence along New York Highway 22 to junction U.S. Highway 684, thence along U.S. Highway 684 to the New York-Connecticut State line. The purpose of this filing is to eliminate the gateway of the facilities of Ralston Purina Co., located at or near California, Mo.

NOTE.—The authorities mentioned above were purchased by Cedar Rapids Steel Transportation Co., pursuant to No. MC-F-10199.

No. MC 21170 (Sub-No. E144), filed June 4, 1974. Applicant: BOS LINES, INC., P.O. Box 68, Cedar Rapids, Iowa 52406. Applicant's representative: Gene R. Prohuski (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food products* and commodities exempt from economic regulation pursuant to the provisions of Section 203(b)(c) of the Interstate Commerce Act in mixed loads with food products, restricted to such commodities as are dealt in by retail, wholesale, and chain grocery stores, from points in that part of Minnesota on, south, and west of a line beginning at the South Dakota-Minnesota State line and extending along Minnesota Highway 68 to junction U.S. Highway 75, thence along U.S. Highway 75 to junction U.S. Highway 14, thence along U.S. Highway 14 to junction U.S. Highway 59, thence along U.S. Highway 59 to junction Minnesota Highway 30, thence along Minnesota Highway 30 to junction unnumbered highway, thence along unnumbered highway to junction Minnesota Highway 62, thence along Minnesota Highway 62 to junction U.S. Highway 71, thence along U.S. Highway 71 to the Minnesota-Iowa State line, to points in Connecticut.

NOTE.—The authorities mentioned above were purchased by Cedar Rapids Steel Transportation, Co., pursuant to No. MC-F-10199.

No. MC 21170 (Sub-No. E145), filed June 4, 1974. Applicant: BOS LINES, INC., P.O. Box 68, Cedar Rapids, Iowa 52406. Applicant's representative: Gene R. Prohuski (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food products* and commodities exempt from economic regulation pursuant to the provisions of Section 203(b)(c) of the Interstate Commerce Act in mixed loads with food products, restricted to such commodities as are dealt in by retail, wholesale, and chain grocery stores, from points in that part of Minnesota on and east of a line beginning at the Iowa-Minnesota State line and extending along U.S. Highway 63 to junction U.S. Highway 52, thence along U.S. Highway 52 to junction Minnesota Highway 58, thence along Minnesota Highway 58 to the Minnesota-Wisconsin State line, to points in that part of Kansas on and south of a line beginning at the Oklahoma-Kansas State line and extending along Kansas Highway 1 to junction unnumbered highway at Coldwater, thence along unnumbered highway to junction unnumbered highway, thence along unnumbered highway to junction U.S. Highway 160 near Protection, thence along U.S. Highway 160 to junction unnumbered highway at Ashland, thence along unnumbered highway through Englewood, to junction U.S. Highway 54, thence along U.S. Highway 54 to the Oklahoma-Kansas State line. The purpose of this filing is to eliminate the gateway of the facilities of Ralston Purina Co., located at or near California, Mo.

NOTE.—The above authorities were purchased by Cedar Rapids Steel Transportation Co., pursuant to No. MC-F-10199.

No. MC 33093 (Sub-No. E21), filed May 16, 1974. Applicant: GRAY VAN LINES, INC., P.O. Box 25085, Oklahoma City, Okla. 73125. Applicant's representative: Robert Gallagher, 1776 Broadway, New York, N.Y. 10019. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, uncrated, between points in Kansas on and west of Kansas Highway 83, on the one hand, and, on the other, points in Mississippi on and North of U.S. Highway 90. The purpose of this filing is to eliminate the gateways of Columbia County, Ark., New Orleans, La., and Atoka, Choctaw, Haskell, LeFlore, Latimer, McCurtain, McIntosh, Pittsburg, and Pushmahata Counties, Okla.

No. MC 33093 (Sub-No. E29), filed May 16, 1974. Applicant: GRAY VAN LINES, INC., P.O. Box 25085, Oklahoma City, Okla. 73125. Applicant's representative: Robert Gallagher, 1776 Broadway, New York, N.Y. 10019. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, uncrated, between points in Missouri on and east of U.S. Highway 71 to Kansas City, and west of U.S. Highway 69 to the Missouri-Iowa State line, on the one hand, and, on the other, points in Alabama on and south of U.S. Highway 90. The purpose of this filing is to eliminate the gateway of Columbia County, Ark., Atoka, Choctaw, Haskell, LeFlore, Latimer, McCurtain, McIntosh, Pittsburg, and Pushmahata Counties, Okla., and New Orleans, La.

No. MC 33093 (Sub-No. E31), filed May 16, 1974. Applicant: GRAY VAN LINES, INC., P.O. Box 25085, Oklahoma City, Okla. 73125. Applicant's representative: Robert Gallagher, 1776 Broadway, New York, N.Y. 10019. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, uncrated, between points in that part of Kansas on and west of U.S. Highway 83, on the one hand, and, on the other, points in that part of Georgia on and south of U.S. Highway 80. The purpose of this filing is to eliminate the gateways of Atoka,

Choctaw, Haskell, Le Flore, Latimer, McCurtain, McIntosh, Pittsburg, and Pushmataha Counties, Okla., Columbia County, Ark., and New Orleans, La.

No. MC 52861 (Sub-No. E28), filed May 22, 1974. Applicant: WILLS TRUCKING, INC., 2535 Center Street, Cleveland, Ohio 44113. Applicant's representative: Paul F. Beery (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Recarbonizing coke*, in bags, from Toledo and Cleveland, Ohio, to points in West Virginia within 50 miles of Weirton, W.Va. The purpose of this filing is to eliminate the gateway of points in Ohio within 50 miles of Weirton, W.Va.

No. MC 59323 (Sub-No. E1), filed June 5, 1974. Applicant: BAY MOTOR EXPRESS, INC., 150th and Exterior St., New York, N.Y. 10451. Applicant's representative: A. L. J. Smidinger (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *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), (a) between points in Passaic, Bergen, Hudson, Essex, Union, Middlesex, Morris, Sussex, Somerset, and Monmouth Counties, N.J., on the one hand, and, on the other, points in Rockland, Westchester, Nassau, and Suffolk Counties, N.Y., and (b) between points in Rockland and Westchester Counties, N.Y., on the one hand, and, on the other, points in Nassau and Suffolk Counties, N.Y.; and (2) *Such merchandise* as dealt in by food business houses, between points in Passaic, Bergen, Hudson, Essex, Union, Middlesex, Morris, Sussex, Somerset, and Monmouth Counties, N.J., and Rockland, Westchester, Nassau, and Suffolk Counties, N.Y., on the one hand, and, on the other, points in Fairfield, New Haven, Litchfield, and Hartford Counties, Conn., with no transportation for compensation on return except as otherwise authorized. The purpose of this filing is to eliminate the gateways of New York, Great Neck Estates, Valley Stream, and Floral Park, N.Y., in (1) above; and the warehouse of the Carnation Co., in Englewood, N.J., and Bronx, N.Y., in (2) above.

No. MC 63792 (Sub-No. E11), filed March 11, 1975. Applicant: TOM HICKS TRANSFER CO., INC., P.O. Box 16006, Houston, Tex. 77022. Applicant's representative: C. W. Ferebee (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, which because of size or weight, require the use of special equipment, from points in Jefferson and Orange Counties, Tex., to points in Arkansas and Mississippi. The purpose of this filing is to eliminate the gateways of points in Louisiana.

No. MC 64373 (Sub-No. E2), filed January 14, 1975. Applicant: CLARKSON BROTHERS, INC., P.O. Box 25, Cowpens, S.C. 29330. Applicant's representative: Paul F. Sullivan, Suite 711, 15th & New York Ave. NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cotton mill machinery*, between points in Georgia north of U.S. Highway 80, on the one hand, and, on the other, points in Virginia east of U.S. Highway 21. The purpose of this filing is to eliminate the gateways of Gastonia, N.C., and points in Rowan and Rockingham Counties, N.C.

No. MC 64373 (Sub-No. E3), filed January 14, 1975. Applicant: CLARKSON BROTHERS, INC., P.O. Box 25, Cowpens, S.C. 29330. Applicant's representative: Paul F. Sullivan, Suite 711, 15th & Pennsylvania Ave. NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cotton mill machinery*, between points in that part of South Carolina on and west of a line beginning at the North Carolina-South Carolina State line and extending along U.S. Highway 601 to junction U.S. Highway 78, thence along U.S. Highway 78 to the Georgia-South Carolina State line, on the one hand, and, on the other, points in Virginia east of U.S. Highway 21. The purpose of this filing is to eliminate the gateways of Gastonia, N.C., and points in Rowan and Rockingham Counties, N.C.

No. MC 64373 (Sub-No. E4), filed January 14, 1975. Applicant: CLARKSON BROTHERS, INC., P.O. Box 25, Cowpens, S.C. 29330. Applicant's representative: Paul F. Sullivan, Suite 711, 15th & New York Ave. NW, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cotton mill machinery*, between points in Virginia east of U.S. Highway 21, on the one hand, and, on the other, points in Alabama on and south of U.S. Highway 80, but including Montgomery, Ala. The purpose of this filing is to eliminate the gateways of Gastonia, N.C., or points in Rowan and Rockingham Counties, N.C., and Columbus, Ga.

No. MC 89084 (Sub-No. E1), filed May 11, 1974. Applicant: INTERSTATE HEAVY HAULING, INC., 2035 NE. Columbia Blvd., Portland, Oreg. 97211. Applicant's representative: Lawrence V. Smart, 1419 NW. 23rd Ave., Portland, Oreg. 97210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Contractors' equipment and heavy machinery*, the transportation of which requires the use of special equipment, between points in Clark, Skamania, Cowlitz, Wahkiakum, and Pacific Counties, Wash., on the one hand, and, on the other, points in Washington east of U.S. Highway 97. The purpose of this filing is to eliminate the gateway of points in Multomah County, Oreg.

No. MC 94265 (Sub-No. E1), filed May 31, 1974. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, Va. 23487. Applicant's representative: Wilmer B. Hill, 666 Eleventh St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Imported frozen meats*, in vehicles equipped with mechanical refrigeration, from Bridgeport and Stamford, Conn., to Norfolk, Portsmouth, Virginia Beach, Chesapeake, Suffolk, Franklin, Williamsburg, Hampton, and Newport News, Va., and points in James City, York, Isle of Wight, and Southampton Counties, Va., points in Tennessee on and west of a line beginning at Chattanooga, Tenn., and extending along U.S. Highway 27 to junction Tennessee Highway 68, thence along Tennessee Highway 68 to Crossville, thence along U.S. Highway 127 to the Tennessee-Kentucky State line, and points in North Carolina, South Carolina, Georgia, Alabama, and Mississippi. The purpose of this filing is to eliminate the gateway of Smithfield, Va.

No. MC 94265 (Sub-No. E2), filed May 31, 1974. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, Va. 23487. Applicant's representative: Wilmer B. Hill, 666 Eleventh St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Imported frozen meats*, in vehicles equipped with mechanical refrigeration, from New London, Conn., to Norfolk, Portsmouth, Virginia Beach, Chesapeake, Hampton, Newport News, Suffolk, Franklin, and Williamsburg, Va., and points in James City, York, Isle of Wight, Southampton, and Greensville Counties, Va., points in Virginia on U.S. Highway 58, from Emporia to Martinsville, and points in that part of southern Virginia on, west, and south of a line beginning at the North Carolina-Virginia State line and extending along U.S. Highway 301 to Emporia, thence along U.S. Highway 58 to Martinsville, and on and east of a line extending from Martinsville along U.S. Highway 220 to the Virginia-North Carolina State line to points in Tennessee (except points in Johnson, Sullivan, Carter, Unicoi, Washington, Hawkins, Cocke, and Sevier Counties), and to points in North Carolina, South Carolina, Georgia, Alabama, and Mississippi. The purpose of this filing is to eliminate the gateway of Smithfield, Va.

No. MC 94265 (Sub-No. E3), filed May 31, 1974. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, Va. 23487. Applicant's representative: Wilmer B. Hill, 666 Eleventh St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Imported frozen meats*, in vehicles equipped with mechanical refrigeration, from New Haven, Conn., to Norfolk, Portsmouth, Virginia Beach, Chesapeake, Suffolk, Franklin, Williamsburg, Hamilton, and Newport News, Va., points in York, James City, Isle of Wight, Southampton, and Greensville Counties, Va., points in Virginia on U.S. Highway 58, between Emporia and Danville, Va., and points in that part of Virginia south of and bounded by a

line beginning at the North Carolina-Virginia State line and extending along U.S. Highway 301 to Emporia, thence along Highway 58 to Danville and thence along U.S. Highway 29 to the Virginia-North Carolina State line, points in Tennesee on and west of a line beginning at the Georgia-Tennessee State line and extending along U.S. Highway 27 to junction Tennessee Highway 68, thence along Tennessee Highway 68 to Crossville, thence along U.S. Highway 127 to the Tennessee-Kentucky State line, and points in North Carolina, South Carolina, Georgia, Alabama, and Mississippi. The purpose of this filing is to eliminate the gateway of Smithfield, Va.

No. MC 94265 (Sub-No. E4), filed May 31, 1974. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, Va. 23487. Applicant's representative: Wilmer B. Hill, 666 Eleventh St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Imported frozen meats*, in vehicles equipped with mechanical refrigeration, from Boston and New Bedford, Mass., and Newport, R.I., to Norfolk, Portsmouth, Virginia Beach, Chesapeake, Hampton, Newport News, Suffolk, Franklin, and Williamsburg, Va., and points in York, James City, Isle of Wight, Southampton, Greensville, Brunswick, Nottoway, Lunenberg, Mecklenburg, Halifax, Pittsylvania, Henry, Patrick, and Carroll Counties, Va., points in Tennessee (except points in Sullivan and Johnson Counties), and points in North Carolina, South Carolina, Georgia, Alabama, and Mississippi. The purpose of this filing is to eliminate the gateway of Smithfield, Va.

No. MC 94265 (Sub-No. E5), filed May 31, 1974. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, Va. 23487. Applicant's representative: Wilmer B. Hill, 666 Eleventh St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Imported frozen meats*, in vehicles equipped with mechanical refrigeration, from Gloucester, Mass., to Norfolk, Portsmouth, Virginia Beach, Chesapeake, Hampton, Newport News, Suffolk, Franklin, and Williamsburg, Va., points in York, James City, Isle of Wight, Southampton, Greensville, Brunswick, Nottoway, Lunenburg, Mecklenburg, Halifax, Pittsylvania, Henry, Patrick, Carroll, Grayson, and Washington Counties, Va., and points in North Carolina, South Carolina, Georgia, Alabama, Mississippi, and Tennessee. The purpose of this filing is to eliminate the gateway of Smithfield, Va.

No. MC 94265 (Sub-No. E6), filed May 31, 1974. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, Va. 23487. Applicant's representative: Wilmer B. Hill, 666 Eleventh St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Imported frozen meats*, in vehicles equipped with mechanical refrigeration, from Providence, R.I., to Norfolk, Portsmouth, Virginia Beach, Chesapeake, Hampton, Newport News, Suffolk, Franklin, and Williamsburg, Va., points in York, James City, Isle of Wight, Southampton, Greensville, Brunswick, Nottoway, Lunenburg, Mecklenburg, Halifax, Pittsylvania, and Henry Counties, Va., points in Tennessee (except points in Sullivan, Johnson, Hawkins, and Washington Counties), and points in North Carolina, South Carolina, Georgia, Alabama, and Mississippi. The purpose of this filing is to eliminate the gateway of Smithfield, Va.

No. MC 94265 (Sub-No. E7), filed May 31, 1974. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, Va. 23487. Applicant's representative: Wilmer B. Hill, 666 Eleventh St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Imported frozen meats*, from Philadelphia, Pa., to Norfolk, Newport News, Suffolk, and Franklin, Va., points in Isle of Wight, and Southampton Counties, Va., points in that part of North Carolina on and east of a line beginning at the Virginia-North Carolina State line and extending along U.S. Highway 1 to Raleigh, thence along U.S. Highway 64 to Asheboro, and thence along North Carolina Highway 49 to the North Carolina-South Carolina State line, points in Buncombe, Henderson, Polk, Transylvania, Jackson, Macon, and Clay Counties, N.C., points in Tennessee on and west of Tennessee Highway 13, points in Wayne, Lawrence, Giles, Maury, Lewis, Perry, Humphreys, Houston, and Montgomery Counties, Tenn., and points in South Carolina, Georgia, Alabama, and Mississippi. The purpose of this filing is to eliminate the gateway of Smithfield, Va.

No. MC 94265 (Sub-No. E8), filed May 31, 1974. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, Va. 23487. Applicant's representative: Wilmer B. Hill, 666 Eleventh St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Imported frozen meats*, from New York, N.Y., to Norfolk, Portsmouth, Newport News, Hampton, Williamsburg, Chesapeake, Virginia Beach, Suffolk, and Franklin, Va., points in James City, York, Isle of Wight, Southampton, and Greensville Counties, Va., points in that part of North Carolina on and east of a line beginning at the North Carolina-Virginia State line and extending along the Blue Ridge Parkway to junction U.S. Highway 276, thence along U.S. Highway 276 to the North Carolina-South Carolina State line, points in that part of Tennessee on and west of a line beginning at the Kentucky-Tennessee State line and extending along U.S. Highway 231 to Murfreesboro, thence along U.S. Highway 70S to McMinneville, thence along Tennessee Highway 56 to junction Tennessee Highway 108, thence along Tennessee Highway 108 to Tennessee Highway 27, thence along Tennessee Highway 27 to Chattanooga, points in Sumner, Wilson, Rutherford, Cannon, Warren, Grundy, and Marion Counties, Tenn., and points in South Carolina, Georgia, Alabama, and Mississippi. The purpose of this filing is to eliminate the gateway of Smithfield, Va.

No. MC 94265 (Sub-No. E9), filed May 31, 1974. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, Va. 23487. Applicant's representative: Wilmer B. Hill, 666 Eleventh St., NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Imported frozen meats*, from Albany, N.Y., to Norfolk, Portsmouth, Virginia Beach, Chesapeake, Newport News, Hampton, Williamsburg, and Suffolk, Va., points in James City, York, Isle of Wight, Southampton, and Greensville Counties, Va., points in that part of southern Virginia bounded by a line beginning at the North Carolina-Virginia State line and extending along U.S. Highway 301 to Emporia, thence along U.S. Highway 58 to Danville, thence along U.S. Highway 29 to the Virginia-North Carolina State line, points in North Carolina (except points in Rockingham, Stokes, Surry, Allegheny, Ashe, Watauga, Avery, Mitchell, Yancey, Madison, Haywood, Swain, Graham, Cherokee, Clay, Macon, and Jackson Counties), points in Tennessee on, east, and south of a line beginning at Chattanooga, and extending along U.S. Highway 127 to junction Tennessee Highway 8, thence along Tennessee Highway 8 to McMinnville, thence along U.S. Highway 70S to Murfreesboro, thence along U.S. Highway 41/70S to Nashville, thence along Interstate Highway 40 to Memphis, and points in South Carolina, Georgia, Alabama, and Mississippi. The purpose of this filing is to eliminate the gateway of Smithfield, Va.

No. MC 94265 (Sub-No. E10), filed May 31, 1974. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, Va. 23487. Applicant's representative: Wilmer B. Hill, 666 Eleventh St., NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Imported frozen meats*, from Rochester, N.Y., to Norfolk, Portsmouth, Newport News, Hampton, Virginia Beach, Chesapeake, Suffolk, Williamsburg, and Cheriton, Va., points in Northampton, James City, York, Isle of Wight, and Southampton Counties, Va., points in that part of North Carolina on and east of a line beginning at the Virginia-North Carolina State line and extending along Interstate Highway 95 to Weldon, thence along U.S. Highway 158 to Oxford, thence along U.S. Highway 15 to Durham, thence along U.S. Highway 15/501 to Pittsboro, thence along U.S. Highway 64 to Ramseur, thence along North Carolina Highway 49 to the North Carolina-South Carolina State line, points in South Carolina, points in that part of Georgia on and south of a line

beginning at the South Carolina-Georgia State line and extending along Interstate Highway 85 to Atlanta, thence along U.S. Highway 78 to the Georgia-Alabama State line, points in Montgomery, Macon, Russell, Lowndes, Bullock, Barber, Wilcox, Clarke, Washington, Monroe, Butler, Crenshaw, Pike, Coffee, Dale, Henry Houston, Geneva, Covington, Escambia, Conecuh, Mobile, and Baldwin Counties, Ala., Pascagoula, Biloxi, and Gulfport, Miss., and points in Hancock, Harrison, Jackson, Stone, George, and Greene Counties, Miss. The purpose of this filing is to eliminate the gateway of Smithfield, Va.

No. MC 94265 (Sub-No. E11), filed May 31, 1974. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, Va. 23487. Applicant's representative: Wilmer B. Hill, 666 Eleventh St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Imported frozen meats*, from Wilmington, Del., to Suffolk, Franklin, and Smithfield, Va., points in Isle of Wight and Southampton Counties, Va., points in that part of North Carolina on and east of a line beginning at the Virginia-North Carolina State line and extending along U.S. Highway 1 to Raleigh, thence along U.S. Highway 1 to Raleigh, thence along U.S. Highway 64 to Asheboro, and thence along North Carolina Highway 49 to the North Carolina-South Carolina State line, points in Buncombe, Henderson, Polk, Transylvania, Jackson, Macon, and Clay Counties, N.C., points in Tennessee west of Tennessee Highway 69, and points in South Carolina, Georgia, and Alabama. The purpose of this filing is to eliminate the gateway of Smithfield, Ala.

No. MC 102560 (Sub-No. E1), filed May 20, 1974. Applicant FREILER INDUSTRIES, INC., P.O. Box 636, Amite, La. 70422. Applicant's representative: Herbert C. Freiler (same as above). Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Steel pipe, angles*, and *round iron*, from points in Orleans Parish, La., to points in Texas on and east of U.S. Highway 77. The purpose of this filing is to eliminate the gateways of the plant site of Dibert, Barcroft & Ross Co., Ltd., near Amite, La.

No. MC 105045 (Sub-No. E2), filed July 5, 1974. Applicant: R. L. JEFFRIES TRUCKING CO., INC., P.O. Box 3277, Evansville, Ind. 47701. Applicant's representative: George H. Veech (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Self-propelled construction equipment* weighing 15,000 pounds or more and *parts and attachments* for such commodities, from Chattanooga, Tenn., to points in Iowa, Kansas, Maryland, Michigan, Missouri, Nebraska, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia, restricted to the transportation of shipments originating at the facilities of Lorain Division, Koekring, Inc., and the Keokring Southern Division, Koekring, Inc., of Chattanooga, Tenn., and further restricted to commodities which are transported on trailers. The purpose of this filing is to eliminate the gateway of points in Kentucky.

No. MC 107002 (Sub-No. E91), filed May 12, 1974. Applicant: MILLER TRANSPORTERS, P.O. Box 1123, Jackson, Miss. 39205. Applicant's representative: H. D. Miller, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicles, from the plant site of Mississippi Chemical Corporation near Yazoo City, Miss., to points in Michigan. The purpose of this filing is to eliminate the gateways of Barfield, Ark., and points within 10 miles thereof.

No. MC 107002 (Sub-No. E92), filed May 12, 1974. Applicant: MILLER TRANSPORTERS, P.O. Box 1123, Jackson, Miss. 39205. Applicant's representative: H. D. Miller, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals* (except petroleum products, plasticizers, and titanium dioxide), in bulk, in tank vehicles, from Hamilton, Miss., to points in Wisconsin, restricted against the transportation of liquid hydrogen, liquid oxygen, and liquid nitrogen when moving to missile storage or launching sites, missile test facilities or manufacturing plants producing liquid hydrogen, liquid oxygen, or liquid nitrogen. The purpose of this filing is to eliminate the gateways of Barfield, Ark., and points within 10 miles thereof.

No. MC 107002 (Sub-No. E93), filed May 12, 1974. Applicant: MILLER TRANSPORTERS, P.O. Box 1123, Jackson, Miss. 39205. Applicant's representative: H. D. Miller, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from Barfield, Ark., and points within 10 miles thereof, to those points in Tennessee east and north of a line beginning at the Kentucky-Tennessee State line and extending along U.S. Highway 27 to junction U.S. Highway 70, thence along U.S. Highway 70 to the Tennessee-North Carolina State line (except Kingsport and Elizabethtown, Tenn.). The purpose of this filing is to eliminate the gateway of Collierville, Tenn.

No. MC 107002 (Sub-No. E94), filed May 12, 1974. Applicant: MILLER TRANSPORTERS, P.O. Box 1123, Jackson, Miss. 39205. Applicant's representative: H. D. Miller, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank vehicles, from Barfield, Ark., and points within 10 miles thereof, to Elizabethtown and Kingsport, Tenn., restricted against the transportation of liquid hydrogen, liquid nitrogen, and liquid oxygen, when moving to missile storage or launching sites, missile storage or launching sites, missile test facilities or manufacturing plants producing liquid hydrogen, liquid oxygen, or liquid nitrogen, and petrochemicals. The purpose of this filing is to eliminate the gateway of Decatur, Ala.

No. MC 107002 (Sub-No. E95), filed May 12, 1974. Applicant: MILLER TRANSPORTERS, P.O. Box 1123, Jackson, Miss. 39205. Applicant's representative: H. D. Miller, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tall oil* and *tall oil products* which are liquid chemicals, in bulk, in tank vehicles, from Panama City, Fla., to points in Indiana. The purpose of this filing is to eliminate the gateway of Cedartown, Ga.

No. MC 107002 (Sub-No. E96), filed May 12, 1974. Applicant: MILLER TRANSPORTERS, P.O. Box 1123, Jackson, Miss. 39250. Applicant's representative: H. D. Miller, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tall oil* and *tall oil products*, which are liquid chemicals, in bulk, in tank vehicles, from Panama City, Fla., to points in Minnesota. The purpose of this filing is to eliminate the gateway of Cedartown, Ga.

No. MC 107002 (Sub-No. E97), filed May 12, 1974. Applicant: MILLER TRANSPORTERS, P.O. Box 1123, Jackson, Miss. 39250. Applicant's representative: H. D. Miller, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tall oil*, in bulk, in tank vehicles, from Panama City, Fla., to points in Missouri. The purpose of this filing is to eliminate the gateway of Memphis, Tenn.

No. MC 107002 (Sub-No. E98), filed May 12, 1974. Applicant: MILLER TRANSPORTERS, P.O. Box 1123, Jackson, Miss. 39205. Applicant's representative: H. D. Miller, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tall oil*, in bulk, in tank vehicles, from Panama City, Fla., to points in Oklahoma. The purpose of this filing is to eliminate the gateway of Hattiesburg, Miss.

No. MC 107002 (Sub-No. E99), filed May 12, 1974. Applicant: MILLER TRANSPORTERS, P.O. Box 1123, Jackson, Miss. 39205. Applicant's representative: H. D. Miller, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tall oil*, in bulk, in tank vehicles, from Panama City, Fla., to points in Texas. The purpose of this filing is to eliminate the gateway of Harrison and Jackson Counties, Miss.

No. MC 107002 (Sub-No. E100), filed May 12, 1974. Applicant: MILLER TRANSPORTERS, P.O. Box 1123, Jack-

son, Miss. 39205. Applicant's representative: H. D. Miller, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tall oil*, in bulk, in tank vehicles, from Panama City, Fla., to points in West Virginia. The purpose of this filing is to eliminate the gateway of the plant site of Monsanto Chemical Company in Anniston, Ala.

No. MC 107064 (Sub-No. E18), (correction), filed May 21, 1974, republished in the FEDERAL REGISTER April 18, 1975. Applicant: STEERE TANK LINES, INC., P.O. Box 2998, Dallas, Tex. 75221. Applicant's representative: H. L. Rice, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, in tank vehicles, from points in that part of Texas in and west of Bailey, Lamb, Hale, Floyd, Crosby, Garza, Fisher, Nolan, Coke, Tom Green, Schleicher, Sutton, and Val Verde Counties, Tex., to points in Indiana. The purpose of this filing is to eliminate the gateway of any point in Ector County, Tex. The purpose of this correction is to correct the origin points.

No. MC 107403 (Sub-No. E294), filed May 29, 1974. Applicant: MATLACK, INC., 10 W. Baltimore Ave., Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Non-flammable liquids*, in bulk, in tank trucks (except petroleum and petroleum products other than medicinal petroleum products and liquid wax, and except wine, cider, vinegar, milk, road oil, coal, and coal tar products, from points in Pennsylvania, to points in Maine and New Hampshire. The purpose of this filing is to eliminate the gateway of Newark, N.J.

No. MC 107678 (Sub-No. E3), filed June 4, 1974. Applicant: HILL & HILL TRUCK LINE, INC., P.O. Box 9698, Houston, Tex. 77015. Applicant's representative: Jay W. Elston, Bank of The Southwest Bldg., Houston, Tex. 77002. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Machinery, equipment, materials*, and *supplies* used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products; and *Machinery, equipment, materials*, and *supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking-up thereof, except, the stringing and picking-up of pipe in connection with main or trunk pipe lines; between all points in Texas in and south of El Paso, Hudspeth, Culberson, Reeves, Pecos, Terrell, Van Verde, Edwards, Kerr, Kendall, Comal, Guadalupe, Caldwell, Fayette, Austin, Waller, Harris, Liberty, and Jefferson Counties, Tex., on the one hand, and, on the other, all points in Sioux and Dawes Counties of Nebraska. The purpose of this filing is to eliminate the gateway of Casper, Wyo.

No. MC 107678 (Sub-No. E4), filed June 4, 1974. Applicant: HILL & HILL TRUCK LINE, INC., P.O. Box 9698, Houston, Tex. 77002. Applicant's representative: Jay W. Elston, Bank of The Southwest Bldg., Houston, Tex. 77002. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Machinery, equipment, materials*, and *supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products; and *Machinery, equipment, materials*, and *supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and picking up of pipe in connection with main or trunk pipe lines; between all points in Texas in and west of Gaines, Dawson, Howard, Glasscock, Regan, Pecos, and Terrell Counties, Tex., on the one hand, and, on the other, all points in North Dakota on and east of North Dakota Highway 30 and in and north of Benson, Ramsey, and Walsh Counties, N. Dak. The purpose of this filing is to eliminate the gateway of Casper, Wyo.

No. MC 107678 (Sub-No. E10), filed June 4, 1974. Applicant: HILL & HILL TRUCK LINE, INC., P.O. Box 9698, Houston, Tex. 77015. Applicant's representative: Jay W. Elston, Bank of The Southwest Bldg., Houston, Tex. 77002. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Machinery, equipment, materials*, and *supplies* used in or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products; and *machinery, materials, equipment*, and *supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, except the stringing and picking up of pipe in connection with the construction and dismantling of pipe lines, between all points in Louisiana, on the one hand, and, on the other, points in Utah. The purpose of this filing is to eliminate the gateway of Harris County, Tex.

No. MC 107678 (Sub-No. E11), filed June 4, 1974. Applicant: HILL & HILL TRUCK LINE, INC., P.O. Box 9698, Houston, Tex. 77015. Applicant's representative: Jay W. Elston, Bank of The Southwest Bldg., Houston, Tex. 77002. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Machinery, equipment, materials*, and *supplies* used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products; and machinery, equipment, materials, and supplies used in, or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and picking up thereof, except the stringing and picking up of pipe in connection with main or trunk pipe lines, between all points in Louisiana on and south of Interstate Highway 10, on the one hand, and, on the other, all points in Sioux and Dawes Counties of Nebraska. The purpose of this filing is to eliminate the gateways of Texas and Casper, Wyo.

No. MC 107678 (Sub-No. E13), filed June 4, 1974. Applicant: HILL & HILL TRUCK LINE, INC., P.O. Box 9698, Houston, Tex. 77015, Applicant's representative: Jay W. Elston, Bank of The Southwest Bldg., Houston, Tex. 77002. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Machinery, equipment, materials*, and *supplies* used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products; *machinery, equipment, materials*, and *supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and picking up thereof, except the stringing and picking up of pipe in connection with main or trunk pipe lines, between all points in Louisiana (except Claiborne, Union, Morehouse, West Carroll, and East Carroll Parishes), on the one hand, and, on the other, all points in South Dakota in Lawrence, Pennington, Custer, Fall River, and Shannon Counties. The purpose of this filing is to eliminate the gateways of Texas, and Casper, Wyo.

No. MC 111401 (Sub-No. E38) (Correction), filed May 12, 1974, published in the FEDERAL REGISTER April 15, 1975. Applicant: GROENDYKE TRANSPORT, INC., P.O. Box 632, Enid, Okla. 73701. Applicant's representative: Victor R. Comstock (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid petrochemicals*, in bulk, in tank vehicles, from points in Oklahoma located on and west of a line extending from the Oklahoma-Kansas State line along U.S. Highway 283 to junction Oklahoma Highway 51, and on and north of Oklahoma Highway 51 to to the Oklahoma-Texas State line, to points in Louisiana. The purpose of this filing is to eliminate the gateway of Texas City, Tex. The purpose of this correction is to add the destination.

No. MC 113624 (Sub-No. E40), (Correction), filed May 20, 1974, published in the FEDERAL REGISTER March 3, 1975. Applicant: WARD TRANSPORT, INC., P.O. Box 735, Pueblo, Colo. 81002. Applicant's representative: Marion Jones,

Suite 1600, 1660 Lincoln St., Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, as described in Appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, other than crude oil in its natural state, from points in that part of Nebraska in and east of Knox, Antelope, Wheeler, Greeley, Howard, Hall, Kearney, and Franklin Counties, Nebr., to points in Lincoln, Sublette, Uinta, Sweetwater, and Carbon Counties, Wyo. The purpose of this filing is to eliminate the gateway of Denver, Colo. The purpose of this correction is to correct the destination areas.

No. MC 113855 (Sub-No. E42), filed May 30, 1974. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd. SE., Rochester, Minn. 55901. Applicant's representative: Michael E. Miller, 502 First Nat'l Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Hay balers*, and (2) *agricultural and road construction, stump-cutting, cable-laying, trench-digging, trench-backfilling*, and *tree-moving equipment*, (3) *parts and attachments* for the commodities named in (1) and (2) above, and (4) *trailers* designed for the transportation of commodities named in (1) and (2) above, in foreign commerce only; (a) from Portaln, N. Dak., to points in Missouri, Indiana, Ohio, Kentucky, Tennessee, Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, North Carolina, South Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, Connecticut, Rhode Island, Massachusetts, District of Columbia, Maine, Vermont, and New Hampshire; (b) from Sweetgrass, Mont., to points in Missouri, Indiana, Ohio, Kentucky, Tennessee, Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, North Carolina, South Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, Connecticut, Rhode Island, Massachusetts, Maine, Vermont, New Hampshire, and the District of Columbia; (c) from Portal, N. Dak., to points in Texas on and east of a line beginning at the Texas-Oklahoma State line extending along Interstate Highway 35 to Denton, thence along Interstate Highway 35W to Hillsboro, Tex., thence along Interstate Highway 35 to Waco, Tex., thence along U.S. Highway 77 to the United States–Mexico International Boundary line at or near Brownsville, Tex., and points in Oklahoma and Kansas on and east of U.S. Highway 75; and (d) from Sweetgrass, Mont., to points in Texas on and east of a line beginning at the Texas-Oklahoma State line extending along Interstate Highway 35 to junction Interstate Highway 35W, thence along Interstate Highway 35W to junction Interstate Highway 35, thence along Interstate Highway 35 to junction Interstate Highway 81, thence along Interstate Highway 81 to the United States–Mexico International Boundary line, points in Oklahoma on and east of Interstate Highway 35, and points in Kansas on, east, and south of a line beginning at the Kansas-Nebraska State line extending along U.S. Highway 75 to Topeka, Kans., thence along Interstate Highway 35 to the Kansas-Oklahoma State line. The purpose of this filing is to eliminate the gateway of Pella, Iowa.

No. MC 113855 (Sub-No. E53), filed May 30, 1974. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd. SE., Rochester, Minn. 55901. Applicant's representative: Michael E. Miller, 502 First Nat'l Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Haybalers and parts*, (2) *Irrigation sprinklers and winches* designed for use with irrigation sprinklers, (3) *Stump-cutting, cable-laying, trench-digging, trench-backfilling*, and *tree-moving equipment*, (4) *Parts and attachments* for the commodities named in (2) and (3) above, and (5) *Trailers* designed for the transportation of commodities named in (2) and (3) above, the transportation of which, because of their size or weight, require the use of special equipment, and (6) *Self-propelled articles* described in (1) and (3) above not requiring special equipment for their transportation, each weighing 15,000 pounds or more and related machinery, tools, parts, and supplies moving in connection therewith (restricted to commodities transported on trailers); (a) from points in Oregon, Washington, and Idaho, to points in Tennessee, Mississippi, Alabama, Georgia, Florida, and South Carolina; (b) from points in Oregon and Washington to points in Arkansas and Louisiana; (c) from points in Idaho, to points in Louisiana on and east of a line beginning at the Arkansas-Louisiana State line extending along U.S. Highway 167 to the north border of Lafayette County, La., thence along the western borders of Lafayette and Iberia Counties to Vermillion Bays and Arkansas on, north, and east of a line beginning at the Arkansas-Oklahoma State line extending along Arkansas Highway 8, thence along Arkansas Highway 8 to junction U.S. Highway 167, thence along U.S. Highway 167 to the Arkansas-Louisiana State line; and (d) from points in Idaho on and west of a line beginning at the Idaho-Nevada State line extending along U.S. Highway 93 to the southern border of Custer County, Idaho, thence along the western boundaries of Custer and Lemhi Counties, Idaho, to the Idaho-Montana State line, to those points in Louisiana and Arkansas excluded in (c) above. The purpose of this filing is to eliminate the gateways of Logan, Utah, and Pilla, Iowa.

No. MC 113855 (Sub-No. E95), filed May 30, 1974. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd. SE., Rochester, Minn. 55901. Applicant's representative: Michael E. Miller, 502 First Nat'l Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities*, the transportation of which, because of their size or weight, require the use of special equipment (except boats and iron and steel articles), and related machinery, parts, and related contractors' materials and supplies when their transportation is incidental to the transportation by said carrier of commodities which by reason of size or weight require special equipment; and (2) *Self-propelled articles*, each weighing 15,000 pounds or more and related machinery, tools, parts, and supplies moving in connection therewith (restricted to commodities transported on trailers); (a) between points in Montana on, west, and south of a line beginning at the United States-Canada International Boundary line at or near Sweetgrass, Mont., thence along U.S. Highway 91 to junction Interstate Highway 90, thence along Interstate Highway 90 to Billings, thence along U.S. Highway 87 to the Wyoming-Montana State line, on the one hand, and, on the other, points in New York; (b) between points in Montana north and east of a line beginning at the United States-Canada International Boundary line at or near Sweetgrass, Mont., thence along U.S. Highway 91 to junction Interstate Highway 90, thence along Interstate Highway 90 to Billings, thence along U.S. Highway 87 to the Wyoming-Montana State line, on the one hand, and, on the other, points in New York (except points in Chautauqua County).

(c) Between points in Montana, on the one hand, and, on the other, points in Virginia (except points in and west of Patrick, Floyd, Montgomery, and Craig Counties); (d) between points in Montana in and west of Park, Meagher, Judith Basin, Fergus, and Phillips Counties, on the one hand, and, on the other, points in North Carolina on and east of U.S. Highway 52; (e) between points in Montana east of Park, Meagher, Judith Basin, Fergus, and Phillips Counties, on the one hand, and, on the other, points in North Carolina on and east of U.S. Highway 301; and (f) between points in Montana, on the one hand, and, on the other, points in Maryland. The purpose of this filing is to eliminate the gateways of points in South Dakota east of the Missouri River and points in Pennsylvania on and east of a line beginning at the Maryland-Pennsylvania State line and extending along unnumbered highway (formerly portion U.S. Highway 15), to junction Business U.S. Highway 15, near Fairplay, Pa., thence along Business U.S. Highway 15 through Gettysburg, Pa., to junction U.S. Highway 15, thence along U.S. Highway 15 to junction unnumbered highway (formerly portion U.S. Highway 15), thence along unnumbered highway through Clear Spring, Pa., to junction U.S. Highway 15, thence along U.S. Highway 15 to the Pennsylvania-New York State line (except points in Berks, Bucks, Chester, Delaware, Montgomery, and Philadelphia, Pa., and points in Pennsylvania on and east of the above

described line in Adams, York, Cumberland, Perry, Dauphin, Lebanon, and Lancaster Counties, Pa., and points in Pennsylvania on and east of U.S. Highway 15 and north of the East Branch of the Susquehanna River in Tioga, Bradford, Lycoming, Sullivan, Union, Snyder, Northumberland, Montour, and Columbia Counties, Pa.).

No. MC 114211 (Sub-No. E244) (Correction) filed June 4, 1974, published in the FEDERAL REGISTER December 17, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such material handling equipment, winches, compaction and road making equipment, rollers, and mobile cranes*, as are self-propelled vehicles (except motor vehicles as defined in Section 203(a)(13) of the Interstate Commerce Act and commodities moving in driveaway service), or equipment designed for use in conjunction with self-propelled vehicles (except tank semi-trailers), and (2) *Parts, attachments, and accessories* of the commodities described in (1) above, from the plant sites of Hyster Company located at Danville, Kewanee, and Peoria, Ill., to points in Washington, Oregon, Montana, Idaho, North Dakota, Nevada, that part of California on and north of a line beginning at the California-Nevada State line extending along Interstate Highway 15 to junction California Highway 91, thence along California Highway 91 to junction California Highway 55, thence along California Highway 55 to the Pacific Ocean, that part of Utah on and west of a line beginning at the Utah-Idaho State line extending along U.S. Highway 91 to junction U.S. Highway 89/91, thence along U.S. Highway 89/91 to junction Interstate Highway 15, thence along Interstate Highway 15 to the Utah-Arizona State line, and that part of Wyoming on and north of a line beginning at the Nebraska-Wyoming State line extending along U.S. Highway 20 to junction U.S. Highway 26, thence along U.S. Highway 26 to the Wyoming-Idaho State line. The purpose of this filing is to eliminate the gateway of Minneapolis, Minn. The purpose of this correction is to reflect the gateway.

No. MC 114211 (Sub-No. E296) (Correction), filed June 4, 1974, published in the FEDERAL REGISTER January 13, 1975. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors, road making machinery and contractors' equipment* and *supplies* from points in that part of Minnesota on and east of a line beginning at the Minnesota-Iowa State line extending along U.S. Highway 71 to junction U.S. Highway 12, thence along U.S. Highway 12 to the Minnesota-Wisconsin State line, to points in that part of Utah on and south of a line beginning at the Utah-Idaho State line extending along U.S. Highway 91 to junction U.S. Highway 89, thence along U.S. Highway 89 to junction U.S. Highway 40, thence along U.S. Highway 40 to the Utah-Colorado State line and to points in that part of Oregon on and south of a line beginning at the Oregon-Nevada State line extending along U.S. Highway 95 to junction Oregon Highway 78, thence along Oregon Highway 78 to junction U.S. Highway 20, thence along U.S. Highway 20 to junction U.S. Highway 97, thence along U.S. Highway 97 to junction Oregon Highway 138, thence along Oregon Highway 138 to junction Oregon Highway 38, thence along Oregon Highway 38 to Reedsport, Oreg., restricted to traffic originating at the plant sites, warehouse sites and experimental farms of Deere and Company. The purpose of this filing is to eliminate the gateway of Des Moines, Iowa. The purpose of this correction is to reflect the gateway.

No. MC 114211 (Sub-No. E302) (Correction), filed June 4, 1974, published in the FEDERAL REGISTER January 22, 1975. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Self-propelled tractors, road making machinery, and contractors' equipment* and *supplies*, from points in that part of Minnesota on and west of a line beginning at the Minnesota-Wisconsin State line extending along Interstate Highway 94 to junction Minnesota Highway 3, thence along Minnesota Highway 3 to junction U.S. Highway 52, thence along U.S. Highway 52 to junction U.S. Highway 63, thence along U.S. Highway 63 to junction Interstate Highway 90, thence along Interstate Highway 90 to junction U.S. Highway 218, thence along U.S. Highway 218 to the Minnesota-Iowa State line, and from points in that part of Minnesota bounded on the north by the Wisconsin-Minnesota State line extending along Interstate Highway 94 to junction Minnesota Highway 3, thence along Minnesota Highway 3 to junction U.S. Highway 52, thence along U.S. Highway 52 to junction U.S. Highway 63, thence along U.S. Highway 63 to junction Interstate Highway 90, thence along Interstate Highway 90 to junction U.S. Highway 218, thence along U.S. Highway 218 to the Minnesota-Iowa State line, thence along the Minnesota-Iowa State line to junction U.S. Highway 69, thence along U.S. Highway 69 to junction Minnesota Highway 109, thence along Minnesota Highway 109 to junction Minnesota Highway 22, thence along Minnesota Highway 22 to junction U.S. Highway 169, thence along U.S. Highway 169 to junction Interstate Highway 494, thence along Interstate Highway 494 to junction U.S. Highway 12, thence along U.S. Highway 12 to the Minnesota-Wisconsin State line, to points in New York, and to points in that part of Ohio on and east of a line beginning at the Ohio-Kentucky State line extending along Interstate Highway 71 to junction Ohio Highway 13, thence along Ohio Highway 13 to junction U.S. Highway 250, thence along U.S. Highway 250 to Sandusky, Ohio, with no transportation for compensation on return except as otherwise authorized. The purpose of this filing is to eliminate the gateway of the plant site of Stinar Corp., in Minneapolis, Minn. The purpose of this correction is to reflect the destination points.

No. MC 114211 (Sub-No. E367) (Correction), filed June 4, 1974, published in the FEDERAL REGISTER January 15, 1975. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors* (except those with vehicle beds, bed frames, and fifth wheels), *road making machinery, and contractors' equipment and supplies*, from points in that part of Minnesota on and north of a line beginning at the South Dakota-Minnesota State line extending along Minnesota Highway 19 to junction Minnesota Highway 5, thence along Minnesota Highway 5 to junction U.S. Highway 12, thence along U.S. Highway 12 to the Minnesota-Wisconsin State line to points in Indiana, Kentucky, Ohio, West Virginia, Virginia, Maryland, the District of Columbia, New Jersey, Pennsylvania, New York, Rhode Island, Connecticut, Massachusetts, Vermont, New Hampshire, Delaware, Maine, and to points in that part of Michigan on and south of a line beginning at Muskegon, Mich., extending along Interstate Highway 96 to Detroit, Mich., restricted to the transportation of traffic originating at the plant sites and warehouse facilities of Deere and Company and with no transportation for compensation on return except as otherwise authorized. The purpose of this filing is to eliminate the gateways of Minneapolis, Minn., and Horicon, Wis. The purpose of this correction is to reflect the gateways.

No. MC 114211 (Sub-No. E393) (Correction), filed June 4, 1974, published in the FEDERAL REGISTER January 20, 1975. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Farm machinery and parts* thereof, from points in that part of Iowa on and northwest of a line beginning at the Iowa-Minnesota State line extending along U.S. Highway 169 to junction U.S. Highway 20, thence along U.S. Highway 20 to the Iowa-Nebraska State line, to points in the Upper Peninsula of Michigan and to points in that part of Wisconsin on and north of a line beginning at the Wisconsin-Minnesota State line extending along U.S. Highway 12 to junction Wisconsin Highway 29,

thence along Wisconsin Highway 29 to Kewanee, Wis., and to points in that part of Florida on and south of a line beginning at Daytona Beach, Fla., extending along U.S. Highway 92 to junction U.S. Highway 17, thence along U.S. Highway 17 to junction Florida Highway 40, thence along Florida Highway 40 to junction U.S. Highway 27, thence along U.S. Highway 27 to junction Alternate U.S. Highway 27, thence along Alternate U.S. Highway 27 to junction Florida Highway 345, thence along Florida Highway 345 to junction Flordia Highway 24, thence along Florida Highway 24 to Lukens, Fla., with no transportation for compensation on return except as otherwise authorized. The purpose of this filing is to eliminate the gateway of Minneapolis, Minn. The purpose of this correction is to reflect the gateway.

No. MC 114211 (Sub-No. E395) (Correction), filed June 4, 1974, published in the FEDERAL REGISTER January 20, 1975. Applicant: WARREN TRANSPORT INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural implements and parts* thereof, from points in that part of Kansas on and west of a line beginning at the Nebraska-Kansas State line, thence along U.S. Highway 75 to junction U.S. Highway 36, thence along U.S. Highway 36 to junction Kansas Highway 99, thence along Kansas Highway 99 to junction Kansas Highway 13, thence along Kansas Highway 13 to junction Kansas Highway 77, thence along Kansas Highway 77 to junction Kansas Highway 177, thence along Kansas Highway 177 to junction Kansas Highway 77, thence along Kansas Highway 77 to the Kansas-Oklahoma State line to points in that part of Ohio on and north of a line beginning at the Indiana-Ohio State line extending along Ohio Highway 502 to junction U.S. Highway 36, thence along U.S. Highway 36 to junction Ohio Highway 4, thence along Ohio Highway 4 to junction Ohio Highway 161, thence along Ohio Highway 161 to junction Ohio Highway 16, thence along Ohio Highway 16 to junction Ohio Highway 60, thence along Ohio Highway 60 to junction Ohio Highway 208, thence along Ohio Highway 208 to junction Ohio Highway 93, thence along Ohio Highway 93 to junction Ohio Highway 83, thence along Ohio Highway 83 to junction Ohio Highway 209, thence along Ohio Highway 209 to junction U.S. Highway 40, thence along U.S. Highway 40 to the Ohio-West Virginia State line, with no transportation for compensation on return except as otherwise authorized restricted against movement to oil field locations. The purpose of this filing is to eliminate the gateway of Beatrice, Nebr. The purpose of this correction is to reflect the gateway.

No. MC 114211 (Sub-No. E424) (Correction), filed June 4, 1974, published in the FEDERAL REGISTER January 23, 1975. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cast iron pressure pipe and fittings and accessories* therefor when moving with such pipe, the transportation of which because of size or weight requires special equipment from points in that part of Nebraska on and southeast of a line beginning at the Iowa-Nebraska State line extending along Interstate Highway 80 to junction U.S. Highway 77, thence along U.S. Highway 77 to the Nebraska-Kansas State line to points in Minnesota. The purpose of this filing is to eliminate the gateway of the plant site of Griffin Pipe Products Co., of Council Bluffs, Iowa. The purpose of this correction is to reflect the correct gateway.

No. MC 115841 (Sub-No. E28), filed June 3, 1974. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., P.O. Box 10327, Birmingham, Ala. 35202. Applicant's representative: E. Stephen Heisley, 666 Eleventh St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, in vehicles equipped with mechanical refrigeration, from points in North Carolina to points in Arkansas, California, Louisiana, Mississippi, Oregon, and Washington, restricted to the transportation of shipments originating at points in North Carolina. The purpose of this filing is to eliminate the gateway of Birmingham, Ala.

No. MC 115841 (Sub-No. E80), filed June 4, 1974. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., P.O. Box 10327, Birmingham, Ala. 35202. -Applicant's representative: E. Stephen Heisley, 666 Eleventh St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Oleomargarine, shortening, animal oils, vegetable oils*, and *blends thereof* (except in bulk or in tank vehicles), in vehicles equipped with mechanical refreigeration, from Brundidge, Ala., and points in Alabama on and north of U.S. Highway 80, to points in Maine, New Hampshire, and Vermont, restricted against the transportation of traffic originating in Cullman, Ala. The purpose of this filing is to eliminate the gateways of Birmingham, Ala., and Chattanooga, Tenn.

No. MC 119777 (Sub-No. E48), filed April 23, 1974. Applicant: LIGON SPECIALIZED HAULER, INC., P.O. Drawer L, Madisonville, Ky. 42431. Applicant's representative: Ronald E. Butler (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pallets, skids, bases, boxes, crating, oak treads, oak risers, oak sills, oak molding, cardboard cartons, nails*, and *lumber;* (1) (a) between points in Colorado, on the one hand, and, on the other, points in Florida on, east, and south of a line beginning at the Florida-Alabama State line, thence along U.S. Highway 331 to junction U.S. Highway 98, thence along U.S. Highway 98 to junction Florida Highway 283, thence along Florida Highway 283 to Greyton Beach at the Gulf of Mexico; (b) between points in Colorado, on and west of a line beginning at the Colorado-Wyoming State line, thence along Colorado Highway 789 to junction U.S. Highway 550, thence along U.S. Highway 550 to the Colorado-New Mexico State line, on the one hand, and, on the other, points in Illinois, on and east of a line beginning at the Illinois-Indiana State line, thence along U.S. Highway 50 to junction Illinois Highway 1, thence along Illinois Highway 1 to junction Illinois Highway 15, thence along Illinois Highway 15 to junction U.S. Highway 45, thence along U.S. Highway 45 to junction U.S. Highway 460, thence along U.S. Highway 460 to junction Illinois Highway 14, thence along Illinois Highway 14 to junction Interstate Highway 57, thence along Interstate Highway 57 to junction U.S. Highway 51, thence along U.S. Highway 51 to the Illinois-Kentucky State line.

(c) Between points in Colorado, on and west of a line beginning at the Wyoming-Colorado State line, thence along Interstate Highway 25 to the Colorado-New Mexico State line, on the one hand, and, on the other, points in Indiana, on and south of a line beginning at the Illinois-Indiana State line, thence along U.S. Highway 50 to junction U.S. Highway 41, thence along U.S. Highway 41 to junction Indiana Highway 67, thence along Indiana Highway 67 to junction Indiana Highway 39, thence along Indiana Highway 39 to junction Indiana Highway 44, thence along Indiana Highway 44 to junction U.S. Highway 27, thence along U.S. Highway 27 to junction U.S. Highway 40, thence along U.S. Highway 40 to the Indiana-Ohio State line; (d) between points in Colorado, on and south of a line beginning at the Colorado-Utah State line, thence along U.S. Highway 666 to junction U.S. Highway 160, thence along U.S. Highway 160 to junction Interstate Highway 25, thence along Interstate Highway 25 to junction U.S. Highway 50, thence along U.S. Highway 50 to junction U.S. Highway 287, thence along U.S. Highway 287 to junction U.S. Highway 160, thence along U.S. Highway 160 to the Colorado-Kansas State line, on the one hand, and, on the other, points in Michigan on, east, and south of a line beginning at the Ohio-Michigan State line, thence along U.S. Highway 127 to junction U.S. Highway 27 at Lansing, Mich., thence along U.S. Highway 27 to junction Interstate Highway 75, thence along Interstate Highway 75 to junction Michigan Highway 32, thence along Michigan Highway 32 to Alpena, on Lake Huron; (e) between points in Colorado, on and north of a line beginning at the Colorado-Kansas State line, thence along U.S. Highway 24 to junction Colorado Highway 9, thence along Colorado High-

way 9 to junction U.S. Highway 6, thence along U.S. Highway 6 to junction U.S. Highway 24, thence along U.S. Highway 6 and 24 to the Colorado-Utah State line, on the one hand, and, on the other, points in Mississippi, on and east of a line beginning at the Tennessee-Mississippi State line, thence along Mississippi Highway 15 to junction Mississippi Highway 503, thence along Mississippi Highway 503 to junction U.S. Highway 80, thence along U.S. Highway 80 to the junction of U.S. Highway 45, thence along U.S. Highway 45 to the Alabama-Mississippi State line.

(f) Between points in Colorado, on the one hand, and, on the other, points in New York, on and east of a line beginning at Lake Ontario at Rochester, N.Y., thence along New York Highway 31 to junction New York Highway 14, thence along New York Highway 14 to the New York-Pennsylvania State line; (g) between points in Colorado, on the one hand, and, on the other, points in Ohio, on and south of a line beginning at the Indiana-Ohio State line, thence along Ohio Highway 129 to junction Ohio Highway 4, thence along Ohio Highway 4 to junction U.S. Highway 36, thence along U.S. Highway 36 to junction Ohio Highway 3, thence along Ohio Highway 3 to junction Ohio Highway 585, thence along Ohio Highway 585 to junction Ohio Highway 21, thence along Ohio Highway 21 to junction Interstate Highway 76, thence along Interstate Highway 76 to junction Interstate Highway 80, thence along Interstate Highway 80 to junction U.S. Highway 422, thence along U.S. Highway 422 to the Ohio-Pennsylvania State line; (h) between points in Colorado, on the one hand, and, on the other, points in Pennsylvania, on, south, and east of a line beginning at the Ohio-Pennsylvania State line, thence along Pennsylvania Highway 68 to junction Interstate Highway 76, thence along Interstate Highway 76 to junction Pennsylvania Highway 28, thence along Pennsylvania Highway 28 to junction Pennsylvania Highway 85, thence along Pennsylvania Highway 85 to junction U.S. Highway 119, thence along U.S. Highway 119 to junction Pennsylvania Highway 255, thence along Pennsylvania Highway 255 to junction Interstate Highway 80, thence along Interstate Highway 80 to junction U.S. Highway 220, thence along U.S. Highway 220 to junction Pennsylvania Highway 287, thence along Pennsylvania Highway 287 to junction U.S. Highway 15, thence along U.S. Highway 15 to the New York-Pennsylvania State line; and (2)(a) between points in Connecticut, on the one hand, and, on the other, points in Florida, on and west of a line beginning at the Florida-Alabama State line, thence along U.S. Highway 331 to junction U.S. Highway 98, thence along U.S. Highway 98 to junction Florida Highway 283, thence along Florida Highway 283 to the terminus at Greyton Beach, Fla., on the Gulf of Mexico; (b) between points in Connecticut, on the one hand, and, on the other, points in Illinois, on and south of a line beginning at the Illinois-Indiana State line, thence along U.S. Highway 50 to junction Illinois Highway 127, thence along Illinois Highway 127 to junction Illinois Highway 140, thence along Illinois Highway 140 to Alton, Ill., on the Missouri-Illinois State line.

(c) Between points in Connecticut, on the one hand, and, on the other, points in Indiana, on and west of a line beginning at the Illinois-Indiana State line, thence along U.S. Highway 50 to junction Indiana Highway 61, thence along Indiana Highway 61 to junction Indiana Highway 56, thence along Indiana Highway 56 to junction U.S. Highway 231, thence along U.S. Highway 231 to junction Indiana Highway 64, thence along Indiana Highway 64 to junction Indiana Highway 145, thence along Indiana Highway 145 to junction U.S. Highway 460, thence along U.S. Highway 460 to junction Indiana Highway 37, thence along Indiana Highway 37 to junction Indiana Highway 66, thence along Indiana Highway 66 to junction Indiana Highway 237, thence along Indiana Highway 237 to the Indiana-Kentucky State line; (d) between points in Connecticut, on the one hand, and, on the other, points in Iowa, on and south of a line beginning at the Iowa-Nebraska State line, thence along U.S. Highway 34 to junction Iowa Highway 48, thence along Iowa Highway 48 to junction Iowa Highway 2, thence along Iowa Highway 2 to junction Iowa Highway 5, thence along Iowa Highway 5 to the Iowa-Missouri State line; (e) between points in Connecticut, on the one hand, and, on the other, points in Missouri, on, west, and south of a line beginning at the Iowa-Missouri State line, thence along U.S. Highway 63 to junction U.S. Highway 136, thence along U.S. Highway 136 to junction Missouri Highway 15, thence along Missouri Highway 15 to junction Missouri Highway 6, thence along Missouri Highway 6 to junction Missouri Highway 16, thence along Missouri Highway 16 to the Illinois-Missouri State line at Canton, Mo.; (f) between points in Connecticut, on the one hand, and, on the other, points in Nebraska, on, south, and west of a line beginning at the Nebraska-South Dakota State line, thence along U.S. Highway 83 to junction Nebraska Highway 2, thence along Nebraska Highway 2 to junction U.S. Highway 34, thence along U.S. Highway 34 to the Nebraska-Iowa State line.

(g) Between points in Connecticut, on and east of a line beginning at the Connecticut-Massachusetts State line, thence along U.S. Highway 7 to junction U.S. Highway 44, thence along U.S. Highway 44 to junction Connecticut Highway 8, thence along Connecticut Highway 8 to junction Interstate Highway 95, thence along Interstate Highway 95 to the Connecticut-New York State line, on the one hand, and, on the other, points in North Dakota, on, north, and west of a line beginning at the United States-Canada International Boundary line, thence along U.S. Highway 85 to junction North Dakota Highway 50, thence along North Dakota Highway 50 to the North Dakota-Montana State line; (h) between points in Connecticut, on the one hand, and, on the other, points in South Dakota, on and west of a line beginning at the South Dakota-Nebraska State line, thence along U.S. Highway 83 to junction U.S. Highway 18, thence along U.S. Highway 18 to junction South Dakota Highway 73, thence along South Dakota Highway 73 to junction Interstate Highway 90, thence along Interstate Highway 90 to junction South Dakota Highway 79, thence along South Dakota Highway 79 to junction U.S. Highway 85, thence along U.S. Highway 85 to the South Dakota-North Dakota State line; and (i) between points in Connecticut, on the one hand, and, on the other, points in Tennessee, on and west of a line beginning at the Tennessee-Kentucky State line, thence along Tennessee Highway 42 to junction U.S. Highway 70S, thence along U.S. Highway 70S to junction Tennessee Highway 55, thence along Tennessee Highway 55 to junction U.S. Highway 41–A, thence along U.S. Highway 41–A to junction U.S. Highway 64, thence along U.S. Highway 64 to junction Tennessee Highway 56, thence along Tennessee Highway 56 to the Tennessee-Alabama State line.

(3)(a) Between points in Delaware, on and south of a line beginning at the Delaware-Maryland State line, thence along Delaware Highway 273 to New Castle, Del., on the Delaware River, on the one hand, and, on the other, points in Illinois, on and south of a line beginning at the Illinois-Missouri State line, thence along U.S. Highway 54 to junction Illinois Highway 96, thence along Illinois Highway 96 to junction Illinois Highway 100, thence along Illinois 100 to junction Illinois Highway 16, thence along Illinois Highway 16 to junction Illinois Highway 185, thence along Illinois Highway 185 to junction Illinois Highway 37, thence along Illinois Highway 37 to junction U.S. Highway 50, thence along U.S. Highway 50 to the Illinois-Indiana State line; (b) between points in Delaware, on the one hand, and, on the other, points in Indiana, on, west, and south of a line beginning at the Indiana-Illinois State line, thence along Indiana Highway 64 to junction U.S. Highway 331, thence along U.S. Highway 331 to junction U.S. Highway 460, thence along U.S. Highway 460 to junction Indiana Highway 545, thence along Indiana Highway 545 to junction Indiana Highway 66, thence along Indiana Highway 66 to junction Indiana Highway 237, thence along Indiana Highway 237 to the Indiana-Kentucky State line; (c) between points in Delaware, on the one hand, and, on the other, points in Iowa, on and south of a line beginning at the Iowa-Missouri State line, thence along U.S. Highway 169 to junction Iowa Highway 2, thence along Iowa Highway 2 to the Iowa-Nebraska State line; (d) between points in Delaware, on the one hand, and, on the other, points in Mississippi, on, north, and west of a line beginning at the Mississippi-Louisiana State line, thence along Interstate Highway 59 to junction U.S. Highway 11, thence along U.S. Highway 11 to junction Mississippi

Highway 26, thence along Mississippi Highway 26 to junction U.S. Highway 49, thence along U.S. Highway 49 to the junction of Mississippi Highway 42, thence along Mississippi Highway 42 to junction Mississippi Highway 63, thence along Mississippi Highway 63 to junction U.S. Highway 45, thence along U.S. Highway 45 to junction Mississippi Highway 16, thence along Mississippi Highway 16 to the Mississippi-Alabama State line.

(e) Between points in Delaware, on the one hand, and, on the other, points in Missouri, on, west, and south of a line beginning at the Missouri-Iowa State line, thence along U.S. Highway 65 to junction Missouri Highway 6, thence along Missouri Highway 6 to junction U.S. Highway 63, thence along U.S. Highway 63 to junction U.S. Highway 24, thence along U.S. Highway 24 to junction Missouri Highway 154, thence along Missouri Highway 154 to junction U.S. Highway 54, thence along U.S. Highway 54 to the Missouri-Illinois State line; (f) between points in Delaware, on the one hand, and, on the other, points in Nebraska, on, south, and west of a line beginning at the Nebraska-South Dakota State line, thence along U.S. Highway 83 to junction Nebraska Highway 2, thence along Nebraska Highway 2 to junction U.S. Highway 34, thence along U.S. Highway 34 to the Nebraska-Iowa State line; (g) between points in Delaware, on the one hand, and, on the other, points in North Dakota, on, north, and west of a line beginning at the United States-Canada International Boundary line, thence along U.S. Highway 85 to junction North Dakota Highway 50, thence along North Dakota Highway 50 to the North Dakota-Montana State line; (h) between points in Delaware, on the one hand, and, on the other, points in South Dakota, on, south, and west of a line beginning at the North Dakota-South Dakota State line, thence along U.S. Highway 85 to junction South Dakota Highway 20 to junction South Dakota Highway 73, thence along South Dakota Highway 73 to junction South Dakota Highway 34, thence along South Dakota Highway 34 to junction U.S. Highway 83, thence along U.S. Highway 83 to junction Interstate Highway 90, thence along Interstate Highway 90 to junction U.S. Highway 183, thence along U.S. Highway 183 to junction U.S. Highway 18, thence along U.S. Highway 18 to junction South Dakota Highway 47, thence along South Dakota Highway 47 to the Nebraska-South Dakota State line; and (i) between points in Delaware, on the one hand, and, on the other, points in Tennessee, on and west of a line beginning at the Kentucky-Tennessee State line, thence along U.S. Highway 231 to the Tennessee-Alabama State line. The purpose of this filing is to eliminate the gateways of Logan County, Ky., and Muhlenberg County, Ky.

No. MC 119777 (Sub-No. E49), filed April 23, 1974. Applicant: LIGON SPECIALIZED HAULER, INC., P.O. Drawer "L", Madisonville, Ky. 42431. Applicant's representative: Ronald E. Butler (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pallets, skids, bases, boxes, crating oak treads, oak risers, oak sills, oak molding, cardboard cartons, nails, and lumber*, (1) between points in Alabama, on the one hand, and, on the other, points in Indiana, Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin; (2) between points in Arkansas, on the one hand, and, on the other, points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia; (3) between points in Colorado, on the one hand, and, on the other, points in Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, North Carolina, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia; (4) between points in Connecticut, on the one hand, and, on the other, points in Arkansas, Colorado, Kansas, Louisiana, Mississippi, Oklahoma, and Texas; (5) between points in Delaware, on the one hand, and, on the other, points in Arkansas, Colorado, Kansas, Louisiana, Oklahoma, and Texas; (6) between points in Florida, on the one hand, and, on the other, points in Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin; (7) between points in Georgia, on the one hand, and, on the other, points in Colorado, Illinois, Iowa, Kansas, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin.

(8) Between points in Illinois, on the one hand, and, on the other, points in Florida, Georgia, and South Carolina; (9) between points in Indiana, on the one hand, and, on the other, points in Alabama, Florida, Louisiana, and Mississippi; (10) between points in Iowa, on the one hand, and, on the other, points in Alabama, Florida, Georgia, North Carolina, and South Carolina; (11) between points in Kansas, on the one hand, and, on the other, points in Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, South Carolina, Vermont, and Virginia; (12) between points in Louisiana, on the one hand, and, on the other, points in Connecticut, Delaware, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont; (13) between points in Maine, on the one hand, and, on the other, points in Arkansas, Colorado, Kansas, Louisiana, Mississippi, Oklahoma, and Texas; (14) between points in Maryland, on the on one hand, and, on the other, points in Arkansas, Colorado, Kansas, Louisiana, Oklahoma, and Texas; (15) between points in Massachusetts, on the one hand, and, on the other, points in Arkansas, Colorado, Kansas, Louisiana, Mississippi, Oklahoma, and Texas; (16) between points in Michigan, on the one hand, and, on the other, points in Alabama, Florida, Louisiana, and Mississippi; (17) between points in Minnesota, on the one hand, and, on the other, points in Alabama, Florida, Georgia, North Carolina, and South Carolina; (18) between points in Mississippi, on the one hand, and, on the other, points in Connecticut, Indiana, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont; (19) between points in Missouri, on the one hand, and, on the other, points in New Jersey, North Carolina, Rhode Island, and South Carolina; (20) between points in Nebraska, on the one hand, and, on the other, points in Alabama, Florida, Georgia, North Carolina, and South Carolina; (21) between points in New Hampshire, on the one hand, and, on the other, points in Arkansas, Colorado, Kansas, Louisiana, Mississippi, Oklahoma, and Texas; (22) between points in New Jersey, on the one hand, and, on the other, points in Arkansas, Colorado, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, and Texas.

(23) Between points in New York, on the one hand, and, on the other, points in Arkansas, Kansas, Louisiana, Mississippi, Oklahoma, and Texas; (24) between points in North Carolina, on the one hand, and, on the other, points in Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, and South Dakota; (25) between points in North Dakota, on the one hand, and, on the other, points in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee; (26) between points in Ohio, on the one hand, and, on the other, points in Louisiana, Mississippi, and Texas; (27) between points in Oklahoma, on the one hand, and, on the other, points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia; (28) between points in Pennsylvania, on the one hand, and, on the other, points in Arkansas, Louisiana, Mississippi, Oklahoma, and Texas; (29) between points in Rhode Island, on the one hand, and, on the other, points in Arkansas, Colorado, Kansas, Louisiana, Mississippi, Missouri, Oklahoma and Texas; (30) between points in South Carolina, on the one hand, and, on the other, points in Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin; (31) between points in South Dakota, on the one hand, and, on the other, points in Alabama, Florida, Georgia, North Carolina and South Carolina; (32) between points in Tennessee, on the one hand, and, on the other, points in North Dakota; (33) between points in Texas, on the one hand, and, on the other, points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia; (34) between points in Vermont, on the one hand, and, on the other, points in Arkan-

sas, Colorado, Kansas, Louisiana, Mississippi, Oklahoma, and Texas; (35) between points in Virginia, on the one hand, and, on the other, points in Arkansas, Colorado, Kansas, Oklahoma and Texas; (36) between points in West Virginia, on the one hand, and, on the other, points in Arkansas, Colorado, Oklahoma, and Texas; and (37) between points in Wisconsin, on the one hand, and, on the other, points in Alabama, Florida, Georgia, and South Carolina. The purpose of this filing is to eliminate the gateways of Logan County, Ky., and Muhlenberg County, Ky.

No. MC 120021 (Sub-No. E1), filed June 4, 1974. Applicant: THE COTTER MOVING & STORAGE CO., 265 W. Bowery St., Akron, Ohio 44308. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, between points in the District of Columbia, on the one hand, and, on the other, points in Indiana, Arkansas, Illinois, Minnesota, Missouri, Nebraska, Wisconsin, and those in Kentucky in and west of Whitley, Laurel, Rockcastle, Madison, Estill, Powell, Menifee, Rowan, and Lewis Counties. The purpose of this filing is to eliminate the gateway of Dayton, Ohio, and points within 25 miles thereof.

No. MC 120021 (Sub-No. E2), filed June 4, 1974. Applicant: THE COTTER MOVING & STORAGE CO., 265 W. Bowery St., Akron, Ohio 44308. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, between points in West Virginia, on the one hand, and, on the other, points in Arkansas, Illinois, Indiana, Minnesota, Missouri, Nebraska, and Wisconsin. The purpose of this filing is to eliminate the gateway of Dayton, Ohio, and points within 25 miles thereof.

No. MC 120021 (Sub-No. E4), filed June 4, 1974. Applicant: THE COTTER MOVING & STORAGE CO., 265 W. Bowery St., Akron, Ohio 44308. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, between points in Vermont, on the one hand, and, on the other, points in Arkansas, Illinois, Indiana, Minnesota, Missouri, Nebraska, and Wisconsin, and those in Kentucky in and west of McCreary, Pulaski, Lincoln, Garrard, Jessamine, Fayette, Scott, and Grant Counties. The purpose of this filing is to eliminate the gateway of Dayton, Ohio, and points within 25 miles thereof.

No. MC 120021 (Sub-No. E7), filed June 4, 1974. Applicant: THE COTTER MOVING & STORAGE CO., 265 W. Bowery St., Akron, Ohio 44308. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Rhode Island, on the one hand, and, on the other, Indiana, Illinois, Kentucky, Arkansas, Missouri, Minnesota, Nebraska, and Wisconsin. The purpose of this filing is to eliminate the gateway of Dayton, Ohio, and points within 25 miles thereof.

No. MC 120021 (Sub-No. E8), filed June 4, 1974. Applicant: THE COTTER MOVING & STORAGE CO., 265 W. Bowery St., Akron, Ohio 44308. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, between points in Pennsylvania, on the one hand, and, on the other, points in Indiana, Illinois, Kentucky, Missouri, Minnesota, Nebraska, and Wisconsin. The purpose of this filing is to eliminate the gateway of Dayton, Ohio, and points within 25 miles thereof.

No. MC 120021 (Sub-No. E11), filed June 4, 1974. Applicant: THE COTTER MOVING & STORAGE CO., 265 W. Bowery St., Akron, Ohio 44308. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, between points in New Jersey, on the one hand, and, on the other, points in Indiana, Illinois, Kentucky, Arkansas, Missouri, Nebraska, Minnesota, and Wisconsin. The purpose of this filing is to eliminate the gateway of Dayton, Ohio, and points within 25 miles thereof.

No. MC 120021 (Sub-No. E14), filed June 4, 1974. Applicant: THE COTTER MOVING & STORAGE CO., 265 W. Bowery St., Akron, Ohio 44308. Applicant's representative: Thomas R. Kingsley, 1819 H. St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, between points in Massachusetts, on the one hand, and, on the other, points in Arkansas, Illinois, Indiana, Kentucky, Minnesota, Missouri, Nebraska, and Wisconsin. The purpose of this filing is to eliminate the gateway of Dayton, Ohio, and points within 25 miles thereof.

No. MC 120021 (Sub-No. E15), filed June 4, 1974. Applicant: THE COTTER MOVING & STORAGE CO., 265 W. Bowery St., Akron, Ohio 44308. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, between points in Maryland, on the one hand, and, on the other, points in Arkansas, Illinois, Indiana, Minnesota, Missouri, Nebraska, Wisconsin, and that part of Kentucky in and west of McCreary, Pulaski, Rockcastle, Estill, Powell, Menifee, Rowan, Fleming, Mason, Bracken, Pendleton and Campbell Counties. The purpose of this filing is to eliminate the gateway of Dayton Ohio, and points within 25 miles thereof.

No. MC 120021 (Sub-No. E16), filed June 4, 1974. Applicant: THE COTTER MOVING & STORAGE CO., 265 W. Bowery St., Akron, Ohio 44308. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, between points in Maine, on the one hand, and, on the other, points in Arkansas, Illinois, Indiana, Kentucky, Minnesota, Missouri, Nebraska, Wisconsin, and in Mingo, Logan, Wayne, Lincoln, Cabell, Putnam, Mason, and Jackson Counties, W. Va. The purpose of this filing is to eliminate the gateway of Dayton, Ohio, and points within 25 miles thereof.

No. MC 120021 (Sub-No. E18), filed June 4, 1974. Applicant: THE COTTER MOVING & STORAGE CO., 265 W. Bowery St., Akron, Ohio 44308. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, between points in Iowa, on the one hand, and, on the other, points in North Carolina, Maryland, West Virginia, Pennsylvania, New York, Rhode Island, and those in Kentucky in and east of Clinton, Russell, Casey, Marion, Washington, Anderson, Franklin, Bowen, and Carroll Counties. The purpose of this filing is to eliminate the gateway of Dayton, Ohio, and points within 25 miles thereof.

No. MC 120021 (Sub-No. E20), filed June 4, 1974. Applicant: THE COTTER MOVING & STORAGE CO., 265 W. Bowery St., Akron, Ohio 44308. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, between points in Illinois, on the one hand, and, on the other, points in Maryland, Pennsylvania, New Jersey, New York, Rhode Island, those in West Virginia, in and east of Pocahontas, Randolph, Upshur, Harrison, Wetzel, Marshall, Ohio, and Brooke Counties, and those in Northampton, Hertford, Bertie, Gates, Chowan, Perquimans, Pasquotank, Camden, and Currituck Counties, N.C. The purpose of this filing is to eliminate the gateway of Dayton, Ohio, and points within 25 miles thereof.

No. MC 120021 (Sub-No. E23), filed June 4, 1974. Applicant: THE COTTER MOVING & STORAGE CO., 265 W. Bowery St., Akron, Ohio 44308. Applicant's representative: Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, between points in Connecticut, on the one hand, and, on the other, points in Arkansas, Illinois, Indiana, Kentucky,

Minnesota, Missouri, Nebraska, and Wisconsin. The purpose of this filing is to eliminate the gateway of Dayton, Ohio, and points within 25 miles thereof.

No. MC 120021 (Sub-No. E24), filed June 4, 1974. Applicant: THE COTTER MOVING & STORAGE CO., 265 W. Bowery St., Akron, Ohio 44308. Applicant's representative: Thomas R. Kingsley, 1819 H. St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, between points in Alabama, on the one hand, and, on the other, points in Minnesota, Wisconsin, Maryland, Pennsylvania, New Jersey, New York, Rhode Island, those in Illinois in and north of Whiteside, Dixon, DeKalb, Kane, DuPage, Cook, and Will Counties, those in Hobart, Lake, Porter, LaPorte, Starke, Marshall and St. Joseph Counties Ind., and those in West Virginia in and north of Wood, Wirt, Ritchie, Doddridge, Harrison, Barbour, and Preston Counties. The purpose of this filing is to eliminate the gateway of Dayton, Ohio, and points within 25 miles thereof.

No. MC 121420 (Sub-No. E5), filed June 4, 1974. Applicant: DART TRUCKING CO., INC., 61 Railroad Street, Canfield, Ohio 44406. Applicant's representative: Paul F. Beery, 8 East Broad St., Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are usually transported in dump truck equipment, between points in Ashtabula County, Ohio, on the one hand, and, on the other, points in Guernsey, Noble, Monroe, and Belmont Counties, Ohio, and Marshall and Wetzel Counties, W. Va., within 50 miles of Toronto, Ohio. The purpose of this filing is to eliminate the gateway of Mercer County, Pa.

No. MC 121420 (Sub-No. E6), filed June 4, 1974. Applicant: DART TRUCKING CO., INC., 61 Railroad Street, Canfield, Ohio 44406. Applicant's representative: Paul F. Beery, 8 East Broad St., Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are usually transported in dump truck equipment, between points in Ashtabula County, Ohio, on and north of U.S. Highway 20 and east of Ohio Highway 45, on the one hand, and, on the other, points in those parts of Wayne, Holmes, Coshocton, Tuscarawas, Carroll, Harrison, and Jefferson Counties, Ohio, and Hancock, and Brook Counties, W. Va., that are within 50 miles of Toronto, Ohio. The purpose of this filing is to eliminate the gateway of Mercer County, Pa.

No. MC 121420 (Sub-No. E7), filed June 4, 1974. Applicant: DART TRUCKING CO., INC., 61 Railroad Street, Canfield, Ohio 44406. Applicant's representative: Paul F. Beery, 8 East Broad St., Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are unusually transported in dump truck equipment, between points in that part of Portage County, Ohio, north of a line beginning at the Portage-Summit County line, extending along Interstate Highway 76 to junction Ohio Highway 44, thence along Ohio Highway 44 to junction Ohio Highway 5, thence along Ohio Highway 5 to the Portage-Trumbull County line, on the one hand, and, on the other, points in those parts of Lawrence, Butler, and Armstrong Counties, Pa., that are within 50 miles of Toronto, Ohio. The purpose of this filing is to eliminate the gateway of Mercer County, Pa.

No. MC 121420 (Sub-No. E8), filed June 4, 1974. Applicant: DART TRUCKING CO., INC., 61 Railroad St., Canfield, Ohio 44406. Applicant's representative: Paul F. Beery, 8 East Broad St., Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Limestone* and *limestone products, insecticides, herbicides, fungicides, fertilizer*, and *fertilizer ingredients and materials* (other than such commodities in bulk liquid form), and iron bearing agglomerates, in dry bulk form, from points in Columbiana County, Ohio, to points in Lucas County, Ohio, east of U.S. Highway 23; and (2) Iron bearing fines, as are transported in dump vehicles, from Lucas County, Ohio, east of U.S. Highway 23 to points in Columbiana County, Ohio. The purpose of this filing is to eliminate the gateways of Mahoning Township, Lawrence County, Pa.

No. MC 121420 (Sub-No. E9), filed June 4, 1974. Applicant: DART TRUCKING CO., INC., 61 Railroad Street, Canfield, Ohio 44406. Applicant's representative: Paul F. Beery, 8 East Broad St., Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Limestone* and *limestone products, insecticides, herbicides, fungicides, fertilizer*, and *fertilizer ingredients* and *materials* (other than such commodities in bulk liquid form), and *iron bearing agglomerates*, in dry bulk form, from points in those parts of Beaver, Allegheny, Armstrong, Lawrence, and Westmoreland Counties, Pa., that are within 50 miles of Toronto, Ohio, to points in Lucas County, Ohio, on and east of U.S. Highway; and (2) *Iron bearing* fines, as are transported in dump vehicles, from points in Lucas County, Ohio, east of U.S. Highway 23 to points in those parts of Beaver, Allegheny, Armstrong, Lawrence, and Westmoreland Counties, Pa., that are within 50 miles of Toronto, Ohio. The purpose of this filing is to eliminate the gateway of Mahoning Township, Lawrence County, Pa.

No. MC 121420 (Sub-No. E10), filed June 4, 1974. Applicant: DART TRUCKING CO., INC., 61 Railroad St., Canfield, Ohio 44406. Applicant's representative: Paul F. Beery, 8 East Broad St., Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities*, as are usually transported in dump truck equipment, between points in Ashtabula County, Ohio, on the one hand, and, on the other, points in those parts of Lawrence, Beaver, Allegheny, Washington, Green, Westmoreland, Fayette, Butler, and Armstrong Counties, Pa., that are within 50 miles of Toronto, Ohio. The purpose of this filing is to eliminate the gateway of Mercer County, Pa.

No. MC 121420 (Sub-No. E11), filed June 4, 1974. Applicant: DART TRUCKING CO., INC., 61 Railroad Street, Canfield, Ohio 44406. Applicant's representative: Paul F. Beery, 8 East Broad St., Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Limestone* and *limestone products, insecticides, herbicides, fungicides, fertilizer and fertilizer ingredients and materials* (other than such commodities in bulk liquid form), and *iron bearing agglomerates*, in dry bulk form, from points in Ashtabula County, Ohio, to points in Lawrence, Gallia, Jackson, Vinton, Meigs, Athens, Hocking, Fairfield, Perry, Morgan, Washington Counties, Ohio, and those parts of the Ohio Counties of Pickway, Ross, Pike, and Scioto east of U.S. Highway 23; and (2) *Iron bearing fines*, as are transported in dump vehicles, from points in Lawrence, Gallia, Jackson, Vinton, Meigs, Athens, Hocking, Fairfield, Perry, Morgan, and Washington Counties, Ohio and those parts of Pickway, Ross, Pike, and Scioto Counties, in Ohio, east of U.S. Highway 23 to points in Ashtabula County, Ohio. The purpose of this filing is to eliminate the gateways of Mercer County, Pa., and Mahoning Township, Lawrence County, Pa.

No. MC 124211 (Sub-No. E28), filed April 22, 1974. Applicant: HILT TRUCKING LINE, INC., P.O. Box 988 D.T.S., Omaha, Neb. 68101. Applicant's representative: Thomas L. Hilt (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Unfrozen malt beverages*, (1) from Kansas City, Mo., to points in Oregon and Washington (Omaha, Nebr.)*; (2) from Chicago, Ill., to points in Oregon, Washington, Colorado, and Wyoming (Omaha and Lincoln, Nebr.)*, those in Nebraska on and west of U.S. Highway 81 and those in Kansas on and west of U.S. Highway 75 (Lincoln, Nebr.)*; and (3) from St. Louis, Mo., to points in Oregon, Utah, and Washington (Omaha, Nebr.)*. The purpose of this filing is to eliminate the gateways as indicated by asterisks above.

No. MC 124211 (Sub-No. E29), filed April 22, 1974. Applicant: HILT TRUCKING LINE, INC., P.O. Box 988 D.T.S., Omaha, Nebr. 68101. Applicant's representative: Thomas L. Hilt (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products*, and *articles* distributed by meat packinghouses as described in Sections A and C

of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), restricted to traffic originating at the plant site of Producers Packing Co., near Garden City, Kans., from the plant site of Producers Packing Co., near Garden City, Kans., to points in Ohio, and those points in North Dakota and South Dakota on and east of U.S. Highway 281. The purpose of this filing is to eliminate the gateway of Saunders County, Nebr.

No. MC 124211 (Sub-No. E30), filed April 22, 1974. Applicant: HILT TRUCK LINE, INC., P.O. Box 988 D.T.S., Omaha, Nebr. 68101. Applicant's representative: Thomas L. Hilt (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, as defined by the Commission (except commodities which, because of size or weight, require the use of special equipment), from the plant site of Bethlehem Steel Corp., in Burns Harbor, Porter County, Ind., to points in California, restricted to the transportation of shipments originating at or destined to the plant site of Bethlehem Steel Corp., in Burns Harbor, Porter County, Ind. The purpose of this filing is to eliminate the gateway of Nance County, Nebr.

No. MC 124211 (Sub-No. E33), filed April 22, 1974. Applicant: HILT TRUCK LINE, INC., P.O. Box 988 D.T.S., Omaha, Nebr. 68101. Applicant's representative: Thomas L. Hilt (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food products* (except commodities in bulk, dairy products, frozen foods, and meats, meat products, and meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766), from points in Texas to points in Minnesota, and *food products* (except dairy products, frozen foods, edible meats, meat products, and packinghouse products, potato products, and commodities in bulk), from points in Texas to points in Minnesota, restricted to the transportation of traffic destined to points in Minnesota. The purpose of this filing is to eliminate the gateway of points in Washington County, Nebr., in the Omaha, Nebr., commercial zone as defined by the Commission.

No. MC 124211 (Sub-No. E35), filed April 22, 1974. Applicant: HILT TRUCK LINE, INC., P.O. Box 988 D.T.S., Omaha, Nebr. 68101. Applicant's representative: Thomas L. Hilt (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: Plumbing supplies [except (1) commodities in bulk, (2) commodities, which because of size or weight, require the use of special equipment, and (3) chemicals], from points in Columbiana County, Ohio, and Armstrong and Lawrence Counties, Pa., to those points in Iowa on and west of U.S. Highway 71, and those points in Minnesota on and west of a line beginning at the Minnesota-Iowa State line and extending along U.S. Highway 75 to junction U.S. Highway 2, thence along U.S. Highway 2 to the Minnesota-North Dakota State line. The purpose of this filing is to eliminate the gateway of the sites of the plant and warehouses of William H. Harvey Company at Omaha, Nebr.

No. MC 124211 (Sub-No. E54), filed May 7, 1974. Applicant: HILT TRUCK LINE, INC., P.O. Box 988 D.T.S., Omaha, Nebr. 68101. Applicant's representative: Thomas L. Hilt (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic beverages*, unfrozen, from points in Tennessee to points in Idaho, Montana, North Dakota, Oregon, South Dakota, Washington, and Wyoming, and from those points in Tennessee on and east of Interstate Highway 65 to points in California, Nevada, Utah, and those in Colorado, on, north, and west of a line beginning at the Colorado-New Mexico State line and extending along U.S. Highway 85 to junction U.S. Highway 50, thence along U.S. Highway 50 to the Colorado-Kansas State line. The purpose of this filing is to eliminate the gateway of Omaha, Nebr.

No. MC 124211 (Sub-No. E65), filed May 13, 1974. Applicant: HILT TRUCK LINE, INC., P.O. Box 988 D.T.S., Omaha, Nebr. 68101. Applicant's representative: Thomas L. Hilt (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Junk and scrap materials*, restricted to meats, meat products, and meat by-products, and articles distributed by meat packinghouses, as described by the Commission (except in bulk), from points in Texas on and west of a line beginning at the Oklahoma-Texas State line and extending along U.S. Highway 83 to junction U.S. Highway 277, to junction unnumbered highway at Del Rio, Tex., to the United States-Mexico International Boundary line, to points in Minnesota, those in North Dakota on and east of U.S. Highway 281, and those in South Dakota on and east of South Dakota Highway 37 (Saunders County, Nebr.)*; (2) *junk and scrap materials*, restricted to meats, meat products, and meat by-products and articles, distributed by meat packinghouses, as described by the Commission (except hides and commodities in bulk), from those points in Texas on and west of a line beginning at the Oklahoma-Texas State line and extending along U.S. Highway 83 to junction U.S. Highway 277, thence along U.S. Highway 277 to junction unnumbered highway at Del Rio, Tex., to the United States-Mexico International Boundary line, to points in Iowa, Michigan, Wisconsin, those in Illinois on and north of U.S. Highway 136, those in Indiana on and north of U.S. Highway 24, those in Nebraska on, north and east of a line beginning at the Iowa-Nebraska State line and extending along Nebraska Highway 2 to junction Interstate Highway 80, thence along Interstate Highway 80 to junction U.S. Highway 81, thence along U.S. Highway 81 to the Nebraska-South Dakota State line, those in Ohio on and north of a line beginning at the Indiana-Ohio State line and extending along U.S. Highway 36 to junction U.S. Highway 22, thence along U.S. Highway 22 to the Ohio-West Virginia State line (Saunders County, Nebr.)*; and (3) *fresh meats*, unfrozen, (except commodities in bulk), from points in Texas on and west of a line beginning at the Oklahoma-Texas State line and extending along U.S. Highway 83 to junction U.S. Highway 277, thence along U.S. Highway 277 to junction unnumbered highway at Del Rio, Tex., to the United States-Mexico International Boundary line, to points in Wisconsin (Lincoln, Nebr.)*. The purpose of this filing is to eliminate the gateways as indicated by asterisks above.

No. MC 124211 (Sub-No. E72), filed May 13, 1974. Applicant: HILT TRUCK LINE, INC., P.O. Box 988 D.T.S., Omaha, Nebr. 68101. Applicant's representative: Thomas L. Hilt (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cullet* (broken glass), (except in bulk), (1) from points in the United States in and east of North Dakota, South Dakota, and Nebraska, and on and north of U.S. Highway 30 to points in Colorado; (2) from those points in the United States in and west of Montana, Wyoming, Colorado, and New Mexico, to points in Illinois on and north of U.S. Highway 24; (3) from points in Idaho, Montana, Oregon, Washington, and Wyoming, to those points in Illinois on and south of U.S. Highway 24; (4) from those points in Kansas, Oklahoma, and Texas, on and West of U.S. Highway 81 to those points in Illinois on and north of U.S. Highway 34; (5) from points in South Dakota, and those in North Dakota on and west of U.S. Highway 281, to points in Illinois; (6) from points in the United States in and west of Montana, Wyoming, Colorado, and New Mexico, to points in Indiana; (7) from points in South Dakota, and those in Kansas on and west of U.S. Highway 81, those in North Dakota on and west of North Dakota Highway 1, those in Oklahoma on and west of U.S. Highway 77, and those in Texas on and west of U.S. Highway 75, to those points in Indiana on and north of U.S. Highway 36; (8) from points in Arizona, California, Colorado, Nevada, New Mexico, and Utah, and those in Kansas, Oklahoma, and Texas on and west of U.S. Highway 77, to points in Wisconsin; (9) from those points in the United States east of U.S. Highway 81 (except points in Minnesota, North Dakota, South Dakota, and the Upper Peninsula of Michigan), to points in Wyoming; (10) from points in Idaho, Montana, Oregon, Washington, and Wyoming, to those points in Oklahoma on and east fo U.S. Highway 77; (11) from points in Iowa, Minnesota, and

Wisconsin, and those in Illinois on and north of U.S. Highway 6, to those points in Oklahoma on and west of U.S. Highway 77; (12) from points in North Dakota and South Dakota, to points in Oklahoma; (13) from points in North Dakota and South Dakota, to points in Kansas; (14) from points in the United States in, south and west of California, Nevada, Utah, Colorado, and Kansas, Oklahoma, and Texas, to points in Minnesota; (15) from points in Idaho, Montana, North Dakota, Oregon, South Dakota, Washington, and Wyoming, to points in Missouri, and (16) from points in the United States on and east of U.S. Highway 81 (except points in Michigan, Minnesota, North Dakota, South Dakota, and Wisconsin), to points in Montana. The purpose of this filing is to eliminate the gateway of Nebraska.

No. MC 124211 (Sub-No. E74), filed May 13, 1974. Applicant: HILT TRUCK LINE, INC., P.O. Box 988 D. T. S., Omaha, Nebr. 68101. Applicant's representative: Thomas L. Hilt (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, as described by the Commission (except oil field commodities and commodities which, because of size or weight, require the use of special equipment and/or handling), from Sterling and Rock Falls, Ill., to points in California. The purpose of this filing is to eliminate the gateway of Nance County, Nebr.

No. MC 124211 (Sub-No. E76), filed May 22, 1974. Applicant: HILT TRUCK LINE, INC., P.O. Box 988 D. T. S., Omaha, Nebr. 68101. Applicant's representative: Thomas L. Hilt (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Food products* (except commodities in bulk, potato products, dairy products, frozen foods, meats, meat products, and meat by-products, and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766), from those points in Kansas on and west of a line beginning at the Kansas-Nebraska State line, and extending along U.S. Highway 75 to junction Interstate Highway 35, thence along Interstate Highway 35 to the Kansas-Oklahoma State line, to points in Connecticut, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, New York, Rhode Island, Vermont, and Wisconsin, and those in Iowa on and north of U.S. Highway 20, and from those in Nebraska on and south of a line beginning at the Nebraska-Colorado State line and extending along Interstate Highway 80 to junction U.S. Highway 77, thence along U.S. Highway 77 to the Nebraska-Iowa State line, to points in Michigan, Minnesota, and Wisconsin, and those in Iowa on and north of U.S. Highway 20; (2) *food products and feed grain* (except commodities in bulk, potato products, frozen foods, meats, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61, M.C.C. 209 and 766), from those points in Nebraska on and south of a line beginning at the Nebraska-Colorado State line and extending along Interstate Highway 80 to junction U.S. Highway 75, thence along U.S. Highway 75 to the Nebraska-Minnesota State line and those in Oklahoma and Texas on and west of Interstate Highway 35, to points in Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont; and (3) *food products and grain products* (except commodities in bulk, dairy products, frozen foods, processed meats, coffee, potato products, and meat and packinghouse products), from points in Nebraska on and south of a line beginning at the Nebraska-Colorado State line and extending along Interstate Highway 80 to junction U.S. Highway 77, thence along U.S. Highway 77 to the Nebraska-Iowa State line, and those in Oklahoma and Texas on and west of Interstate Highway 35, to points in Wisconsin. The purpose of this filing is to eliminate the gateway of Lincoln, Nebr.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[FR Doc.75-13248 Filed 5-19-75;8:45 am]

---

[Notice No. 770]

## ASSIGNMENT OF HEARINGS

MAY 15, 1975.

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.

CORRECTION

MC-F-12313, Wells Cargo, Inc.—Purchase—Western Truck Lines and MC 43209 Sub 60, Wells Cargo, Inc.; now assigned June 23, 1975 at Los Angeles, California, Room 517 Federal Building, 312 N. Spring Street; instead of San Francisco, California, Room 13025 Federal Building, 450 Golden Gate Avenue.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[FR Doc.75-13250 Filed 5-19-75;8:45 am]

---

[Notice No. 769]

## ASSIGNMENT OF HEARINGS

MAY 15, 1975.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 200 Sub 267, Riss International Corporation.
MC 340 Sub 33, Querner Truck Lines, Inc.
MC 10761 Sub 267, Transamerican Freight Lines, Inc.
MC 25869 Sub 123, Nolte Bros. Truck Line, Inc.
MC 30844 Sub 512, Kroblin Refrigerated Xpress, Inc.
MC 48958 Sub 125, Illinois-California Express, Inc.
MC 51146 Sub 383, Schneider Transport, Inc.
MC 52460 Sub 152, Eitex Transportation, Inc.
MC 52921 Sub 26, Red Ball, Inc.
MC 59365 Sub 98, Graves Truck Line, Inc.
MC 59367 Sub 94, Decker Truck Line, Inc.
MC 71459 Sub 44, O. N. C. Freight Systems.
MC 95540 Sub 907, Watkins Motor Lines, Inc.
MC 100449 Sub 50, Mallinger Truck Line, Inc.
MC 107107 Sub 437, Alterman Transport Lines, Inc.
MC 107515 Sub 942, Refrigerated Transport Co., Inc.
MC 107839 Sub 158, Denver-Albuquerque Motor Transport, Inc.
MC 112822 Sub 334, Bray Lines, Inc.
MC 113267 Sub 315, Central and Southern Truck Line, Inc.
MC 113362 Sub 277, Ellsworth Freight Lines, Inc.
MC 113651 Sub 173, Indiana Refrigerator Lines, Inc.
MC 114045 Sub 400, Trans-Cold Express, Inc.
MC 114273 Sub 185, Cedar Rapids Steel Transportation, Inc.
MC 114274 Sub 30, Vitalis Truck Lines, Inc.
MC 114284 Sub 62, Fox-Smythe Transportation Company.
MC 114457 Sub 198, Dart Transit Company.
MC 114632 Sub 74, Apple Lines, Inc.
MC 115180 Sub 92, Onley Refrigerated Transportation, Inc.
MC 115826 Sub 260, W. J. Digby, Inc.
MC 116544 Sub 152, Altruck Freight Systems, Inc.
MC 117119 Sub 505, Willis Shaw Frozen Express, Inc.
MC 117686 Sub 151, Hirschbach Motor Lines, Inc.
MC 117878 Sub 7, Dwight Cheek, DBA Dwight Cheek Trucking.
MC 117883 Sub 195, Subler Transfer, Inc.
MC 117940 Sub 133, Nationwide Carriers, Inc.
MC 118034 Sub 21, Miller Truck Line, Inc.
MC 118089 Sub 17, Robert Heath Trucking, Inc.
MC 118142 Sub 73, M. Bruenger & Co., Inc.
MC 118159 Sub 147, National Refrigerated Transport, Inc.
MC 118202 Sub 39, Schultz Transit, Inc.
MC 118288 Sub 46, Stephen F. Frost.
MC 119669 Sub 51, Tempco Transportation, Inc.
MC 119741 Sub 50, Green Field Transport Company, Inc.
MC 119789 Sub 209, Caravan Refrigerated Cargo, Inc.
MC 119988 Sub 64, Great Western Trucking Co., Inc.
MC 123004 Sub 5, The Luper Transportation Company.
MC 123639 Sub 159, J. B. Montgomery, Inc.
MC 123872 Sub 31, W & L Motor Lines, Inc.
MC 124174 Sub 100, Momsen Trucking Co.
MC 124211 Sub 249, Hilt Truck Line, Inc.
MC 124774 Sub 92, Midwest Refrigerated Express, Inc.
MC 127042 Sub 147, Hagen, Inc.
MC 129600 Sub 19, Polar Transport, Inc.

MC 133095 Sub 61, Texas Continental Express, Inc.
MC 133119 Sub 58, Heyl Truck Lines, Inc.
MC 133566 Sub 39, Gangloff & Downham Trucking Co., Inc.
MC 133655 Sub 77, Trans-National Truck, Inc.
MC 134182 Sub 25, Milk Producers Marketing Company, DBA All-Star Transportation.
MC 134477 Sub 70, Schanno Transportation, Inc.
MC 134755 Sub 38, Charter Express, Inc.
MC 134777 Sub 23, Sooner Express, Inc.
MC 134783 Sub 23, Direct Service, Inc.
MC 135007 Sub 44, American Transport, Inc.
MC 135185 Sub 20, Columbine Carriers, Inc.
MC 135684 Sub 5, Bass Transportation Co., Inc.
MC 136052 Sub 8, Security Carriers, Inc.
MC 136408 Sub 18, Cargo Contract Carriers Corp.
MC 136669 Sub 2, Processed Beef Express, Inc.
MC 136786 Sub 58, Robco Transportation, Inc.
MC 138018 Sub 18, Refrigerated Foods, Inc.
MC 138469 Sub 5, Donco Carriers, Inc.
MC 139833 Sub, 2, Tasco, Inc.
MC 139923 Sub 3, Miller Trucking Co., Inc.; and
MC 140033 Sub 4, Cox Refrigerated Express, Inc., now being assigned July 28, 1975 (1 week), at Amarillo, Texas, in a hearing room to be designated later.

MC–F–12257, International Carriers, Inc.—Purchase—Motor Dispatch, Inc., now being assigned continued hearing June 23, 1975 (5 days) at Detroit, Michigan; in Conference Room B, 7th Floor, City County Building, 2 Woodward Avenue.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[FR Doc.75–13249 Filed 5–19–75;8:45 am]

[Notice No. 291]

## MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

MAY 20, 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 June 9, 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–75806. By order of May 13, 1975, the Motor Carrier Board approved the transfer to Grover Trucking Co., a corporation, Idaho Falls, Idaho, of the operating rights in certificate No. MC–115904 and subnumbers thereunder issued to Louis Grover, Idaho Falls, Idaho, authorizing the transportation of lumber, wood chips, lumber mill products, composition board, gypsum products, plastic pipe and fittings, sawmill products, and wallboard to and from points as specified in Idaho, Nevada, Oregon, Washington, Montana, Colorado, Wyoming, and Arizona.

Irene Warr, 430 Judge Building, Salt Lake City, Utah 84111 Attorney for applicants.

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

[FR Doc.75–13251 Filed 5–19–75;8:45 am]

federal register

TUESDAY, MAY 20, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 98

PART II

# FEDERAL COMMUNICATIONS COMMISSION

■

# COMMUNITY PROBLEMS; ASCERTAINMENT BY BROADCAST APPLICANTS

Notice of Inquiry and Proposed Rulemaking

## FEDERAL COMMUNICATIONS COMMISSION

[ 47 CFR Part 1 ]

[FCC 75-540; Docket No. 19715]

### COMMUNITY PROBLEMS; ASCERTAINMENT BY BROADCAST APPLICANTS

**Notice of Inquiry and Proposed Rulemaking**

In the matter of ascertainment of community problems by broadcast applicants.

1. The Commission has before it for consideration its Notice of Inquiry in the above-entitled matter, relating to Ascertainment of Community Problems by Broadcast Applicants, (Docket No. 19715), 40 FCC 2d 379 (1973). Also before the Commission for consideration are the 137 comments and 38 reply comments received in response to the Notice of Inquiry in this proceeding. As set forth below, we deal here only with ascertainment requirements for renewal applicants.

INTRODUCTION

2. In its Report and Statement of Policy Re: Commission En Banc Programming Inquiry, 25 FR 7291, 20 RR 1901 (1960), the Commission stated that " * * * the principal ingredient of the licensee's obligation to operate his station in the public interest is the diligent, positive and continuing effort * * * to discover and fulfill the tastes, needs and desires of his service area, for broadcast service." In the fulfillment of this obligation, broadcasters were advised that they should conduct consultations in two main areas: First, with members of the listening public who will receive the station's signal; and, second, with leaders of community life—public officials, educators, religious, agriculture, business, labor, professional, eleemosynary organizations, and others who bespeak the interests which make up the community.

3. Following several years of confusion as to the ascertainment requirements—particularly as to the purpose of the consultations—set forth in the 1960 Programming Policy Statement, supra, the Commission, on February 23, 1973, issued a Primer on Ascertainment of Community Problems by Broadcast Applicants, 27 FCC 2d 650, 36 FR 4092 (hereinafter Primer), in an effort to clarify the broadcast applicant's obligation in this area.[1]

4. To begin, under the guidelines set forth in the Primer, applicants must determine the demographics and composition of the city of license, indicating its economic, social, racial, ethnic and other significant characteristics. Thereafter, and within the six month period prior to filing a broadcast application, the applicant must conduct two surveys—one of community leaders and the other of members of the general public. These surveys must be conducted to ascertain community "problems, needs and interests" as distinguished from program preferences.

5. As indicated, to ascertain the community's problems, needs and interests, the applicant's principals or management level employees must interview community leaders representing a cross-section of the community as revealed in the compositional study. While an applicant is expected to make reasonable and good faith efforts to interview leaders in each significant community element (e.g., labor, religious, etc.), interviews with leaders of all groups within each significant element are not required. The applicant, in this respect, has broad discretion in selecting leaders from each significant element in the community—discretion the Commission will not disturb absent a showing, supported by appropriate data, that a significant element of the community has been omitted. The applicant must also identify each leader interviewed by name, position and organization represented.

6. With respect to the general public survey, applicants must make efforts to consult with a random sample thereof. The random sample need not be a statistically reliable sampling, but may be taken from a city directory, or may be done on a geographical basis. Also, the applicant has a wider choice as to who can conduct the general public survey—namely, principals, management level or other employees, and professional research organizations. The applicant, in this connection, need not identify members of the public interviewed, but must identify the number of consultations and the methods used.

7. Having completed its community leader and general public surveys, the Primer requires the applicant to list all problems (excluding the frivolous) ascertained. Based on its evaluation of these problems, the applicant must determine which problems merit treatment on its facilities. The applicant, in this regard, is not expected to treat all ascertained problems. With respect to those problems it proposes to treat, however, the applicant must propose what programs it will broadcast to deal with those problems, giving a description of the program or program series, its anticipated time segment, duration and frequency of broadcast.

NOTICE OF INQUIRY

PART I—THE ROLES OF RADIO AND TELEVISION

8. In the instant Notice of Inquiry we set out to explore, first, whether there is a difference between the respective roles of radio and television in discharging their statutory responsibility to serve the "public interest, convenience and necessity"; and, second, whether the ascertainment guidelines set forth in the Primer, supra, should be modified, particularly with respect to applicants seeking renewal of their broadcast licenses.

9. The comments received only touched upon Part I of the instant Notice in a peripheral manner, if at all. Those commenting on Part I, however, generally recognize differences between radio and television in terms of economics, station and market size, and the number of employees. The commenting parties also recognize that radio stations—which generally offer a specialized format—serve more localized audiences than do television stations which, for the most part, are located in larger markets and provide programming of more "general interest." Despite these differences, however, most commenting parties seem to agree—to one extent or another—that the basic purpose of both radio and television is to present entertainment and informational programming to the public. Any differences cited in this respect seem to relate to the means of providing that programming. As noted by the Community Coalition For Media Change, for example, the roles are the same and such differences as there are derive from the fact that one offers aural communication and the other aural and visual communication. These differences, it is maintained, only relate to how a licensee of a radio or television station through its programming efforts fulfills its public interest obligation. The comments do reveal a point of contention, however. Some parties maintain that the differences noted above have a direct bearing on each licensee's ascertainment efforts. These parties assert, therefore, that the Commission must take such factors into account when establishing ascertainment guidelines. Spanish International Communications Corporation, for example, maintains that radio stations with specialized formats should be permitted to limit their ascertainment efforts to their audiences; and, moreover, that they should be permitted to limit their broadcast material dealing with community problems, needs and interests to those audiences. Comments to the contrary maintain that there are and should be no differences between the ascertainment requirements for radio and television stations. Black Efforts For Soul in Television (BEST), for example, states: "It is true that radio and television are different modes of communication that provide primary service to different groups in terms of age, sex, income and taste, and serve them at different times of the day and at different listening or viewing locations." But, continues BEST, "these factors do not provide rational grounds for the Commission to determine that either medium should have different standards for ascertaining the problems, needs and interests of the communities they seek to serve * * *"

[1] In issuing its Primer, the Commission noted that its guidelines applied to applicants for construction permits for new broadcast stations and for a facilities change where the station's proposed field intensity contour (Grade B for TV, the 1 mV/m for FM, and the 0.5 mV/m for AM) encompasses a new area equal to or greater than 50 percent of the area within the station's present contours; for construction permit applications or license modifications to change station location; construction permits for satellite television stations; and the assignee's or transferee's (except in cases of proforma transfer) portion of assignment or transfer applications. Primer, supra, at 682. Additionally, the Commission noted that, " * * * as an interim measure until other standards are adopted, renewal applicants will be required to comply with the Primer." Primer, supra, at 655.

10. In the 1930's and 1940's, radio was the sole electronic communications medium for bringing to the general public a "rapid and efficient" nationwide broadcast service (47 U.S.C. 151). Since the 1950's, however, we have witnessed the spectacular growth of television—a broadcast medium which now reaches over 96 percent of the nation's homes. The phenomenal growth of television has had a dramatic effect on radio in terms of station operation and programming technique. With the rapid development of television and the divergence of national advertising revenues to this new medium, radio broadcasters were forced to cut operating costs—operating staffs were cut to a minimum by using combination positions where possible, by having the program log kept by the announcer, newsperson, or disc jockey (by the person on duty.) Joint studio-transmitter operations, remote control, automation, and other operating techniques became the rule rather than the exception during the 1950's, and have remained so today. Radio programming was revamped for casual listening. Background music, news and other bits of information interspersed by the disc jockey between records became, and have remained, the staple of radio programming.

11. The nature, scope and reasons for these changes in radio cannot go unrecognized if we are to develop ascertainment guidelines that are workable and useful. A station with few employees, for instance, cannot be expected to conduct a community survey as extensive as its larger television counterpart.[2] Similarly, how a licensee of a radio station decides to respond to the many conflicting and competing problems and needs of the public within its service area may differ substantially from the manner in which its television counterpart serves the public.

12. Some broadcasters contend that radio, by comparison with television, operates with a handicap not often recognized. They claim that any pronounced amount of talk on radio has a tendency to cause listeners to tune to another station, usually in search of music. The aural and visual techniques of television, it is asserted, make talk on this medium more attractive than it seems to be on radio. In providing listeners with their favorite music, news capsules and other tidbits of information without requiring extended concentration, radio may have no peer. This does not mean, however, that radio stations are under no obligation to provide programming related to community problems, needs and interests. Of course, any notion that a program is not a program unless at least 15 or 30 minutes in length fails to comprehend radio broadcasting as it currently exists. Given today's medium, we think it important to reiterate our opinion that an effective public service job can be done on radio programs of a shorter duration—vignettes, they might be called. See Columbia Broadcasting System, Inc., FCC 75-149, 32 RR 2d 1270 (1975); Great Trails Broadcasting Corp., 39 FCC 2d 39 (1972). In sum, the types of appropriate service may differ from community to community, from service to service, from station to station, and from time to time. The licensee's prudent judgment on how to best serve its community will therefore be accorded great weight by the Commission. In the final analysis, however, we must concur with the comments of BEST and others filing similar comments that the differences between radio and television do not provide a reasonable basis for developing different ascertainment standards for AM and FM on the one hand and TV on the other. While each service performs a somewhat different role in serving the public, all broadcast licensees have the same basic obligation to discover and fulfill the problems, needs and interests of the public within their service areas, for broadcast service.[3]

*Summary of action taken.* 13. Based on our review of the record in this proceeding, thus far, we are convinced that different ascertainment guidelines for renewal applicants vis-a-vis all other broadcast applicants are justified. As discussed in more detail below, since an existing licensee's obligation is to make a continuing effort to discover and fulfill the problems and needs of the public within the station's service area, we believe the more appropriate procedure for renewal applicants calls for ascertainment throughout the license term rather than during the six months prior to filing of the application. This continuous ascertainment effort must, of course, involve consultations with both a representative cross-section of community leaders and a generally random sample of members of the general public. For an existing licensee, however, we believe that these interviews can be conducted by principals, management-level and other employees of the station acting under the direction and supervision of a principal or management level employee. Further, the interview process proposed herein will allow for a multiplicity of dialogue techniques (e.g., community leader luncheons, joint consultations, person-to-person interviews during regular business meetings, etc.).

14. As noted above, under existing requirements new applicants are required to conduct a compositional study of the city of license to become familiar with its population characteristics and community institutions and elements. While a renewal applicant, under the procedures suggested herein, will be required to have on file certain population data, a detailed compositional study will no longer be required. In lieu thereof, we have identified 19 typical institutions and elements normally present in a communtiy (Appendix C), and we expect the licensee to utilize this listing in conducting its community leader survey.[4] Absent a compelling showing to the contrary, interviews with leaders in each of the enumerated categories on an annual basis will establish a prima facie case of compliance with the Commission's ascertainment guidelines. So far as the general public survey is concerned, under the procedures recommended herein a licensee must make a reasonable and good faith effort to consult with a generally random sample at a period of his choosing during the license term. If the licensee follows a method designed to produce a roughly random sample, compliance with our requirements will be achieved. A licensee may, of course, continue to use a professional research firm to conduct its general public survey.

15. With respect to documentation, we have set out for particular comment the following proposals for non-exempt stations, involving modification of the present § 1.526 of the Commission's rules (Appendix A):

(a) That each licensee deposit in its public inspection file yearly, on the anniversary date upon which the station's renewal application normally would be filed, an annual community leader checklist showing the number of such leaders interviewed in the enumerated categories during the preceding 12 months;

(b) That within 45 days following such a community-leader interview, each licensee place in its public inspection file information identifying the: (i) name and address of the leader consulted, (ii) group or organization represented, (iii) date, time and place of the interview, (iv) problem(s), need(s) or interest(s) identified during the interview, (v) name of the licensee representative conducting the interview, and (vi) name of the reviewer of the completed record of consultation (a principal or management-level employee).

(c) That at some time prior to filing for renewal of license, the licensee place in the station's public inspection file a narrative description of the methods used to survey members of the general public and the number of people consulted during the survey. Also to be deposited is information relating to the population characteristics of its community of license and service area.

[2] In 1973, television stations averaged about 59 full-time and 6 part-time employees (see Television Broadcast Financial Data—1973, released August 28, 1974), whereas radio stations averaged about 11 full-time and 4 part-time employees (see AM and FM Broadcast Financial Data—1973, released January 17, 1975).

[3] As set forth in paragraphs 65-69, infra, we are proposing an exemption from most of the revised documentation and filing proposals herein for stations licensed to smaller communities. As is made clear elsewhere in this Further Notice, we do not intend to relieve such broadcasters from the obligation to ascertain their communities, but only from most of the requirements of FCC record-keeping. A staff inquiry indicates that some 1,900 radio stations and 14 television stations are currently licensed to communities whose populations are less than 10,000, and which lie outside all Standard Metropolitan Statistical Areas (SMSA's). See Appendix E.

[4] This documentation would not be required for exempt small-community licensees (Note 3, supra), although the checklist might be helpful to them.

16. At renewal time each licensee to whom these documentation requirements apply would be asked to certify, on the renewal application itself, that all appropriate data has been placed in the station's public inspection file. Additionally, the annual community leader checklists would be submitted as exhibits in support of the renewal application.

17. Certain proposals for documentation of the ascertainment effort would apply to all licensees, even those whose stations come under the small-community exemption discussed at paragraph 67, infra. Thus, every licensee would be required to place in the station's public inspection file yearly, on the anniversary date upon which the station's renewal application normally would be filed, an annual listing of what the licensee believes to have been the most significant problems and needs (up to 10) discovered during the preceding 12 months, together with typical and illustrative programs or program series—excluding ordinary news inserts—broadcast to help meet those problems and needs. At renewal time, these annual problem-program lists would be filed as exhibits with the renewal application itself.

PART II—ASCERTAINMENT GUIDELINES FOR RENEWAL APPLICANTS

18. Although neither the comments received in this Inquiry nor our own recent experiences give us a basis for varying, as between radio and television, the standards for ascertainment as a process, we have found in the record of Docket 19715 reason to believe that the public interest would be served by some modification of the requirements of the present Primer as they apply to commercial broadcast license renewal applicants, whether their service is aural only, or aural and visual.[5] Moreover, we have reason to anticipate that some of the changes proposed for renewal candidates might also be feasibly and justifiably applied to other broadcast applications. Therefore, for the moment, we choose to resolve this Inquiry only insofar as it applies to ascertainment of their communities by renewal applicants, and will hold the docket open for such further action with respect to other kinds of broadcast applications as we may determine hereafter to be in the public interest.

Should an Ascertainment of Community Problems Be Made Six Months Before Filing an Application, as Now Required, at Some Different Time, or on a Continuing Basis? How Should It Be Documented?

19. Comments favoring some form of "continuing ascertainment [Question II (b) (1)] outnumbered, by a large margin, the combination of those supporting the current six months pre-filing requirement plus those arguing for some "different" but uniform time period within which licensees should survey their communities. Certain proponents of continuing ascertainment, such as the National Association of Broadcasters (NAB) and Westinghouse (Group W), argue that an on-going process is simply natural, and even necessary, because "problems change." Other proponents perceived a negative effect of the six-month pre-filing requirement. The North Carolina Association of Broadcasters, for example, found a disincentive to undertake surveys throughout the license period because the licensee knows "he will receive little credit for his efforts." University of Chicago Professors Milton Friedman (economics) and Harry Kalven Jr. (law) and WAIT Radio President Maurice Rosenfield, filing individually and on behalf of WAIT, suggest that:

> [A] station is encouraged—indeed, again, it is warned—to stay even with the projections of three years earlier and keep its problem programming frozen to what was proposed.

20. Although posed as such for convenience of discussion, the question of continuous ascertainment does not really represent an option for the renewal candidate. It is not an "either/or" by comparison with the current six months pre-filing requirement. It is an undiminished obligation that dates back at least to the 1960 Programming Policy Statement, supra, there expressed as the "diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his community or service area." (Emphasis supplied) 25 FR at 7294. It is important to observe that the quote refers to an existing licensee, not to a new applicant nor to a prospective assignee. Since the adoption of the Primer in 1971, of course, the still-viable idea of continuous ascertainment has been somewhat overshadowed by the administrative convenience of a "record" ascertainment taking place within a fixed time period. We have found it useful that new applicants and assignees should be prescribed a period not too far removed from the filing dates of their applications—such as six months prior—within which to begin to write the history of their broadcast services through the conduct of ascertainment surveys. For them, there is no "continuity" from the past. Once they become licensees, looking toward renewal, the 1960 obligation attaches.

21. Thus, with respect to renewal applicants, the point of the instant Inquiry has been to determine the feasibility of establishing a continuous ascertainment procedure actually capable of being monitored and evaluated. For the reasons noted above, we submit that an ascertainment reporting requirement of six months every three years is not only artificial when applied to renewal applicants, but in fact discontinuous. Yet, on the record, during this interim period since 1971, it is all we have had by which the licensee, his public and the Commission could measure the likelihood that future service would be in the public interest.

22. In the discussion which follows, we shall set forth a procedure by which we believe continuous ascertainment for existing licensees looking toward renewal can be accomplished and documented in the public interest. Before proceeding to that explanation, however, we wish to acknowledge two principal concerns expressed in comments favoring retention of the present six months pre-filing requirement on the timing of ascertainment. Black Efforts for Soul in Television (BEST) suggested, for example, that the six-month period "represents a good compromise between the desires to have the most recent data possible and yet to also give the broadcaster sufficient time to analyze the results and conduct of a profitable dialogue with community leaders and groups about them * * *" A professional survey firm, Media Statistics, commented that "lack of a designated period could increase the end cost of ascertainment by reducing the opportunity for savings in cooperative ascertainment efforts."

23. We believe that the procedure set out below accounts for both these concerns, and many others as well. Continuous ascertainment—and the means by which we ask it to be documented—will still yield recent data, since the spread of documented community leader interviews, for example, will cover the third year of the license term as well as the first and second years. Moreover, the third of the annual filings of lists of community problems and illustrative programs (See paragraph 57, infra) would take place at renewal time itself. Even more obviously, this procedure for continuous ascertainment would increase the "sufficient time" which as BEST correctly states, the broadcaster needs to analyze survey results and to apply them to local dialogue with his listeners. As for the "cooperative" or joint licensee ascertainment efforts mentioned by Media Statistics, there is nothing in the procedure set out below which would prevent continuation of this practice. To say that licensees no longer need to conduct their entire "record" ascertainments in the space of a final six months is not to say they can't get together for surveys either inside or outside that time frame, if they choose. Moreover, to the extent that the mounting of the survey effort within six months has been a burden on money and resources, especially for smaller broadcasters, the continuous ascertainment procedure should at least spread that burden over time, and may to some extent diminish the need for joint ascertainment—even though that method remains acceptable. (See paragraph 41, infra).

[5] This Inquiry and its resolution cover only applications for commercial broadcast licenses. A Notice of Inquiry and Notice of Proposed Rulemaking on ascertainment of community problems by non-commercial educational broadcast facilities (Docket No. 19816) was released on September 11, 1973, (42 FCC 2d 690) and remains under consideration by the Commission.

Are Consultations With Community Leaders and Members of the Public, in the Manner Provided by the Primer, Helpful to the Station and to the Public Which the Station is Licensed To Serve?

24. On the record before us, the answers to this section [II(b)(2)] of the Inquiry are mixed. Even strong proponents of the existing Primer are not completely satisfied with it. The United Church of Christ (UCC), for example, believes that a community leader interview must consist of more than "a casual question at a chance encounter between a station employee and the person consulted," which UCC claims does occur under the present procedures. BEST suggests that "more basic ascertainment data should be made available to the public," particularly as regards "lists of problems and needs the broadcaster claims to have formulated" from his surveys. At the other extreme the National Association of FM Broadcasters (NAFMB), while arguing that present ascertainment requirements "either should be deleted in their entirety or, at least, substantially modified," nevertheless submitted in reply comments a survey of its membership indicating that nearly 20 percent of those answering the survey "relied on formal ascertainment" in connection with renewal to discover and meet community problems.

25. We find unacceptable as a rationale for regulatory change the declarations that Primer-style consultations are "hogwash" and a "complete waste of time," on the alleged ground that "not once have we learned anything about our community that we didn't already know."[*] At the same time, we can respond usefully, we believe, to comments from broadcasters that the currently rather formal, relatively detailed ascertainment procedure of the Primer is not only more burdensome than it need be—especially to smaller stations—but also may be counter-productive to the extent that it causes community-leader and other interviewees to become, as Station KRSA of Salinas put it, "frankly tired of talking to us." Viewed against the mixed record of comments both supporting and attacking Primer methods of community consultation, the modifications we outline below strike something of a middle course perhaps summed up by this quote from the comments of the South Carolina Broadcasters Association:

> Consultations with community leaders and members of the public have proven invaluable to station management in their efforts to ascertain community needs and problems, but not necessarily "in the manner provided by the Primer." We believe that each station must devise its own method for maintaining continuing and meaningful contact at all community levels.

While we believe it important—not only for the public but for the broadcast licensee itself—that the FCC continue to provide some common framework for ascertainment, we are suggesting that the public interest actually will be advanced rather than set back by more flexible procedures which, because they are "continuous" rather than fixed in time, can be directed more to the substance and results of ascertainment than to its form and method.

26. A number of comments on this record, as well as our own experience of four years with the present Primer, persuade us that for renewal applicants, one unnecessary exaltation of form over substance may be the so-called "compositional study" discussed in Questions 4, 9 and 10 of the 1971 ascertainment guidelines. In theory and in form, the compositional study—containing both structural/institutional and demographic data on a community—is meant to provide a first order of data from which is derived both the representative selection of community leaders and the population yardsticks against which general public surveys may be measured. In practical effect, Question 10 of the 1971 Primer appears to have given most renewal applicants filing since that year the bulk of what they choose to submit about the socioeconomic and institutional structures of their communities. They are able to appropriate Question 10's list of such elements as "government, education, religion, agriculture, business, labor" and so on simply because these features are characteristic of most areas of human habitation. Similarly, and again in the words of the Primer, the gathering of demographic data appears not so much an independent study as the extracting of "minority, racial or ethnic" breakdowns of population from publications of the U.S. Census Bureau.

27. Upon reflection, it strikes us that the requirement of a compositional study was intended not so much to make competent sociologists out of busy broadcasters as it was to add weight to the warning of Primer Question 5 that no applicant could "rely upon long-time residency in, or familiarity with, the area to be served" as a substitute for ascertainment. Now that this point has been made beyond a peradventure, we feel it is time—at least for renewal purposes—to stop expecting a "study" when what we really seek is the relatively uncomplicated identification of typical community institutions and elements, including simple demographic characteristics. We propose to retain these two features in the form of a list of common socioeconomic and other characteristics to be used for leader consultations (Appendix C) and in the required compilation of certain demographic data (Appendix A) which should prove useful not only to ascertainment of both leaders and citizens but also to licensee evaluation and improvement of equal employment opportunity programs. Specifically, the list of common socioeconomic elements includes: government, business, labor, agriculture, education, professions, charities, civic organizations, public health and safety, recreation, environment, student and youth organizations, associations of and for the elderly, religion, ethnic groups, minority representation, women's organizations, the military, culture and consumer services. As noted below, this list may be added to, or subtracted from, as the licensee may deem appropriate for his community. The demographic data consists of population of the community of license and station service area, broken down as to: male and female, youth (17 and under, 18 and above), minorities and elderly (65 and above). Also asked for is a brief narrative statement of the techniques and sources for the general public survey (see Paragraph 59, infra), which may include U.S. Census and similarly reliable statistics. To the extent that these techniques and sources also have a bearing on the design of the community leader consultations—e.g., interviews with representatives of such population elements as minority and ethnic groups, youth, elderly, etc.—the licensee could cover this in the narrative statement.

28. Although the matter of the compositional study was not expressly set out for comment in the current Inquiry, we note that the response of the Federal Communications Bar Association suggests a course such as we adopt here. We are also aware of the comment from Black Efforts for Soul in Television (BEST) "that the trouble with ascertainment is not with the Primer, but with the licensees themselves * * *," and that this sort of criticism might be applied to most licensees' compositional studies. Our recommended answer is to reduce the compositional information requested of the licensee—either for filing with the Commission or retention in station public files—to that directly supportive of community leader and public interviewing, as outlined in the present Primer. To ask anything further would be superfluous.

29. Questions II(b)(3) through II(b)-(6) of the Inquiry focus chiefly on licensee consultations with community leaders. The discussion below takes up this aspect of the survey process first, then moves into an analysis of the general public survey. The emphasis in both these sections is upon certain modifications in the actual execution of these two types of ascertainment. A third section discusses changes in the documentation and reporting of both community leader and general public surveys.

*Community leader consultations*

30. For the reasons indicated in Paragraph 27, supra, we seek to replace the present Primer requirement of a separate compositional study of the city of license with (a) a list of institutional and structural elements which, we believe, are common to most if not all communities; and (b) a compilation of certain demographic information useful to the evaluation not only of the community leader consultations but also the general public survey. The list of community elements, of course, may be augmented by the licensee to take account of—in the words of the current Primer—"any other factors or activities that

[*] For a contrary view, see the discussion of studies reported by UCLA and Citizens United for Better Broadcasting, at Paragraphs 49–50, *infra*.

make (its) particular community distinctive." (Question 9) Conversely, a licensee would be permitted to show that his community lacks one or more of the elements of the typical list provided.

31. We intend that if the licensee consults with one or more leaders in each of these elemental categories annually and is able to certify to that effect on its renewal application, this will create a presumption of the adequacy of this part of the community ascertainment, rebuttable only by a clear and convincing showing to the contrary. If made in the context of a complaint, petition to deny or competing application, such a showing must establish a substantial and material question of fact in order to warrant our further administrative inquiry or designation of the issue for hearing.

*Number of leaders.* Suggestions that the Commission establish minimum numbers of consultations that would virtually assure compliance have been made by both proponents and opponents of the current Primer. Action for a Better Community submitted a formula which, while designed for the general public survey, could be extended by analogy to community leader consultations. It viewed the number of interviews as a direct function of population of the licensee's service area and an inverse function of the number of other stations serving that area. McKenna & Wilkinson, on behalf of several radio clients, suggested minimum numbers of leader interviews based on population and ranging from 175 consultations in areas of one million or more people to 15 consultations in areas of less than 10,000. The Federal Communications Bar Association (FCBA) proposed that minimum numbers of interviews with "minority" leaders be keyed to the proportion of that minority in the overall population, but that with respect to the non-demographic structural elements (e.g., professions, labor, etc.) the Commission:

> [S]hould simply insist all of those categories be represented in the survey or an explanation be provided as to why the omission of one or more categories is appropriate.

32. Like BEST, "we are wary of fixed formulas for determining the number of spokesmen to be consulted." We are attracted to the proposal from Storer Broadcasting that:

> The Commission would provide a great service * * * by publicly disavowing the "numbers" game which has led to excesses in current surveys. It could do this by adopting guidelines specifying certain community elements which should be consulted during the license period, and by announcing that coverage of the entire spectrum will constitute prima facie compliance without regard to total numbers.

We believe that one or more community leaders in each of the listed categories present in the service area should be contacted annually rather than triennially, and to this extent we depart from the Storer suggestion above. This does not mean, necessarily, that three consultations with one or more leaders in a given category (i.e., one consulation per year) would suffice to withstand any inquiry or challenge. The test remains representativeness of the community sought to be ascertained. While quantitative factors such as population, and qualitative considerations such as the "importance" or "influence" of an element or its leaders, all are germane to the idea of representativeness, we refuse to infringe upon either the discretion of the licensee or the freedom of the licensee's critics by establishing acceptable minimum numbers of community leader consultations.

*Level of consultation.* Question II(b)(3) of the Inquiry specifically asks whether community leader consultations should continue to be conducted "by principals and management-level employees only," as in the current Primer, "or by other employees as well," or even by "non-employees." To take the latter category of non-employees first, relatively few respondents were willing to consider total fulfillment of leader consultations by outside interviewers, and then only "if they are professional." (e.g., KGMI, Bellingham, Washington) The majority of the comments, from broadcasters and non-broadcasters alike, indicated that station employees are the appropriate participants in the leader survey process. Several respondents, however, recognized a value in non-employee interviews used to supplement or—as Station KFJZ of Fort Worth put it—"substantiate" findings. We agree that leader consultations are best conducted by individuals who have the identifiability and accountability of a permanent employment relationship with the licensee, although purely supplementary interviews by non-employees are permissible.

33. Comments were received on both sides of the choice between management-level and "other" employees. A number of broadcasters favored the restrictions of the present Primer, usually on the ground that the very directness of the contact between the station's decision-makers and the interviewed community leaders enhanced the possibilities for truly responsive programming. On the other hand, many licensees argued that (a) communication between station decision-makers and community leaders need not be attenuated just because other employees act as intermediaries; (b) frequently, certain non-managerial employees are well suited by their training, skills and daily patterns of outside contact to conduct leader consultations; and (c) to permit the licensee's principals and managers to delegate interview authority, so long as they do not shun the ultimate responsibility for ascertainment, is simply consistent with the traditional discretion of the licensee to conduct his business as he deems best fitted to the public interest.

34. As noted earlier, the 1960 Programming Policy Statement views ascertainment as the "principal ingredient" in the execution of the licensee's obligation to serve the public interest. Under such a view, which we here reaffirm, it is difficult to imagine the licensee's principals and/or managers being permitted to take anything less than a substantial interest in the ascertainment process. We think it justifiable that where these individuals are in some sense new to a community—as in the case of applicants for a prospective facility, or assignees of an existing facility—their interest ought to be accounted for by direct participation in surveying leaders of the community in question. Where the facility is not new but established, where its managers have become to some degree known and acclimated, and where the facility seeks renewal, we believe a somewhat less restrictive approach to leader consultation can be taken.

35. We are inclined to agree with the comment of Action for a Better Community that even in a renewal ascertainment "licensee owners and managers should be required to do at least some of the interviewing." We also are attracted to the view of the Rocky Mountain Broadcasters Association (RMBA) that: "All employees could make consultation with community leaders providing that they report directly to principals and management upon completion of such consultations." In fact, where interviewers other than principals or management-level employees are involved in interviewing—an involvement which we here permit—we expect that their activity will not only be reported to, but be carried on under the supervision of, a principal or manager of the licensee. In this connection, we believe that the "Suggested Leader Contact Form" (Appendix D) should prove useful both to the licensee and to those monitoring the conduct or results of his ascertainment.

36. The matter of how many community leaders should be contacted by management, and how many by other employees of the stations should, we believe, be resolved by balancing two basic interests. First, it is important that community leaders have some access to the people at the top, the decision-making personnel of a station. These are ultimately the people upon whom the impressions must be registered, and this may, perhaps, be more effectively accomplished if they are directly involved in the face-to-face interviewing. Similarly, there is, we believe, some need for the upper-level people at a station to get out and talk with the leaders of the community, to further their involvement in it even beyond the routine daily contacts which so many of the broadcasters' comments mentioned. See e.g., comments of Station KWPM, West Plains, Missouri. The second consideration is that the Commission is interested in expanding the range of possible contacts, and an effective way of doing so is offered by KRSA, Salina, Kansas: "By expanding our source of comments we can't help but do a better job." On the other hand, the frequent value of lower-level contacts is suggested by KLTF, Little Falls, Minnesota: "Many times staff members are able to elicit information from community leaders and are received with greater candor than is accorded management or ownership." On balance, both these considerations appear valid. We, therefore, are proposing that at least

50 percent of the leader interviews during the license term be done by principals and management-level employees, with the balance permitted to non-managerial employees if the station so chooses. In order to assure that these managerial contacts are distributed over each of the elements of the community leader checklist (Appendix C), we are asking that the totality of leader interviews throughout the license term show that one or more of the interviews in each element was conducted by a principal or manager.

37. It is well to note that even the present Primer's resolution of the question in favor of solely principal and management-level interviewers was recognized not as an eternal verity but as a matter of "balancing" different considerations. 27 FCC 2d at 664, 36 FR at 4097. The Primer's discussion in 1971 observed that "principals or management-level personnel may not be as expert in conducting consultations as some lower-level members of their staffs." In view of this recognition—and in view of the repeated urgings from smaller broadcasters, especially, that we permit them to make more effective use of their limited resources—we suggest striking the balance differently for renewal applicants than was done in the 1971 Primer. By easing the restriction as to employee interviews of community leaders, we would permit the utilization of each wide-ranging and conversationally-skilled individuals as salesmen, news reporters and on-air program hosts. At the same time, we are recommending that their consultative activities be properly supervised at the management level.

*Format of leader consultations.* Questions II(b) (4) through (6) of the Inquiry go to the advisability of certain relaxations in the setting and method—the format, it might be termed—of community leader interviews. To the extent that subquestion (4) concerns use of non-employees to conduct community leader consultations, we believe we have resolved the issue adequately above.

As a matter of policy, we are not permitting fulfillment by outside sources of the leader ascertainment by any single licensee. Accordingly, it follows that such non-employee interviewing "for all stations in the community collectively" similarly is disallowed.

38. Question II(b)(5) of the Inquiry asks whether community leader consultations ought to be allowed to take place in "group," on-the-air ("broadcast programming") and "Town Hall" settings. The comments received suggest that first, and more fundamentally, we must address ourselves to the degree to which leader interviews should be formally pre-arranged and conducted with full awareness by all parties that an ascertainment, per se, is taking place. On this record, a substantial number of comments call for some reduction in what the writers perceive as an undue formality in the present requirements. These respondents wish to make use of—and would like to receive credit for—the myriad of less formal contacts and encounters daily between licensee's representatives and community leaders. The relaxation regarding non-management interviews, discussed at Paragraph 36 above, would seem to lead in this direction. On the other hand, we cannot dismiss lightly the comment of the United Church of Christ:

> We believe that an adequate consultation requires a face to face meeting expressly prearranged for the purpose of exploring community needs. We believe that a more meaningful dialogue will result if the person interviewed is advised of the purpose of the interview and the nature of a broadcaster's responsibilities in connection with it.

39. On the surface, there is something appealing about the UCC's idea that a deeper exploration, a "more meaningful dialogue," will result from such formalities as prior appointment and full notice. On the other hand, the record in this proceeding is rife with comments—particularly from communities with multiple broadcast services—that community leaders are growing weary of near-simultaneous requests for individual appointments by large numbers of licensees. In fact, the group interview to be discussed below arose as one means of dealing with such frustrations. Moreover, there is some indication, in comments like the following, that interviewees may tend to "freeze up" in a format that tends toward the self-conscious:

> [W]e have to just about put words in their mouth to get some expression of various community problems. (WPAY, Marion, South Carolina)

40. In sum, we have no quarrel with UCC's feelings in this matter, but we doubt that they are so universally valid as to require the suggested modifications. Face-to-face interviewing should remain the staple of the community leader ascertainment, but the formality of the process is likely to depend on circumstances the Commission cannot predict and has no desire to control. Nor can it be said with certainty what effect the formality of the setting has on the fruitfulness of an interview. The realities of politics and power may dictate, for example, that a relatively small station in a large, multi-station market will not have as ready access to a city mayor as a larger competing facility would have. Given these hypothetical circumstances, it would be ironic for that smaller station's sole newsman to miss the opportunity of an ascertainment interview with the mayor—through a chance encounter with the dignitary—just because the consultation could not be prearranged nor the interviewee put on notice as to the full purpose of the consultation. In fact, even if the dialogue between reporter and dignitary were entirely devoted to "news" at the time, we see no reason why the same encounter could not generate a "problem, need or interest" in some other context. As one respondent put it, news can raise problems and problems can be news.[7] We continue to recognize, nonetheless, an obligation upon each licensee to dig out problems that may not represent news to everyone—problems that have not really reached the threshold of public consciousness.[8]

41. These considerations shape our approach to the three parts of Inquiry Question II(b)(5). Pragmatically speaking, we see no reason to restrict the present Primer's flexibility regarding group consultations. At the same time, we continue to believe that the joint consultation must allow what amounts to a multiplicity of one-on-one dialogues. As we said in a footnote to this question in the Inquiry, citing Southern California Broadcasters Association 30 FCC 2d 705 (1971) and Metro Portland Broadcast Committee 31 FCC 2d 148 (1971):

> Each individual community leader must be given an opportunity to freely present his opinion of community problems; each broadcaster present must have an opportunity to question each leader; and the joint meetings should include community leaders who are [on] the same or equal plane of interest and responsibility.

In affirming this allowance of joint leader consultations we are cognizant of the criticism expressed in some of the comments, to the effect that group interviews often are not as productive as individual sessions and ought not be permitted to account for the entirety of the community leader ascertainment. We suggest that, with the new flexibility given the renewal applicant by this document, the licensee would be unwise to open himself to charges of abuse by employing only one of the many formats available for leader consultations. At the same time, we would hope that the new continuity of ascertainment throughout the license term—as well as the aforementioned flexibility—would

---

[7] We would caution here that not every news interview or question is "designed to elicit sufficient information" about a problem (Question 19, Primer) so as to qualify as an ascertainment contact. A reporter's questions frequently are highly structured, even "closed-ended," seeking not the existence of a problem but a newsmaker's reaction to a problem or event. By contrast, an ascertainment question ordinarily should be "open" enough to assure that the response is not dictated by the form of the inquiry.

[8] We do not believe this approach to be inconsistent with the present Primer's answer to Question 19, although to the extent there is some difference in emphasis, we shall explain ourselves further. We take the Primer's disfavor of "a brief or chance encounter" to be, in the context of Question 19, chiefly a warning to the licensee who tries to claim that he went through the motions of ascertainment but obtained little or no information from his interviewees. To the extent that the renewal applicant—by then, established in his community—can make productive use of information acquired in a brief or chance encounter, we encourage him to document and evaluate it as a part of his ascertainment. The Primer's concern that a licensee may be misled by the expression of "programming preferences" instead of real problems, or by the couching of problems "in terms of exposure or publicity for [a] particular group" is simply not so crucial for the renewal applicant, who will have been a part of the community long enough to properly distinguish and evaluate such responses.

work to make joint consultations less necessary than they may have been over the past four years, when the six months pre-filing requirement made it difficult to spread out the costs and burdens of community surveys except by such techniques as group interviews.

42. With respect to the use of broadcast programming as a means of ascertainment, many of the comments both pro and con seemed to imagine that we might make on-air consultations an exclusive vehicle. One smaller Florida broadcaster, for example, replied that "this method, in our opinion, would accomplish exactly the same end as making a costly and time consuming ascertainment survey * * *" The Community Coalition for Media Change (CCMC) contended, by contrast, that "ascertainment by broadcast programming would not be a valid way to reach the total community * * *" Media Statistics, apparently having in mind broadcast announcements inviting comments on community problems, warned of "extreme response bias," while WCVB–TV of Boston, seemingly still thinking of ascertainment within a fixed period of time, commented that to ascertain by programming would be a "cart-before-the-horse situation."

43. Recognizing a certain validity in all of these responses, we tend to agree with the National Broadcasting Company (NBC), on the one hand, that "certainly the licensee should not be forced to ignore"—and, indeed, should be given ascertainment credit for—"a problem revealed in his own programming." On the other hand, we suspect that Station WTLV of Jacksonville is right when it suggests: "Leaders could not be expected to speak frankly at all times if their interviews were broadcast." For this reason, and for the reason that leader interviewees ought not be confined to those who would make good or provocative on-air guests or commentators, we expect that licensees will not over-rely on ascertainment via programming. As for WCVB–TV's cart-before-horse criticism, that largely disappears in the face of our encouragement for continuous ascertainment by renewal applicants. Naturally, a broadcast ascertainment should be credited forward, toward future programming, not backward in some belated match-up with a past program. Under a continuous procedure, including the annual listings of problems discovered and illustrative programs designed to treat them, there is always a way to make use of new ascertainment information.

44. The "Town Hall" sub-question posed by the inquiry was answered by many respondents in relation to surveys of the general public, and their comments are analyzed under that heading below. To the extent it was applied to community leader consultations, not even those favoring the technique seemed to believe it could satisfy the entire obligation. Among the difficulties believed to arise from the sheer size of such meetings were domination by the more forceful interviewers or interviewees; inhibiting effects of the size of the audience; and possible attendance bias toward splinter groups or special interests not particularly representative of community leadership or the general public.

45. In our judgment, the "Town Hall" concept as applied to leader consultations becomes, for the conscientious licensee, simply a question of how large he can permit a "group" interview (paragraph 41) to become and still meet the guidelines set out in our 1971 letter to the Southern California Broadcasters, supra. Even where the licensee is not sharing interview time with other licensees, but instead is the sole host or sponsor of a large event, he must take care to see that any interviews for which credit is sought provided at least a reasonable opportunity for dialogue with each leader-guest. Most "community leader luncheons," which some licensees use as one means of consultation, apparently are small enough to enable genuine consultation between guests and qualified members of the licensee's staff. It is debatable whether a "Town Hall" full of leaders could be so well organized.

46. *Telephone interviews.* Question II (b)(6) of the Inquiry asks whether telephone consultations with community leaders should continue to be permitted. A strong majority of comments answered in the affirmative, for reasons ranging from convenience and efficiency—and occasional necessity—to the declaration that more interesting interviews sometimes result than in face-to-face talks. Most of these comments, however, in keeping with the question's reference to our current practice, stated that the use of telephone should be secondary or supplemental rather than exclusive, primary or basic. The respondents opposing telephone interviews said that the medium was not personal enough to produce adequate dialogue; that "fear * * * of unknown voices" would be inhibiting; and that use of the telephone led to a "bias against minorities," apparently on the assumption that many such individuals would not be able to afford telephones.

47. As is well known, the Commission has construed the silence of the present Primer to allow telephone interviewing of community leaders. Recently, we addressed ourselves to a question raised by a broadcast organization whether "in view of the current energy crisis, the Primer permits telephone interviews with community leaders outside the city of license and, if so, what percentage of those interviews may be conducted by telephone." Southern California Broadcasters Association, 47 FCC 2d 519 (1974). There we expressed ourselves as reluctant, in view of the instant Inquiry, to "establish a rule of thumb as to the permissible percentage of ascertainment interviews which may be conducted by telephone * * *" We added that a licensee employing this medium ought to document its results through "contemporaneous notes" or follow-up letters, and be prepared to demonstrate that the interview "resulted in a meaningful dialogue." Id.

48. On the basis of the strong majority favoring continued use of the telephone, going beyond the question of distance of the interviewee from the city of license, we are inclined not only to continue to permit the practice but—in the spirit of the new flexibility accorded the renewal applicant—to consider other rationales in a given case. However, as in other areas in increased ascertainment flexibility, we caution against the abuse of over-reliance on any single medium such as the telephone when such a variety of interview formats is permitted the renewal applicant.

*General public surveys*

49. Although few of the instant proceeding's questions referred directly to ascertainment of the general public in and around the community of license, many useful comments on the subject were received. In reply to Question II-(b)(2) on the general value of Primer-style consultations with both leaders and citizens, the Communications Law Program at the UCLA Law School reported results of a study involving six VHF and two UHF television stations in the Los Angeles area. Two students in the program interviewed station personnel "responsible for implementation of the Primer's requirements," utilizing "over 50 open and closed-end questions." Among their conclusions:

> While a majority of the station personnel felt that community leader surveys are more valuable, some stations felt that the general public survey was more useful, and two stations felt they were both equally important * * *
>
> All the interviewees said that each type of survey has a special function, and that important information might easily be lost if one relied exclusively on only one kind of survey.

50. A Lansing organization, Citizens United for Better Broadcasting, reported on a Michigan State University study of ascertainment which compared perceptions of community problems and needs among broadcast station personnel, community leaders and members of the general public in the areas served by two facilities: WZZM–TV of Grand Rapids, Michigan, and WSON Radio of Henderson, Kentucky. Besides concluding that perceptions differed markedly in numbers as well as subject matter of significant problems identified, the study noted particularly that variations between concerns identified by leaders and those identified by public interviewees might bear some correlation to community size.

51. On the other hand, both American Broadcasting Company and Storer Broadcasting Company—while supporting retention of a modified leader ascertainment—urged abolition of the general public surveys. Storer was particularly emphatic on this point:

> Experience shows that it [public survey] has chiefly benefited the survey salesmen and the renewal attackers, and that the costs are far out of proportion to usefulness * * * gen-

eral public surveys tend to elicit problems which are already well known and publicized * * *

Tending to agree with the latter point, the FCBA suggested that public surveys "do not often unearth community problems not mentioned by leaders." The bar association saw a value, however, where in larger markets "the general public will sometimes place a somewhat different priority on various problems than the leadership group." The FCBA concluded that in markets of 50,000 or more a public survey "might be kept separate from the leader survey," but "in very small markets * * * a separate survey serves no useful purpose and should not be required."

52. On the record before us, we cannot conclude that public surveys add nothing or little of value to the licensee's ascertainment. This is not to say that we find the studies reported by UCLA and CUBB to be determinative, in any final sense, of the value of interviewing citizens concerning community problems. Rather, in the absence of a clear demonstration that public surveying is unwarranted, we prefer to stick fairly close to the status quo of the present Primer. That is, we would retain the requirement that the licensee survey a random sample of the general public in his community of license.

53. In keeping with our proposed elimination of the fixed prefiling period within which renewal ascertainments previously have been conducted, we are permitting the licensee to survey the general public at any time of his choosing within the license period. We have considered, but would reject, the idea of accomplishing for this public interview a continuity similar to that achieved for the community leader consultations. Without intending to hold ourselves out as statisticians, we are concerned that requiring public surveys to be distributed throughout the license period could result in interviews with relatively small samples of the general populace at any given time. This development, in turn, could lead to challenges of the statistical reliability of the continuous surveying, insofar as it purported to reflect public sentiment at any given time. While the Commission has never demanded, even under the 1971 Primer, proof of a public survey's scientific validity—but instead has accepted rough demonstrations of randomness—we see no reason to risk confusion and uncertainty when a fixed-period public survey would avoid these potential difficulties. Thus we are not requiring that the public survey performed for "record" purposes in connection with the renewal ascertainment be continuous throughout the license term.[9] Instead, we have confidence that such recent Commission actions as the Report and Order in Docket 19153, 38 FR 28762 (1973), setting forth new means and encouragement for local contacts and dialogue between the licensee and his public, will provide a supplemental, non-record continuity to the scheme of ascertaining the general populace. Similarly useful in this supplemental sense would be the "group" interview, on-air (broadcast) and "Town Hall" formats discussed above (paragraphs 41–45). Although mentioned there in the context of community leader consultations, there is no reason why such methods—although usually non-random—could not be applied supplementarily to ascertainment of the general public.

54. To conclude this consideration of public surveying for renewal purposes, we find the record in this proceeding to date supportive of the reasoning of the current Primer, which permits public interviews to be conducted by non-employees of the licensee if professionally performed under the licensee's general supervision. We also would affirm the general usefulness of the telephone in random surveying—as is currently permitted—and further recognize its value in any supplementary, non-random public consultations which the licensee might wish to perform. Finally, we continue to believe in the validity of preprinted questionnaires for surveys of the general populace, as discussed in Question 17 of the 1971 Primer.[10]

*Documentation*

55. Currently, reporting of "Ascertainment of Community Needs" is covered by Part I of sections IV–A (radio) and IV–B (television) of the present Application for Renewal of Broadcast License (Form 303). It requires a minimum of three exhibits from the radio applicant and four from the TV applicant. One regional broadcast group, commenting on the apparent "one-upsmanship" involved in the size of these exhibits, called for the Commission to set a page limit on them, claiming this would

> [E]liminate possible unnecessary material from being included on the renewal and therefore wasting the Commission's time, and it would stop the mad rush by broadcasters to have a larger and better documented filing than the station next door * * * [A]ny other information the broadcaster feels is important and might be useful in a future hearing could be dated and placed in the station's public file.

While we have no objection to better documentation, we must agree—and have so stated to Congressional committees investigating agency and industry burdens of paperwork—that the volume of paper generated by government regulations, and the consumption of time and resources represented on the paper, must constantly be monitored to see if it bears rational relationship to the public mission it is supposed to serve.

56. In fact, it is well to remember that the Notice of Inquiry in the instant proceeding grew out of the work and the recommendations of the Commission's task force on broadcast re-regulation, a continuing body which has not ceased its efforts to assure that every one of the Commission's rules, regulations and procedures—and the paperwork associated with them—remains fully justified as a service to the public interest, particularly in light of changing technology. Although not expressly stated in the questions of the Inquiry, the call for comments on whether differences in broadcast station and market size warranted variations in our ascertainment requirements implied our strongly felt concern for the regulatory burdens imposed upon the small (and even the large) broadcaster. As indicated elsewhere in this report and order, it appears from many of the comments received that our concern was well placed.

We have undertaken to examine, in the light of this record and of our four years' experience with the Primer, whether some relaxation of restrictions and reduction of sheer detail might draw away some of the allegedly overweening attention now devoted to the methodology of ascertainment, in order to place the focus where it really belongs, especially for the renewal applicant: upon the licensee's obligations to discover and fulfill the problems and needs of his community. We think such an approach is inherently faithful to the 1960 Programming Policy Statement, supra, from which recent ascertainment philosophy springs.

57. The documentation we suggest in support of the ascertainment revisions here proposed for non-exempt renewal applicants (see paragraph 67, infra) reduces the number of exhibits required for filing with the Commission to two. Moreover, since each exhibit ordinarily would be composed entirely of three checklists, it is not likely to become so voluminous as to require page limitations.[11] The first of these exhibits would contain annual checklists of community leaders contacted in each year of the current license term. (See Appendix C) Other documentation of community leader consultations usually would not have to be filed with the Commission but could simply be retained in the public file at the broadcast station. This locally deposited information, fully and timely accessible to the public, would include: name and address of the leader contacted; the group or organization or interest he or she represents, and any title or position held in this connection; the date, time and place of the contact; the name of the licensee representative carrying out the consultation (plus that representative's supervisor, if the representative is not a principal or manager); the problems, needs and interests identified by the consultation; and the date of review of the completed record of consultation by a principal or manager of the licensee. (See Appendix A for rule changes involved.) In this regard, the Commission is offering a sample community leader contact form, in partial

[9] This is not to say that a licensee who wishes to ascertain the public continuously could not do so, as long as he is satisfied with the sampling reliability of his methods.

[10] We note, however, that Question 17 cautions, with respect to community leaders, that questionnaires are a "useful guide * * * but cannot be used in lieu of personal consultations."

[11] Except as proposed in the new matter of § 1.526(a)(9), Appendix A.

response to the suggestion, e.g., of the American Broadcasting Company that we adopt "a standardized reporting technique." Our interest in facilitating the exercise of licensee discretion stops us short of imposing undue uniformity, but we offer the sample contact form for whatever assistance it may provide. (Appendix D)

58. The second set of three annual checklists proposed as an exhibit for the renewal application's ascertainment section involves new lists—requested of all licensees—of problems identified through community consultations and of illustrative programming offered to meet these problems. To the extent that this does represent some slight imposition upon the licensee, we feel it is justified in the light of our general endorsement of "continuous" ascertainment, and also in view of the wishes of some commentators, particularly public-interest groups, for more and better documentation by which to evaluate the licensee's ascertainment and programming performance during the course of the license term. The comment of BEST is pertinent here:

[I]t would seem to be sound regulatory policy for [the Commission] to require additional information collected by a broadcaster during ascertainment to be available in the station's public file to aid citizens groups in [policing broadcaster performance].

59. Respecting the documentation of the general public survey, the nonexempt licensee would be required to place in his station's public file—within 45 days of the completion of the survey—a brief narrative statement covering the techniques and results of the canvass. Similarly, in keeping with our decision to retain essential demographic information (see discussion, paragraph 27, supra), we are requiring the licensee to retain data on the population characteristics of his community of license. This information can be applied, of course, not only to the general public survey but also to the design of community leader consultations.

60. Revision of our renewal application forms to achieve the purposes set out here will be accomplished through another proceeding.[13] Briefly, we propose—as questions under a new section on "programming information"—to ask the applicant whether he has:

Placed in the station's public inspection file at the appropriate times the required documentation related to efforts to ascertain community problems, needs and interests, including demographic data;

Placed in the station's public inspection file at the appropriate times the annual lists of those problems, needs and interests which, in the applicant's judgment, warranted treatment by the station, as well as the typical and illustrative programming broadcast in response thereto.

The Community Leader Annual Checklists (Appendix C) would accompany the application in support of a "yes" answer to the first question, while the three yearly listings of problems and illustrative programming would document an affirmative response to the second question. If the applicant answers "no" to either query, the Commission would ask for explanation and further information. Naturally, if our examination of the ascertainment exhibits filed with the renewal application also discloses deficiencies or raises questions, we will not hesitate to pursue these with the licensee upon our own motion. One satisfactory explanation for not depositing all of the above-described documentation in the public inspection file would be the applicant's eligibility for the small-market exemption from most ascertainment record-keeping requirements, first mentioned at Note 3, supra, and referred to elsewhere above. We turn now to a discussion of that exemption.

61. *The "small-market" exemption.* More than a year prior to the issuance of the instant Notice of Inquiry, the Commission had established a task force on re-regulation of broadcasting, focusing particularly on radio in smaller markets. We alluded to that on-going study in opening the present Docket 19715, 40 FCC 2d at 380:

Over 600 comments have been filed in our re-regulation study. Many contend that various specific requirements of the ascertainment process are unnecessary, impractical, unduly burdensome and, thus, should be modified or deleted.

Accordingly, we asked for further comment—through the medium of this Notice—on how the size of a station's market and "other variables" might affect the licensee's discharge of its statutory obligation to serve the public interest, inviting suggestions as to how "small market" might be defined. We also specifically elicited views on whether such variables as market size called for varying ascertainment requirements.

62. Some comments opposing any such variation met the question directly and substantively, for example those of BEST:

Small-market radio and television stations may have fewer people to serve, but their program choices are far more important to their communities since they frequently are the only locally-based source of news and public affairs information * * * Thus, if anything (they) should bear the greatest burden of detailed ascertainment.

Further, small market broadcasters are not, due to the size of their communities, inherently or significantly more knowledgeable about their needs, problems and interests than are large market broadcasters * * * From our past experience, we know that no matter how active a broadcaster may believe that he is in the community, there are no guarantees that he will be exposed to all the significant views and thoughts regarding its welfare.

Action for a Better Community, based in Rochester, New York, attributed special significance to the views and thoughts of groups it believes to be "under-represented:"

The ascertainment process is of particular interest to minority groups, since both methods commonly used by broadcasters to gauge audience acceptance of programming decisions—advertiser sponsorship and ratings—tend to discriminate against minorities * * * Thus ascertainment surveys may be the only way Blacks have to overcome the under-representations of their actual interest in television and radio programming.

63. Other comments opposing variation in ascertainment requirements according to size of market pointed to the procedural confusions that might arise from an "ever-increasing number of unsatisfactory and complicated rules. Witness the current Primer and many questions arising therefrom." (KWKH Radio, Shreveport, La.) The National Association of Broadcasters struck the same theme:

Factors such as market size, staff size and programming significantly affect the role of the individual station in discharging its responsibility to serve the public interest, convenience and necessity. To take cognizance of dissimilar ascertainment requirements endemic to particular sub-groups of licensees, however, would necessitate multiple "Primers" * * * An increase in the number of guidelines would most likely harvest a corollary accretion in the struggle to comply with Commission ascertainment policies.

64. On the other hand, many licensees from relatively small communities spoke out vigorously against the essential redundancy and pointless ritual they experienced in making the rounds—for the FCC record—of leaders, citizens and problems already well known to them. Chester County Broadcasting (WCOJ) of Coatesville, Pennsylvania stated:

There is no necessity to visit countless officials under formalized procedures to hear a recitation of the problems in their areas of authority or expertise. Broadcasters are of necessity already familiar—often on a first-name basis—with local governmental, business, charitable, and minority group leaders.

Chesapeake Broadcasting (WASA-AM-FM) of Havre de Grace, Maryland added that:

By its very nature, it is obvious that small stations cannot afford the staff that large metropolitan area stations can and do have * * * Therefore, small stations who are conscious of this find a real solution in community involvement.

Radio Station KWPM, West Plains, Missouri, expanded on the theme of community knowledge through community involvement:

We continually work with these people on practically a daily basis in schools, service clubs, youth groups, churches, veterans groups, historical societies, etc., not just as broadcasters but as co-workers in the many projects that keep a small community alive. For us to schedule interviews with these people simply to have a record of such consultation for a renewal application is wasteful and expensive redundancy for them and for us.

Nor were all such comments from broadcasters, for example the statement of the National Organization for Women (NOW):

Ascertainment requirements should not vary according to whether a station is a radio or television station. Instead, they should be based upon the size of the market, the size of the station and that station's gross revenues. The present ascertainment requirements, if strictly interpreted and enforced, might be unduly burdensome to some

[13] Revision of FCC Form 303, Notice of Inquiry and Notice of Proposed Rulemaking, FCC 75-375, released April 11, 1975.

of the small radio and television broadcasting stations.

65. Despite their differences, comments on both sides of the question of varying ascertainment requirements agree on certain basic points. No one, for example, whatever the refinements of his position, is arguing for an end to ascertainment as such. The small-community broadcasters quoted at paragraph 64, supra, contend that they always have ascertained, and always will, in a very natural way that makes the 1971 Primer's formal guidelines, when applied to them, unnecessarily ritualistic and redundant. BEST expresses doubts that this organic, small-town process described by the broadcasters makes them "inherently or significantly more knowledgeable" than their large-market counterparts, and argues that Primer-style ascertainment still is needed to fill inevitable gaps of knowledge and to guard against a licensee's refusal to educate himself voluntarily. Another ground of agreement by respondents on both sides of the question concerns the complexity of any Primer-like guidelines. For the NAB, this inescapable complexity is so burdensome as to militate against the success of any effort to prescribe differing ascertainments for different-sized markets. Many small-market broadcasters, on the other hand, suggest that the way to remove complexity is simply to relieve them of the formal record-keeping of the 1971 Primer, giving them credit for continual engagement in a process which need not be reduced to writing.

66. Bearing in mind these common themes—keep the ascertainment obligation, but keep it as simple as possible—we propose to test the opposed views of, e.g., BEST and Station KWPM, as to the knowledgeability of broadcast licensees in smaller markets. We suggest that, on an experimental basis, stations in smaller communities should be exempt from any Commission oversight of their methods of ascertainment. We are firm in our belief that these stations must continue to ascertain community issues, but during the test period we propose that the FCC avoid any inquiry into the number of persons interviewed, the composition of the interview sample, or any other matter relating to how the licensee discerned which particular problems should be covered. These licensees would also be exempt from record keeping and reporting requirements concerning the ascertainment process.

67. We would continue the experimental partial exemption in effect long enough to test it throughout the country, namely for at least the three years it would take each licensee—under the present term—to come up for renewal at least once. The suggested exemption would not include the annual lists of up to 10 significant community problems, together with illustrative programming responsive to those problems, discussed at paragraph 58, supra, and proposed as an amendment to § 1.526(a)(9) of our rules. (See Appendix A) As noted, the obligation to deposit these lists annually in the station file, and to report the three together as an exhibit to the renewal application, would devolve upon all licensees, exempt as well as non-exempt. Exempt licensees would not be required, however, to maintain any of the other ascertainment-related records covered by proposed new §§ 1.526(a) (11) and (12) of the Commission's rules on public-file documentation, including the proposed annual Community Leader Checklist (Appendix C) data concerning community leader interviews (see the sample "Contact Sheet" at Appendix D), and information relating to the demographics of the community of license, and the design and results of the general public survey. Naturally, since exempt licensees would not be required to maintain such information in their public files, they would not be expected to file it with their renewal applications.

68. For the purpose of this test, we propose to define a small community of license as one with a population of 10,000 or less (as enumerated in the 1970 U.S. Census) and which is located outside all officially designated Standard Metropolitan Statistical Areas (SMSA's).[13] Our effort here is twofold: to create a large enough sample of "exempt" licensees to make the experiment meaningful, and yet to keep the size of the exempt community—as well as the nature of its environment such as to admit of a reasonable assumption that the broadcaster knows his town thoroughly. It is our tentative suggestion that communities outside all SMSA's have at least the general resemblance of non-metropolitan environments and that these are not "bedroom" suburbs where citizens might not be well informed on their particular portion of the larger community. Moreover, we believe the choice of "community of license" population to be not only justifiable but convenient. First, the broadcaster's chief obligation is to his community of license. Second, official city and county data is readily available from Census Bureau publications, while figures for broadcast service areas are not so easily obtained nor readily accepted. Finally, we understand from the Census Bureau that the process of defining and delimiting the present 275 or so SMSA's in the country is virtually complete, and that information in this regard soon will be readily available.

69. At its best, ascertainment constitutes an effort to dig beneath the surfaces of majority opinion and conventional wisdom to discover and deal with needs that might not otherwise be exposed. We expect all licensees to strive for that ideal, including those small market licensees who would be exempted from most reporting requirements under the experiment proposed herein. For the purpose of this experiment, we will accept as a given the hypothesis that the broadcaster in the smaller community knows his town thoroughly, not only its majorities but also its minority elements. The exempt licensee who fails, during this period of testing, to program for the latter—notably the racial minorities protected under the Civil Rights Acts of 1964 and 1972, as well as our own rules—weakens this hypothesis, to the point which may cause us to inquire further into his trusteeship of a scarce broadcast frequency. Columbus Broadcasting Coalition v. F.C.C. 505 F. 2d 320 (D.C. Cir. 1974). Chuck Stone v. F.C.C. 466 F. 2d 316 reh. den. 466 F. 2d 311 (D.C. Cir. 1972).

[13] We specifically invite comment on whether the 10,000 figure is an appropriate cut off. Our tentative count indicates that this standard would exempt approximately 1900 commercial radio stations and 14 commercial TV stations.

### Conclusions

70. This Further Notice has discussed, analyzed and endeavored to resolve in the public interest the multiple questions posed by the Notice of Inquiry in Docket 19715. Under Part I, we have considered the roles and functions of the radio and television media in discharging their statutory responsibilities for service to the public interest; and how the execution of those responsibilities might be affected by variations in station and market size, station format and numbers of outlets in a given market. We have suggested that television and radio differ in substantial and meaningful ways, but that these differences do not necessarily call for different standards of community ascertainment. On the other hand, such distinctions as station size and format may reasonably affect the way in which common ascertainment standards are met, as well as the manner in which programming responsive to ascertainment problems is designed and carried out.[14]

71. Under Part II, we have proposed to apply any modifications for renewal of commercial broadcast licenses, expressly holding open this Docket, 19715, for further consideration of such changes as may be warranted for other kinds of broadcast applications. We also adverted to the pendency of another Docket, 19816, in which ascertainment requirements for non-commercial educational broadcast facilities are under study.

72. We next have recommended that "continuous ascertainment" is not only preferable and feasible for renewal applicants, but actually is expected of them under the 1960 Programming Policy Statement. Therefore, we have advanced our views of how continuous ascertainment could be accomplished, documented and reported—specifically pointing out where modifications of the current Primer are necessary and/or desirable. We have set forth our reasons for replacing the licensee's initial compositional study of his community with a procedure by which the essential informational products of that study—a structual/institutional breakdown and a demographic profile of the community—may be obtained simply and effectively. This information is then applied to community

[14] We are seeking empirical data on the conduct of ascertainment in small markets through the experimental exemption discussed in paragraphs 67–69, supra, and set out for comment by Paragraph 77, infra.

leader consultations and to surveying of the general public in much the same fashion—albeit with greater flexibility—as laid out in the present Primer. Perhaps the principal modification of the 1971 document, as applied to renewal applicants, lies in the suggestion that up to 50 percent of community leader interviews may be conducted by non-principal, non-managerial employees of the broadcast licensee, so long as they are supervised by—and report timely and directly to—a principal or manager.

73. Finally, in dealing with the question of documenting and reporting renewal ascertainments under the modified procedures, we have attempted to strike a proper public-interest balance between the burdens repeatedly alleged on this record to inhere in the present Primer—particularly for the smaller broadcaster—and the benefits claimed to result from provision for more and better documentation at the local level of the licensee's efforts to ascertain and program for community problems and needs.

74. The recommendations we have made would require certain modifications in § 1.526 of our rules regarding records to be maintained locally for public inspection by applicants, permittees and licensees. (See Appendix A) Section (a) (9) would be revised to add for commercial radio broadcast facilities the requirement that annual listings of "what the licensee or permittee believes to have been significant problems and needs of the area served" be deposited by a date certain in the station's public files. The requirement already applies to commercial television facilities. Furthermore, new § 1.526(a) (11) and (12) would carry out our intent (see discussion, paragraphs 57–59, supra) that certain information concerning community leader consultations as well as the sources, methods and results of the general public surveys, also be timely deposited in the public files of every non-exempt station. Comment is requested on these rule modifications by paragraph 76, infra. As we noted earlier, the changes in the basic commercial license renewal application form necessary to implement the above modifications will be accomplished in another proceeding.[35]

75. With regard to the phasing in of these changes in ascertainment for renewal applicants, we propose that licensees be given approximately a year's notice between the date we release a final order on any changes in ascertainment for renewal applicants and the date they would be expected to file under the new procedures. By that time, we believe that circumstances, rules and forms will be in such readiness as to allow them to ascertain, document and report for renewal purposes under the modified procedures discussed in this Further Notice Order. For example, licensees with authorizations expiring in December of 1976 would have approximately one year before their filing deadlines (August of 1976) to perform a new-style, continuous ascertainment. Naturally, as we move beyond December 1, 1976, into a time when licensees filing thereafter will have had more than a year in which to implement the new procedures, the acknowledged difficulties and confusions of transition will diminish. On balance, we believe the benefits of the modified ascertainment for renewal applicants are sufficient to warrant their earliest possible implementation.

76. Based on the foregoing discussion, and pursuant to the authority contained in sections 4 (i) and (j) and 303, 307 and 403 of the Communications Act of 1934, as amended, comments are invited upon the matter discussed in this Further Notice. Particular emphasis should be placed on the following:

The proposed amendments of § 1.526 of the Commission's rules, as discussed herein and set forth at Appendix A, as well as the proposed checklist reproduced in Appendix C;

The proposed exemption from certain recordkeeping and filing requirements of community ascertainment, discussed at paragraph 61 et seq.,

Interested parties responding to this Further Notice of Inquiry and Notice of Proposed Rule Making may file comments at the Commission's headquarters, Washington, D.C., on or before June 30, 1975. Because of the lengthy record already established in this proceeding, and because of the refinement of the proposals herein made possible by that record, we are exercising our discretion to provide for the receipt of comments only, and not for reply comments. For these same reasons, we do not contemplate any extensions of time for comments beyond the date set out above. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs, and comments filed shall be furnished to the Commission. However, in an effort to obtain the widest possible response in this proceeding from licensees and members of the public, informal comments (without extra copies) will be accepted. Copies of all pleadings filed in this matter will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

Adopted: May 8, 1975.

Released: May 15, 1975.

FEDERAL COMMUNICATIONS COMMISSION,[36]

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

It is proposed to amend 47 CFR Part 1 as set forth below.[37]

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. In § 1.526(a), subparagraph (9) is revised and subparagraphs (11) and (12) are added as follows:

**§ 1.526 Records to be maintained locally for public inspection by applicants, permittees and licensees.**

* * * * *

(a) * * *

(9) Every year, on the anniversary date on which the station's renewal application would be due for filing with the Commission, each licensee or permittee of a commercial radio or television station shall place in its public inspection file a listing of no more than ten significant problems and needs of the area served by the station during the preceding twelve months. In relation to each problem or need cited, licensees and permittees shall indicate typical and illustrative programs or program series, excluding ordinary news inserts of breaking events, which were broadcast during the preceding twelve months in response to those problems and needs. Such a listing shall include the title of the program or program series, its source, type, brief description, time broadcast and duration. The third annual listing shall be placed in the station's public inspection file on the due date of the filing of the station's application for renewal of license. Provided, however, upon the filing of the station's application for renewal of license, the three annual problem-program listings shall be forwarded to the Commission as part of the application for renewal of license. The annual listings are not to exceed five pages, but may be supplemented at any time by additional material placed in the public inspection file and identified as a continuation of the information submitted to the Commission.

* * * * *

(11) Each licensee or permittee of a commercially operated radio or television station shall place in the station's public inspection file appropriate documentation relating to its efforts to interview a representative cross-section of community leaders to ascertain community problems and needs. Such documentation shall be placed in the station's public inspection file within forty-five days of the date of completion of each interview, and shall include: (i) the name, address, organization, and position or title of the community leader interviewed; (ii) the date, time and place of the interview; (iii) the name of the principal, management-level or other employee of the station conducting the interview; (iv) the problems and needs discussed during the interview; and (v) the date of review of the interview record by a principal or management-level employee of the station. Additionally, each year on the anniversary date on which the station's application for renewal would normally be filed with the Commission, each licensee and permittee shall place in the station's public inspection file a checklist indicating the number of community leaders interviewed during the preceding twelve

[35] Revision of FCC Form 303, supra.

[36] The concurring statement of Commissioner Hooks is filed as part of the original document.

[37] The proposed amendments were submitted with the original document as appendix A.

months representing: elements found on FCC Form; *Provided*, That, if a community lacks one of the enumerated institutions or elements, the licensee and permittee should so indicate by providing a brief explanation on its checklist. The third annual checklist shall be placed in the station's public inspection file on the due date of the filing of its application for renewal of license. Upon the filing of the application for renewal of license, however, the three annual checklists for the current license term shall be forwarded to the Commission as part of the application for renewal of license.

(12) Each licensee or permittee of a commercially operated radio and television station shall place in the station's public inspection file documentation relating to its efforts to consult with a generally random sample of members of the general public to ascertain community problems and needs. Such documentation shall consist of: (i) information relating to the total population of the station's service area, including the numbers and proportions of males and females; of minorities; of youth (17 and under, 18 and above); and the numbers and proportions of the elderly (65 and above); (ii) a narrative statement of the sources consulted and the methods followed in conducting the general public survey, including the number of people surveyed and the results thereof. Such documentation shall be placed in the public inspection file within 45 days of completion of the survey but in no event later than the due date for filing the station's application for renewal of license. Upon filing its application for renewal of license, each licensee and permittee must certify that the above-noted documentation has been placed in the station's public isnpection file.

* * * * *

2. The present "Notes" in § 1.526 relating to the engineering sections of certain applications would become "Note 1," to be followed by "Note 2," as below.

NOTE 2: Paragraphs (a)(11) and (a)(12) above shall not apply to commercial radio and television stations licensed to communities which: (1) have a population, according to the immediately preceding decennial U.S. Census, of 10,000 persons or less; and (2) are located outside all Standard Metropolitan Statistical Areas (SMSA's), as defined by the Federal Bureau of the Census.

APPENDIX B

PARTIES FILING COMMENTS AND REPLY COMMENTS IN DOCKET NO. 19715

Action for a Better Community, Inc.
Action for Children's Television
Alexandria Broadcasting Corporation (KXRA and KXRA-FM, Alexandria, Minnesota)
American Broadcasting Companies, Inc.
American Civil Liberties Union
American Contemporary Radio Network Affiliates Association
American FM Radio Network Affiliates Association
American Information Radio Network Affiliates Association
Argonaut Broadcasting Company (KFAX, San Francisco, California)
Black Efforts for Soul in Television
Blackstone Broadcasting Company (KTBB, Tyler, Texas)
Bonebrake and Company (KOCY, Oklahoma City, Oklahoma)
Boston Broadcasters, Inc. (WCVB-TV, Boston, Massachusetts)
Broadcast House Pacific (KNDI, Honolulu, Hawaii)
Capital Broadcasting Corp. (WKXL and WKXL-FM, Concord, New Hampshire)
CBS, Inc.
Chesapeake Broadcasting Corp. (WASA and WASA-FM, Harve de Grace, Maryland)
Chester County Broadcasting Company (WCOJ, Coatesville, Pennsylvania)
Citizens United for Better Broadcasting, Lansing, Michigan
Lauren A. Colby, Esquire, Washington, D.C.
Committee on Children's Television
Communications Investment Corp. and Gem State Broadcasting Corp.
Community Coalition for Media Change
Council on Children, Media and Merchandising
Crawford Broadcasting Company (WDJC-FM, Birmingham, Alabama, WDCX-FM, Buffalo, New York, WMUZ-FM, Detroit, Michigan, KELR, El Reno, Oklahoma, WYCA-FM, Hammond, Indiana, KFMK-FM, Houston, Texas, WDAC-FM, Lancaster, Pennylsvania, WWGM, Nashville, Tennessee, and WPEO, Peoria, Illinois)
Dixie Broadcasting, Inc.
Dodge City Broadcasting Co., Inc. (KGNO and KGNO-FM, Dodge City, Kansas)
Elkins Educational Research Foundation, Inc.
Emporium Broadcasting Company (WLEM, Emporium, Pennsylvania)
Federal Communications Bar Association (Special Committee on Reregulation of Radio) and the Communications Law Committee of the Administrative Law Section of the American Bar Association.
First Illinois Cable TV, Inc. (KPJZ and KWXI-FM, Fort Worth, Texas)
Fisher's Blend Station, Inc. (KOMO and KOMO-TV, Seattle, Washington)
Professor Joseph M. Foley, Ohio State University
Franklin Broadcasting Corp. (WYSR, Franklin, Virginia)
Milton Friedman, and (on behalf of WAIT, Chicago, Illinois) Harry Kalven, Jr., and Maurice Rosenfield.
General Electric Broadcasting Company, Inc.
Golden Strand Broadcasting Co. (WMYB and WMYB-FM, Myrtle Beach, South Carolina)
Haley, Bader and Potts, Washington, D.C.
Heart O'Wisconsin Broadcasters, Inc. (WISM, Madison, Wisconsin)
Independent Music Broadcasters, Inc. (WVCG and WYOR(FM), Coral Gables, Florida)
Indian River Broadcasting Company (WIRA and WOVV-FM, Lincolnton, North Carolina)
James Broadcasting Company (WJTN, Jamestown, New York, WDOE, Dunkirk, New York, WWYN, Erie, Pennsylvania, WVMT, Burlington, Vermont, and WSYB, Rutland, Vermont)
Jesup Broadcasting Corp. (WLOP and WIFO (FM), Jesup Georgia)
Joint Comments of the Evening News Association, Lee Enterprises, Inc., RKO General, Inc., Time-Life Broadcast, Inc., Universal Communications Corporation and WKY Television System, Inc.
Joint Comments of 31 Radio Licensees
Joint Comments of 10 Television Licensees
Joint Reply Comments of 38 Radio and Television Licensees
Mr. Ellwood P. Jones, Jr., Conshohocken, Pennsylvania
Juniper Broadcasting, Inc. (KGRL, Bend, Oregon, KACI, The Dalles, Oregon and KTIX, Pendleton, Oregon)
KAGO, Klamath Falls, Oregon
KAMC, Arlington, Texas
KERRY Radio, Inc. (KOOS, Coos Bay, Oregon.
Key Television, Inc. (KEYT(TV), Santa Barbara, California)
KFAB Broadcasting Company
KFKA, Greeley, Colorado
KFSC, Denver, Colorado
KFXD, Boise, Idaho
KFXM Broadcasting Company (KFXM, San Bernardino, California and KDUO(FM), Riverside, California)
KGMI, Inc. (KGMI and KISM(FM), Bellingham, Washington)
KHUB and KHUB-FM, Fremont, Nebraska
KOTE-FM, Lancaster, California
KPOK and KPOK-FM, Portland, Oregon
KREW, Sunnyside, Washington
KRNR, Roseburg, Oregon
KROX, Crookston, Minnesota
KSRV, Ontario, California
KSUB, Cedar City, Utah
KTRF Radio Corp. (KTRF, Thief River Falls, Minnesota)
KTTR and KZNN(FM), Rolla, Missouri
KUGN, Eugene, Oregon
KVOW, Riverton, Wyoming
KWKH, Shreveport, Louisiana
KWPM, West Plains, Missouri
KYOU and KGRE(fm), Greeley, Colorado
Lakeland FM Broadcasting, Inc. (WVFM, Lakeland, Florida)
Lincoln County Broadcasting Company, Inc. (WLON, Lincolnton, North Carolina)
Little Falls Broadcasting Company (KLTF, Little Falls, Minnesota)
Lunde Corporation (KLFM, Ames, Iowa)
May Broadcasting Company
McGraw-Hill Broadcasting Company, Inc. (KMGH-TV, Denver, Colorado, WRTV, Indianapolis, Indiana, KGTV, San Diego, California and KERO-TV, Bakersfield, California)
Media Statistics, Inc.
Menomonie Broadcasting Co. (WMNE and WDMW(FM), Menomonie, Wisconsin)
Metromedia, Inc.
Midland Broadcasters, Inc.
Mitchell Broadcasting, Inc. (KGRN, Grinnell, Iowa)
Nassau Broadcasting Company (WHWH, Princeton, New Jersey, WPST, Trenton, New Jersey, and WPSB, Bridgeport, Connecticut)
National Association of Broadcasters
National Association of FM Broadcasters
National Broadcasting Company, Inc.
National Organization for Women
Nebraska Broadcasters Association
960 Radio, Inc. (KLAD, Klamath Falls, Oregon)
North Carolina Association of Broadcasters
Northwest Radio and TV (KWNA, Winnemucca, Nevada)
Nutmeg Broadcasting Company (WILI, Willimantic, WINY, Putnam and WNTY, Southington, Connecticut)
Oregon Association of Broadcasters
Oregon Radio, Inc. (KSLM and KSLM-FM, Salem, Oregon)
Our Lady of the Snows Broadcasting Corporation (WMRY(FM), East St. Louis, Illinois)
Pacific FM Incorporated (KIOI(FM), San Francisco, California)
Pickens County Broadcasting Co. (WELP and WELP-FM, Easley, South Carolina)
Radio Athens, Inc. (WATH and WATH-FM, Athens, Ohio)
Radio WBAW, Inc. (WBAW and WBAW-FM, Barnwell, South Carolina)
Rio Broadcasting Company (KIRT, Mission, Texas and KQXX(FM), McAllen, Texas)
Rocky Mountain Broadcasters Association
Sarasota-Charlotte Broadcasting Corporation (WENG, Englewood, Florida)
Scotts Bluff Broadcasting Corp. (KNEB and KNEB-FM, Scottsbluff, Nebraska)
Sioux Empire Broadcasting Co. (KCHF and KCHF-FM, Sioux Falls, South Dakota)

South Central Broadcasting Corporation
Southern California Broadcasters Association
Southern Broadcasting Company
Spanish International Communications Corporation (KMEX–TV, Los Angeles, California, KFTV, Hanfornia, KWEX–TV, San Antonio, Texas, WLTV, Miami, Florida, and WXTV, Patterson, New Jersey)
Storer Broadcasting Company
Sundial Broadcasting Corp. (KIBE, Palo Alto, KDFC(FM), San Francisco, California
Suwannee Broadcasting Company (WNER, Live Oak, Florida)
Television 12 of Jacksonville, Inc. (WTLV, Jacksonville, Florida)
Texas Coast Broadcasters, Inc. (KNUZ and KQUE(FM), Houston, Texas)
Top O' Texas Broadcasting Company (KPDN, Pampa, Texas)
Trans World Broadcasting Corporation (WZAK(FM), Cleveland, Ohio)
Tri-City Broadcasting Company, Inc. (WTYC, Rock Hill, South Carolina)
Tri-State Broadcasting Co. (WTVB and WANG(FM), Coldwater, Michigan)
222 Corporation (WKQT and WCKW(FM), Garyville, Louisiana)
Office of Communication, United Church of Christ
United Communications, Inc. (KMMJ, Grand Island, Nebraska)
UCLA Communications Law Program
University of Illinois, Department of Radio and Television
WAKX, Duluth, Minnesota
Watchers Against Television Commercial Harassment
WAVI and WDAO(FM), Dayton, Ohio
WBEC, Inc. (WBEC and WQRB, Pittsfield, Massachusetts)
WBSC, Bennettsville, South Carolina
WCOA, Pensacola, Florida
WCRB, Waltham, Massachusetts
WCRW, Inc. (WCRW, Chicago, Illinois)
WELO, Tupelo, Mississippi
Westinghouse Broadcasting Company, Inc.
WIZZ and WIZZ–FM, Streator, Illinois
WKBK, Keene, New Hampshire
WMFM, Madison, Wisconsin
WMPA, Aberdeen, Mississippi
WNAG, Grenada, Mississippi
WPKO and WIBO–FM, Waverly, Ohio
WPLA, Plant City, Florida
WPRE, Prairie du Chien, Wisconsin
WREN, Topeka, Kansas
WROX, Clarksdale, Mississippi
WSEB and WSEB(FM), Sebring, Florida
WSOR–FM, Fort Myers, Florida
WSPR, Inc. (WSPR, Springfield, Massachusetts)
WYFI, Norfolk, Virginia

APPENDIX C—*Sample—community leader annual checklist*

| Institution/element | Number | Not applicable (explain briefly) |
|---|---|---|
| 1. Government (local, county, State and Federal) | | |
| 2. Business | | |
| 3. Labor | | |
| 4. Agriculture | | |
| 5. Education | | |
| 6. Professions | | |
| 7. Charities | | |
| 8. Civic, Neighborhood and Fraternal Organizations | | |
| 9. Public safety, health, and welfare | | |
| 10. Recreation | | |
| 11. Environment | | |
| 12. Organizations of and for youth and students | | |
| 13. Organizations of and for the elderly | | |
| 14. Religion | | |
| 15. Minority and ethnic groups | | |
| 16. Organizations of and for women | | |
| 17. Military | | |
| 18. Culture | | |
| 19. Consumer Services | | |
| While the following are not regarded as separate community elements for purposes of this survey, indicate the number of leaders interviewed in all elements above who are: | | |
| (a) Blacks | | |
| (b) Spanish-surnamed Americans | | |
| (c) American Indians | | |
| (d) Orientals | | |

APPENDIX D

SUGGESTED LEADER CONTACT FORM

Date: _____

Name and address of person contacted: _____

Organization(s) or group(s) represented by person contacted: _____

Date, time and place of contact: _____

Method of contact: _____

Problems, needs and interests identified by person contacted: _____

Name of interviewer: _____
Reviewed by _____
Position _____
Date _____

APPENDIX E

TABLE 1. STANDARD METROPOLITAN STATISTICAL AREAS

*Area code and title*

0040—Abilene, TX
Callahan County, Jones County, Taylor County.

0800—Akron, OH
Portage County, Summit County.

0120—Albany, GA
Dougherty County, Lee County.

0160—Albany-Schenectady-Troy, NY
Albany County, Montgomery County, Rensselaer County, Saratoga County, Schenectady County.

0200—Albuquerque, NM
Bernalillo County, Sandoval County.

0220—Alexandria, LA
Grant Parish, Rapides Parish.

0240—Allentown-Bethlehem-Easton, PA-NJ
Carbon County, PA, Lehigh County, PA, Northampton County, PA, Warren County, NJ

*Area code and title*

0280—Altoona, PA
Blair County.

0320—Amarillo, TX
Potter County, Randall County.

0360—Anaheim-Santa Ana-Garden Grove, CA
Orange County.

0380—Anchorage, AK
Anchorage Census Division.

0400—Anderson, IN
Madison County.

0440—Ann Arbor, MI
Washtenaw County.

*0450—Anniston, ALA
Calhoun County.

0460—Appleton-Oshkosh, WI
Calumet County, Outagamie County, Winnebago County.

0480—Asheville, NC
Buncombe County, Madison County.

0520—Atlanta, GA
Butts County, Cherokee County, Clayton County, Cobb County, De Kalb County, Douglas County, Fayette County, Forsyth County, Fulton County, Gwinnett County, Henry County, Newton County, Paulding County, Rockdale County, Walton County.

0560—Atlantic City, NJ
Atlantic County.

0600—Augusta, GA–SC
Columbia County, GA, Richmond County, GA, Aiken County, SC.

0640—Austin, TX
Hays County, Travis County.

0680—Bakersfield, LA
Kern County.

0720—Baltimore, MD
Baltimore city, Anne Arundel County, Baltimore County, Carroll County, Harford County, Howard County.

0760—Baton Rouge, LA
Ascension Parish, East Baton Rouge Parish, Livingston Parish, West Baton Rouge Parish.

0780—Battle Creek, MI
Barry County, Calhoun County.

0800—Bay City, MI
Bay County.

0840—Beaumont-Port Arthur-Orange, TX
Hardin County, Jefferson County, Orange County.

0880—Billings, MT
Yellowstone County.

0920—Biloxi-Gulfport, MS
Hancock County, Harrison County, Stone County.

0960—Binghamton, NY–PA
Broome County, NY, Tioga County, NY, Susquehanna, PA.

1000—Birmingham, AL
Jefferson County, St. Clair County, Shelby County, Walker County.

1040—Bloomington-Normal, IL
McLean County.

1080—Boise City, ID
Ada County.

1120—Boston, MA
Essex County (part); Beverly city, Lynn city, Peabody city, Salem city, Boxford town, Danvers town, Hamilton town, Lynnfield town, Manchester town, Marblehead town, Middleton town, Nahant town, Saugus town, Swampscott town, Topsfield town, Wenham town.

*Area code and title*

1120—Boston, MA—Continued
Middlesex County (part): Cambridge city, Everett city, Malden city, Medford city, Melrose city, Newton city, Somerville city, Waltham city, Woburn city, Acton town, Arlington town, Ashland town, Bedford town, Belmont town, Boxborough town, Burlington town, Carlisle town, Concord town, Framingham town, Holliston town, Lexington town, Lincoln town, Natick town, North Reading town, Reading town, Sherborn town, Stoneham town, Sudbury town, Wakefield town, Watertown town, Wayland town, Weston town, Wilmington town, Winchester town.
Norfolk County (part), Quincy city, Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town.
Plymouth County (part): Abington town, Duxbury town, Hanover town, Hanson town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Rockland town, Scituate town.
Suffolk County; Boston city, Chelsea city, Revere city, Winthrop town.

1160—Bridgeport, CT
Fairfield County (part): Bridgeport city, Shelton city, Easton town, Fairfield town, Monroe town, Stratford town, Trumbull town.
New Haven County; Derby city, Milford city.

1170—Bristol, CT
Hartford County (part): Bristol city, Burlington town.
Litchfield County (part): Plymouth town.

1200—Brockton, MA
Bristol County (part): Easton town.
Norfolk County (part): Avon town.
Plymouth County (part): Brockton city, Bridgewater town, East Bridgewater town, Halifax town, West Bridgewater town, Whitman town.

1240—Brownsville-Harlingen-San Benito, TX
Cameron County.

1260—Bryan-College Station, TX
Brazos County.

1280—Buffalo, NY
Erie County, Niagara County.

1300—Burlington, NC
Alamance County.

1310—Caguas, PR
Caguas Municipio, Gurabo Municipio, San Lorenzo Municipio.

1320—Canton, OH
Carroll County, Stark County.

1360—Cedar Rapids, IA
Linn County.

1400—Champaign-Urbana-Rantoul, IL
Champaign County.

1440—Charleston, SC
Berkeley County, Charleston County, Dorchester County.

1480—Charleston, WV
Kanawha County, Putnam County.

*Area code and title*

1520—Charlotte-Gastonia, NC
Gaston County, Mecklenburg County, Union County.

1560—Chattanooga, TN-GA
Hamilton County, TN, Marion County, TN, Sequatchie County, TN, Catoosa County, GA, Dade County, GA, Walker County, GA.

1600—Chicago, IL
Cook County, Du Page County, Kane County, Lake County, McHenry County, Will County.

1640—Cincinnati, OH-KY-IN
Clermont County, OH, Hamilton County, OH, Warren County, OH, Boone County, KY, Campbell County, KY, Kenton County, KY, Dearborn County, IN.

*1660—Clarksville-Hopkinsville, TN-KY
Montgomery County, TN, Christian County, KY.

1680—Cleveland, OH
Cuyahoga County, Geauga County, Lake County, Medina County.

1720—Colorado Springs, CO
El Paso County, Teller County.

1740—Columbia, MO
Boone County.

1760—Columbia, SC
Lexington County, Richland County.

*1800—Columbus, GA-AL
Columbus, GA (cons. gov.) Chattahoochee County, GA, Russell County, AL.

1840—Columbus, OH
Delaware County, Fairfield County, Franklin County, Madison County, Pickaway County.

1880—Corpus Christi, TX
Nueces County, San Patricio County.

1920—Dallas-Fort Worth, TX
Collin County, Dallas County, Denton County, Ellis County, Hood County, Johnson County, Kaufman County, Parker County, Rockwall County, Tarrant County, Wise County.

*1930—Danbury, CT
Fairfield County (part): Danbury city, Bethel town, Brookfield town, New Fairfield town, Newtown town, Redding town.
Litchfield County (part): New Milford town.

*1960—Davenport-Rock Island-Moline, IA-IL
Scott County, IA, Henry County, IL, Rock Island County, IL.

2000—Dayton, OH
Greene County, Miami County, Montgomery County, Preble County.

2020—Daytona Beach, FL
Volusia County.

2040—Decatur, IL
Macon County.

2080—Denver-Boulder, CO
Adams County, Arapahoe County, Boulder County, Denver County, Douglas County, Gilpin County, Jefferson County.

2120—Des Moines, IA
Polk County, Warren County.

2160—Detroit, MI
Lapeer County, Livingston County, Macomb County, Oakland County, St. Clair County, Wayne County.

2200—Dubuque, IA
Dubuque County.

2240—Duluth-Superior, MN-WI
St. Louis County, MN, Douglas County, WI

2280—(Deleted) See 6640.

*Area code and title*

2320—El Paso, TX
El Paso County.

2335—Elmira, NY
Chemung County.

2360—Erie, PA
Erie County.

2400—Eugene-Springfield, OR
Lane County.

2440—Evansville, IN-KY
Gibson County, IN, Posey County, IN, Vanderburgh County, IN, Warrick County, IN, Henderson County, KY.

2480—Fall River, MA-RI
Bristol County (part), MA, Fall River city, Dighton town, Somerset town, Swansea town, Westport town.
Newport County (part), RI, Little Compton town, Portsmouth town, Tiverton town.

2520—Fargo-Moorhead, ND-MN
Cass County, ND, Clay County, MN.

2560—Fayetteville, NC
Cumberland County.

2580—Fayetteville-Springdale, AR
Benton County, Washington County.

2600—Fitchburg-Leominster, MA
Middlesex County (part), Shirley town, Townsend town.
Worcester County (part), Fitchburg city, Leominster city, Lunenburg town, Westminster town.

2640—Flint, MI
Genesee County, Shiawassee County

2650—Florence, AL
Colbert County, Lauderdale County.

2680—Fort Lauderdale-Hollywood, FL
Broward County.

2700—Fort Myers, FL
Lee County.

2720—Fort Smith, AR-OK
Crawford County, AR, Sebastian County, AR, Le Flore County, OK.

2760—Fort Wayne, IN
Adams County, Allen County, De Kalb County, Wells County.

2800—(Deleted) See 1920.

2840—Fresno, CA
Fresno County.

2880—Gadsden, AL
Etowah County.

2900—Gainesville, FL
Alachua County.

2920—Galveston-Texas City, TX
Galveston County.

2960—Gary-Hammond-East Chicago, IN
Lake County, Porter County.

2970—(Deleted) See 1520.

3000—Grand Rapids, MI
Kent County, Ottawa County.

3040—Great Falls, MT
Cascade County.

3080—Green Bay, WI
Brown County.

3120—Greensboro – Winston - Salem – High Point, NC
Davidson County, Forsyth County, Guilford County, Randolph County, Stokes County, Yadkin County.

3160—Greenville-Spartanburg, SC
Greenville County, Pickens County, Spartanburg County.

3200—Hamilton-Middletown, OH
Butler County.

3240—Harrisburg, PA
Cumberland County, Dauphin County, Perry County.

*Area code and title*

3280—Hartford, CT
Hartford County (part); Hartford city, Avon town, Bloomfield town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Manchester town, Marlborough town, Newington town, Rocky Hill town, Simsbury town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town.
Litchfield County (part); New Hartford town.
Middlesex County (part); Cromwell town, East Hampton town, Portland town.
New London County (part); Colchester town.
Tolland County (part); Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Stafford town, Tolland town, Vernon town, Willington town.

3320—Honolulu, HI
Honolulu County.

3360—Houston, TX
Brazoria County, Fort Bend County, Harris County, Liberty County, Montgomery County, Waller County.

3400—Huntington-Ashland, WV-KY-OH
Cabell County, WV; Wayne County, WV; Boyd County, KY; Greenup County, KY; Lawrence County, OH.

3440—Huntsville, AL
Limestone County, Madison County, Marshall County.

3480—Indianapolis, IN
Boone County, Hamilton County, Hancock County, Hendricks County, Johnson County, Marion County, Morgan County, Shelby County.

3520—Jackson, MI
Jackson County.

3560—Jackson, MS
Hinds County, Rankin County.

3600—Jacksonville, FL
Baker County, Clay County, Duval County, Nassau County, St. Johns County.

3640—Jersey City, NJ
Hudson County.

3680—Johnstown, PA
Cambria County, Somerset County.

3720—Kalamazoo-Portage, MI
Kalamazoo County, Van Buren County.

3760—Kansas City, MO–KS
Cass County, MO; Clay County, MO; Jackson County, MO; Platte County, MO; Ray County, MO; Johnson County, KS; Wyandotte County, KS.

3800—Kenosha, WI
Kenosha County.

3810—Killeen-Temple, TX
Bell County, Coryell County.

3815—Kingsport-Bristol, TN–VA
Hawkins County, TN; Sullivan County, TN; Bristol city, VA; Scott County, VA; Washington County, VA.

3840—Knoxville, TN
Anderson County, Blount County, Knox County, Union County.

3870—La Crosse, WI
La Crosse County.

*Area code and title*

3880—Lafayette, LA
Lafayette Parish.

3920—Lafayette-West Lafayette, IN
Tippecanoe County.

3960—Lake Charles, LA
Calcasieu Parish.

3980—Lakeland-Winter Haven, FL
Polk County.

4000—Lancaster, PA
Lancaster County.

4040—Lansing-East Lansing, MI
Clinton County, Eaton County, Ingham County, Ionia County.

4080—Laredo, TX
Webb County.

4120—Las Vegas, NV
Clark County.

4160—Lawrence-Haverhill, MA-NH
Essex County (part), MA; Lawrence city, Haverhill city, Amesbury town, Andover town, Georgetown town, Groveland town, Merrimac town, Methuen town, North Andover town, Salisbury town, West Newbury town.
Rockingham County (part), NH; Atkinson town, Hampstead town, Kingston town, Newton town, Plaistow town, Salem town, Windham town.

4200—Lawton, OK
Comanche County.

4240—Lewiston-Auburn, ME
Androscoggin County (part); Auburn city, Lewiston city, Lisbon town.

*4280—Lexington-Fayette, KY
Bourbon County, Clark County, Fayette County, Jessamine County, Scott County, Woodford County.

4320—Lima, OH
Allen County, Auglaize County, Putnam County, Van Wert County.

4360—Lincoln, NE
Lancaster County.

4400—Little Rock-North Little Rock, AR
Pulaski County, Saline County.

4410—Long Branch-Asbury Park, NJ
Monmouth County.

4440—Lorain-Elyria, OH
Lorain County.

4480—Los Angeles-Long Beach, CA
Los Angeles County.

4520—Louisville, KY-IN
Bullitt County, KY, Jefferson County, KY, Oldham County, KY, Clark County, IN, Floyd County, IN.

4560—Lowell, MA-NH
Middlesex County (part), MA; Lowell City, Billerica town, Chelmsford town, Dracut town, Tewksbury town, Tyngsborough town, Westford town.
Hillsborough County (part), NH; Pelham town.

4600—Lubbock, TX
Lubbock County.

4640—Lynchburg, Va.
Lynchburg city, Amherst County, Appomattox County, Campbell County.

4680—Macon, Ga.
Bibb County, Houston County, Jones County, Twiggs County.

4720—Madison, WI
Dane County.

4760—Manchester, NH
Hillsborough County (part); Manchester city, Bedford town, Goffstown town.
Merrimack County (part); Allenstown town, Hooksett town, Pembroke town.
Rockingham County (part); Derry town, Londonderry town.

*Area code and title*

4800—Mansfield, OH
Richland County.

4840—Mayagüez, PR
Añasco Municipio, Hormigueros Municipio, Mayagüez Municipio.

4880—McAllen-Pharr-Edinburg, TX
Hidalgo County.

4900—Melbourne-Titusville-Cocoa, Brevard County.

4920—Memphis, TN-AR-MS
Shelby County, TN, Tipton County, TN, Crittenden County, AZ, De Soto County, MS.

4960—Meriden, CT
New Haven County (part); Meriden city.

5000—Miami, FL
Dade County.

5040—Midland, TX
Midland County.

5080—Milwaukee, WI
Milwaukee County, Ozaukee County, Washington County, Waukesha County.

5120—Minneapolis-St. Paul, NM-WI
Anoka County, MN, Carver County, MN, Chisago County, MN, Dakota County, MN, Hennepin County, NM, Ramsey County, NM, Scott County, MN, Washington County, MN, Wright County, MN, St. Croix County, WI.

5160—Mobile, AL
Baldwin County, Mobile County.

5170—Modesto, CA
Stanislaus County.

5200—Monroe, LA
Ouachita Parish.

5240—Montgomery, AL
Autauga County, Elmore County, Montgomery County.

5280—Muncie, IN
Delaware County.

5320—Muskegon-Muskegon Heights, MI
Muskegon County, Oceana County.

5350—Nashua, NH
Hillsborough County (part); Nashua city, Amherst town, Hudson town, Merrimack town, Milford town.

5360—Nashville-Davidson, TN
Cheatham County, Davidson County, Dickson County, Robertson County, Rutherford County, Sumner County, Williamson County, Wilson County.

5380—Nassau-Suffolk, NY
Nassau County, Suffolk County.

5400—New Bedford, MA
Bristol County (part); New Bedford city, Acushnet town, Dartmouth town, Fairhaven town, Freetown town.
Plymouth County (part); Lakeville town, Marion town, Mattapoisett town.

5440—New Britain, CT
Hartford County (part); New Britain city, Berlin town, Plainville town, Southington town.

5460—New Brunswick-Perth Amboy-Sayreville, NJ
Middlesex County.

5480—New Haven-West Haven, CT
Middlesex County (part); Clinton town, Killingworth town.
New Haven County (part); New Haven city, West Haven city, Bethany town, Branford town, East Haven town, Guilford town, Hamden town, Madison town, North Branford town, North Haven town, Orange town, Wallingford town, Woodbridge town.

*Area code and title*

5520—New London-Norwich, CT-RI
Middlesex County (part), CT; Old Saybrook town.
New London County (part), CT; New London city, Norwich city, Bozrah town, East Lyme town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, Old Lyme town, Preston town, Sprague town, Stonington town, Waterford town.
Washington County (part), RI; Hopkinton town, Westerly town.

5560—New Orleans, LA
Jefferson Parish, Orleans Parish, St. Bernard Parish, St. Tammany Parish.

5600—New York, NY-NJ
Bronx County, NY, Kings County, NY, New York County, NY, Putnam County, NY, Queens County, NY, Richmond County, NY, Rockland County, NY, Westchester County, NY, Bergen County, NJ

5640—Newark, NJ
Essex County, Morris County, Somerset County, Union County.

5680—Newport News-Hampton, VA
Hampton city, Newport News city, Williamsburg city, Gloucester County, James City County, York County.

*5720—Norfolk-Virginia Beach-Portsmouth, VA-NC
Chesapeake city, VA, Norfolk city, VA, Portsmouth city, VA, Suffolk city, VA, Virginia Beach city, VA, Currituck County, NC

5745—Northeast Pennsylvania
Lackawanna County, Luzerne County, Monroe County.

5760—Norwalk, CT
Fairfield County (part); Norwalk city, Weston town, Westport town, Wilton town.

5800—Odessa, TX
Ector County.

5840—(Deleted) See 7160

5880—Oklahoma City, OK
Canadian County, Cleveland County, McClain County, Oklahoma County, Pottawatomie County.

5920—Omaha, NE-IA
Douglas County, NE, Sarpy County, NE, Pottawattamie County, IA.

5960—Orlando, FL
Orange County, Osceola County, Seminole County.

5990—Owensboro, KY
Daviess County.

6000—Oxnard-Simi Valley-Ventura, CA
Ventura County.

6020—Parkersburg-Marietta, WV-OH
Wirt County, WV, Wood County, WV, Washington County, OH.

6040—Paterson-Clifton-Passaic, NJ
Passaic County.

6080—Pensacola, FL
Escambia County, Santa Rosa County.

6120—Peoria, IL
Peoria County, Tazewell County, Woodford County.

6140—Petersburg-Colonial Heights—Hopewell, VA
Colonial Heights city, Hopewell city, Petersburg city, Dinwiddie County, Prince George County.

6160—Philadelphia, PA-NJ
Bucks County, PA, Chester County, PA, Delaware County, PA, Montgomery County, PA, Philadelphia County, PA, Burlington County, NJ, Camden County, NJ, Gloucester County, NJ.

*Area code and title*

6200—Phoenix, AZ
Maricopa County.

6240—Pine Bluff, AR
Jefferson County.

6280—Pittsburgh, PA
Allegheny County, Beaver County, Washington County, Westmoreland County.

6320—Pittsfield, MA
Berkshire County (part); Pittsfield city, Adams town, Cheshire town, Dalton town, Lanesborough town, Lee town, Lenox town, Stockbridge town.

6360—Ponce, PR
Juana Diaz Municipio, Ponce Municipio, Villalba Municipio.

6400—Portland, ME
Cumberland County (part); Portland city, South Portland city, Westbrook city, Cape Elizabeth town, Cumberland town, Falmouth town, Freeport town, Gorham town, Scarborough town, Windham town, Yarmouth town.
York County (part); Saco city, Old Orchard Beach town.

6440—Portland, OR-WA
Clackmas, County, OR; Multnomah County, OR; Washington County, OR; Clark County, WA

6460—Poughkeepsie, NY
Dutchess County.

6480—Providence-Warwick-Pawtucket, RI-MA
Bristol County, RI; Barrington town, Bristol town, Warren town.
Kent County (part), RI; Warwick city, Coventry town, East Greenwich town, West Warwick town.
Newport County (part), RI; Jamestown town.
Providence County (part) RI; Central Falls city, Cranston city, East Providence city, Pawtucket city, Providence city, Woonsocket city, Burrillville town, Cumberland town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Scituate town, Smithfield town.
Washington County (part), RI; Narragansett town, North Kingstown town, South Kingstown town.
Bristol County (part) MA; Attleboro city, North Attleborough town, Norton town, Rehoboth town, Seekonk town.
Norfolk County (part), MA; Plainville town.
Worcester County (part), MA; Blackstone town, Millville town.

6520—Provo-Orem, UT
Utah County.

6560—Pueblo, CO
Pueblo County.

6600—Racine, WI
Racine County.

6640—Raleigh-Durham, NC
Durham County, Orange County, Wake County.

6680—Reading, PA
Berks County.

6720—Reno, NV
Washoe County.

6740—Richland-Kennewick, WA
Benton County, Franklin County.

6760—Richmond, VA
Richmond city, Charles City County, Chesterfield County, Goochland County, Hanover County, Henrico County, Powhatan County.

*Area code and title*

6780—Riverside-San Bernardino, Ontario, CA
Riverside County, San Bernardino County.

6800—Roanoke, VA
Roanoke city, Salem city, Botetourt County, Craig County, Roanoke County.

6820—Rochester, MN
Olmstead County.

6840—Rochester, NY
Livingston County, Monroe County, Ontario County, Orleans County, Wayne County.

6880—Rockford, IL
Boone County, Winnebago County.

6920—Sacramento, CA
Placer County, Sacramento County, Yolo County.

6960—Saginaw, MI
Saginaw County.

6980—St. Cloud, MN
Benton County, Sherburne County, Stearns County.

7000—St. Joseph, MO
Andrew County, Buchanan County.

7040—St. Louis, MO-IL
St. Louis city, MO, Franklin County, MO, Jefferson County, MO, St. Charles County, MO, St. Louis County, MO, Clinton County, IL, Madison County, IL, Monroe County, IL, St. Clair County, IL.

7080—Salem, OR
Marion County, Polk County.

7120—Salinas-Seaside-Monterey, CA
Monterey County.

7160—Salt Lake City-Ogden, UT
Davis County, Salt Lake County, Tooele County, Weber County.

7200—San Angelo, TX
Tom Green County.

7240—San Antonio, TX
Bexar County, Comal County, Guadalupe County.

7320—San Diego, CA
San Diego County.

7360—San Francisco-Oakland, CA
Alameda County, Contra Costa County, Marin County, San Francisco County, San Mateo County.

7400—San Jose, CA
Santa Clara County.

7440—San Juan, PR
Bayamon Municipio, Canóvanas Municipio, Carolina Municipio, Cataño Municipio, Guaynabo Municipio, Loiza Municipio, San Juan Municipio, Toa Baja Municipio, Trujillo Alto Municipio.

7480—Santa Barbara-Santa Maria-Lompoc, CA
Santa Barbara County.

7485—Santa Cruz, CA
Santa Cruz County.

7500—Santa Rosa, CA
Sonoma County.

7510—Sarasota, FL
Sarasota County.

7520—Savannah, GA
Bryan County, Chatham County, Effingham County.

7560—(Deleted) See 5745

7600—Seattle-Everett, WA
King County, Snohomish County.

7640—Sherman-Denison, TX
Grayson County.

7680—Shreveport, LA
Bossier Parish, Caddo Parish, Webster Parish.

7720—Sioux City, IA-NE
Woodbury County, IA, Dakota County, NE.

7760—Sioux Falls, SD
Minnehaha County.

*Area code and title*

7800—South Bend, IN
Marshall County, St. Joseph County.

7820—(Deleted) See 3160

7840—Spokane, WA
Spokane County.

7880—Springfield, IL
Menard County, Sangamon County.

7920—Springfield, MO
Christian County, Greene County.

7960—Springfield, OH
Champaign County, Clark County.

8000—Springfield-Chicopee-Holyoke, MA–CT
Hampden County (part), MA; Chicopee city, Holyoke city, Springfield city, Westfield city, Agawam town, East Longmeadow town, Hampden town, Longmeadow town, Ludlow town, Monson town, Palmer town, Southwick town, West Springfield town, Wilbraham town.
Hampshire County (part), MA; Northampton city, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, South Hadley town, Southampton town.
Worcester County (part), MA; Warren town.
Tolland County (part), CT; Somers town.

8040—Stamford, CT
Fairfield County (part); Stamford city, Darien town, Greenwich town, New Canaan town.

8080—Steubenville-Weirton, OH–WV
Jefferson County, OH, Brooke County, WV, Hancock County, WV

8120—Stockton, CA
San Joaquin County.

8160—Syracuse, NY
Madison County, Onondaga County, Oswego County.

8200—Tacoma, WA
Pierce County.

8240—Tallahassee, FL
Leon County, Wakulla County.

*Area code and title*

8280—Tampa-St. Petersburg, FL
Hillsborough County, Pasco County, Pinellas County.

8320—Terre Haute, IN
Clay County, Sullivan County, Vermillion County, Vigo County.

8360—Texarkana, TX-Texarkana, AR
Bowie County, TX, Little River County, AR, Miller County, AR.

8400—Toledo, OH–MI
Fulton County, OH, Lucas County, OH, Ottawa County, OH, Wood County, OH, Monroe County, MI.

8440—Topeka, KS
Jefferson County, Osage County, Shawnee County.

8480—Trenton, NJ
Mercer County.

8520—Tucson, AZ
Pima County.

8560—Tulsa, OK
Creek County, Mayes County, Osage County, Rogers County, Tulsa County, Wagoner County.

8600—Tuscaloosa, AL
Tuscaloosa County.

8640—Tyler, TX
Smith County.

8680—Utica-Rome, NY
Herkimer County, Oneida County.

8720—Vallejo-Fairfield-Napa, CA
Napa County, Solano County.

*8760—Vineland-Millville-Bridgeton, NJ
Cumberland County.

8800—Waco, TX
McLennan County.

*8840—Washington, DC–MD–VA
District of Columbia, Charles County, MD, Montgomery County, MD, Prince Georges County, MD, Alexandria city, VA, Fairfax city, VA, Falls Church city, VA, Arlington County, VA, Fairfax County, VA, Loudoun County, VA, Prince William County, VA.

8880—Waterbury, CT
Litchfield County (part); Thomaston town, Watertown town, Woodbury town.

*Area code and title*

8880—Waterbury, CT—Continued
New Haven County (part); Waterbury city, Naugatuck borough, Beacon Falls town, Cheshire town, Middlebury town, Prospect town, Southbury town, Wolcott town.

8920—Waterloo-Cedar Falls, IA
Black Hawk County.

8960—West Palm Beach-Boca Raton, FL
Palm Beach County.

9000—Wheeling, WV-OH
Marshal County, WV, Ohio County, WV, Belmont County, OH.

9040—Wichita, KS
Butler County, Sedgwick County.

9080—Wichita Falls, TX
Clay County, Wichita County.

9120—(Deleted) See 5745

9140—Williamsport, PA.
Lycoming County.

9160—Wilmington, DE-NJ-MD
New Castle County, DE, Salem County, NJ, Cecil County, MD.

9200—Wilmington, NC
Brunswick County, New Hanover County.

9240—Worcester, MA
Worcester County (part); Worcester city, Auburn town, Berlin town, Boylston town, Brookfield town, Charlton town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oxford town, Paxton town, Shrewsbury town, Spencer town, Sterling town, Sutton town, Upton town, Uxbridge town, Webster town, Westborough town, West Boylston town.

9260—Yakima, WA
Yakima County.

9280—York, PA
Adams County, York County.

9320—Youngstown-Warren, OH
Mahoning County, Trumbull County.

[FR Doc.75-12862 Filed 5-19-75;8:45 am]

federal register

TUESDAY, MAY 20, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 98

PART III

# DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

■

## AIRWORTHINESS REVIEW PROGRAM

### Proposed Type Certification Standards; Equipment Deviation List

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### [ 14 CFR Parts 1, 23, 25, 27, 29, 43, 91, 135 ]

[ Docket No. 14607; Notice No. 75-20]

### AIRWORTHINESS REVIEW PROGRAM

### Proposed Type Certification Standards; Notice Number 4; Equipment Deviation List

The Federal Aviation Administration is considering amending (1) Parts 1, 23, 25, 27, and 29 of the Federal Aviation Regulations to provide for the type certification of aircraft with "Equipment Deviation Lists" containing conditions and limitations for the operation of aircraft with missing and inoperable equipment and to provide standards for the development of such lists; (2) Part 43 with respect to the approval for return to service of aircraft having such a list; and (3) Part 91 with respect to the operation of such aircraft. It is also proposed that § 135.143(b) be revised to more clearly indicate the circumstances under which equipment required by Part 135 must be in an operable condition.

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to any significant environmental or economic impact that might result because of the adoption of the proposals contained herein may also be submitted. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue SW., Washington, D.C. 20591. All communications received on or before August 18, 1975, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This notice is the fourth issued as a part of the First Biennial Airworthiness Review Program. The proposals contained herein are based on the FAA's evaluation of the discussions relating to the following proposals in the Procedures and Special Issues Committee (Committee I) at the Airworthiness Review Conference, held in Washington, D.C. from December 2 through 11, 1974:

| Proposal No. | FAR sections | Proponent | Agenda items |
|---|---|---|---|
| 713 | 23.1583 | FAA | H-14: |
| 831 | 25.1583 | do | Do. |
| 884 | 27.1583 | do | Do. |
| 971 | 29.1583 | do | Do. |
| 1004 | 43.13 | do | Do. |
| 1009 | 91.29 | do | Do. |
| 1010 | 91.31 | do | Do. |
| 1011 | 91.33 | do | Do. |
| 1016 | 91.165 | do | Do. |
| 477 | Part 91 | GAMA [1] | H-15. |
| 490 | 91.33 | GMC [2] | Do. |
| 489 | 91.33 | North American [3] | Do. |
| 550 | 135.143 | ALPA [4] | Do. |

[1] General Aviation Manufacturers Association.
[2] General Motors Corp.
[3] North American Rockwell Corp.
[4] Air Line Pilots Association.

Modern aircraft are being operated with increasing amounts of installed equipment. Much of that equipment is required for certain kinds of operation (such as VFR day or IFR) or for certain types of operating conditions (such as operations in icing conditions). Other equipment may be installed in the aircraft for the convenience of the operator. For whatever purpose installed, the aircraft must, with the installed equipment, continue to meet the regulatory standards under which it was type certificated, and the equipment, itself, must meet the applicable requirements in those standards.

In that connection, § 21.181(a)(1) provides, in pertinent part, that a standard airworthiness certificate for an aircraft is effective as long as the maintenance, preventive maintenance, and alterations are performed in accordance with Parts 43 and 91, and § 91.27(a) prohibits air craft operations unless the aircraft has a current airworthiness certificate. Section 91.165 provides that aircraft must be regularly inspected and that between those inspections defects must be repaired in accordance with Part 43. Under § 43.13, the person maintaining an aircraft must ensure that the aircraft is at least equal to its original or properly altered condition after its having undergone maintenance.

Those provisions in conjunction with the aircraft type certificate act to prohibit the operation of an aircraft with certain equipment deviations (installed inoperable equipment or equipment required for an aircraft operating condition or kind of operation, under the aircraft's type certificate, that is not installed in the aircraft). Therefore, even though an item of equipment may have been installed purely for the convenience of the operator, aircraft operations with that item of installed equipment inoperable might be prohibited. In some circumstances that prohibition would be appropriate, such as where a pilot might rely on an inoperable item of equipment. However, in such circumstances the aircraft could be safely operated if the equipment were to be removed.

With respect to equipment required for a particular kind of operation or operating condition, the absence of operable items of such equipment in the aircraft should not result in a prohibition against aircraft operations in which the equipment is not needed provided that the pilot is aware of the status of the equipment and appropriate operating conditions and limitations are available to the pilot to indicate the procedures that must be followed for the safe operation of the aircraft.

In order to make it clear to the pilot that, in general, aircraft operation with equipment deviations is prohibited, it is proposed that an operating limitation containing such a prohibition be presented as provided under the applicable type certification requirements (Parts 23, 25, 27, and 29). However, to provide for those circumstances in which safe operations could be conducted with equipment deviations, the type certification requirements would be amended to provide for the development of an "Equipment Deviation List". That list would contain the information needed by a pilot to safely operate the aircraft with equipment deviations. The term "equipment deviations" would be defined in Part 1. Comments are specifically requested with respect to the appropriateness of the term "Equipment Deviation List" as well as any terms that might be more appropriate.

It should be noted that the type certification standards, if revised as proposed, could be utilized to obtain an "Equipment Deviation List" for aircraft already type certificated by amendment to their type certificates or by obtaining supplemental type certificates.

Consistent with the proposed revisions to Parts 1, 23, 25, 27, and 29, Part 43 would be revised to provide for the approval of aircraft with equipment deviations for return to service, and § 91.165 would be revised to provide for aircraft operations, with equipment deviations as provided for in the "Equipment Deviation List." However, the amendments proposed herein would not relieve an operator from compliance with the equipment requirements of any applicable operating rule.

It is also proposed that § 135.143(b) be revised to make it clear that the additional equipment and instruments required by Part 135 for particular operating conditions or kinds of operation must be in an operable condition only for those operating conditions or kinds of operation for which those items of equipment and instruments are required. With respect to equipment required by Part 135 for all operating conditions and kinds of operation, the proposed revision of § 135.143(b) would have no effect.

Finally, in order to avoid unnecessary repetition, a short-form proposal is used in this notice where substantively identical proposals are being made for each of the aircraft certification parts (Parts 23, 25, 27, and 29). In each such case the short-form proposal refers to a Part 23 proposal. The proposals for Part 23 are

set forth herein in their entirety. If these proposals are adopted, however, the word "airplane" as used in the Part 23 proposals would be changed to "rotorcraft" for the Part 27 and 29 proposals. In addition, comments are specifically requested with respect to the appropriateness of the information contained in proposed § 23.1591(d) for rotorcraft.

(Secs. 313(a), 601, 603, 604, 605, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423, 1424, 1425); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

In consideration of the foregoing, it is proposed to amend Parts 1, 23, 25, 27, 29, 43, 91, and 135 of the Federal Aviation Regulations as follows:

## PART 1—DEFINITIONS AND ABBREVIATIONS

4–1. By inserting between the definitions of "Decision height" and "Equivalent airspeed" in § 1.1 the following definition:

**§ 1.1 General definitions.**

* * * * *

"Equipment deviation", as used with respect to an "Equipment Deviation List", means an item of inoperable equipment that is installed in an aircraft or an item of equipment required for any aircraft operating condition or kind of operation, under the aircraft's type certificate, that is not installed in the aircraft.

* * * * *

## PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, AND ACROBATIC CATEGORY AIRPLANES

4–2. By adding a new § 23.1583(m) to read as follows:

**§ 23.1583 Operating limitations.**

* * * * *

(m) *Equipment.*

(1) Except as provided in paragraph (m)(2) of this section, an operating limitation must be established that indicates that airplane operation with inoperable items of installed equipment or with items of equipment required under the airplane's type certificate not installed is prohibited.

(2) For airplanes having an "Equipment Deviation List", an operating limitation must be established that indicates that airplane operation with an equipment deviation is prohibited unless those operations are conducted in accordance with the operating conditions and limitations contained in the "Equipment Deviation List."

4–3. By adding a new § 23.1591 to read as follows:

**§ 23.1591 "Equipment Deviation List."**

(a) An "Equipment Deviation List" may be provided if it—

(1) Contains the information specified in paragraph (b) of this section;

(2) Is approved under paragraph (c) of this section; and

(3) Is presented in accordance with paragraph (e) of this section.

(b) The list must contain—

(1) The equipment deviations and combinations of equipment deviations permitted during an airplane operation;

(2) The airplane operating conditions under which safe operation is possible with each listed equipment deviation;

(3) The additional operating limitations that are necessary for operating the airplane with each listed equipment deviation; and

(4) A statement that indicates that the operating rules of this chapter include provisions that require that specific equipment be installed and be in an operable condition and that irrespective of the "Equipment Deviation List", those provisions apply according to their terms.

(c) If the Administrator finds that the level of safety for an aircraft operating with each listed equipment deviation under the applicable operating conditions and limitations prescribed in accordance with paragraph (b) of this section, is equivalent to that established in the airworthiness standards applicable to the type certification of the aircraft, the list is approved.

(d) For purposes of this section the term "operating conditions" includes the following:

(1) Operations under VFR day, VFR night, and IFR conditions.

(2) Operations in icing conditions.

(3) Operations at altitudes at which oxygen and cabin pressurization are not necessary.

(4) Operations in a cargo-only configuration with respect to passenger compartment emergency evacuation equipment.

(5) Operations over land only with respect to ditching equipment.

(6) Operations in positive controlled airspace.

(e) An "Equipment Deviation List" may be included in a separate manual or be presented in a manner specified in § 23.1581.

## PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

**§§ 25.1583, 25.1591 [Amended]**

4–4. By adding a new § 25.1583(l) that would be substantively identical to the proposed new § 23.1583(m).

4–5. By adding new § 25.1591 that would be substantively identical to the proposed new § 23.1591.

## PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

**§ 27.1583, 27.1591 [Amended]**

4–6. By adding a new § 27.1583(g) that would be substantively identical to the proposed new § 23.1583(m).

4–7. By adding a new § 27.1591 that would be substantively identical to the proposed new § 23.1591.

## PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

**§§ 29.1583, 29.1591 [Amended]**

4–8. By adding a new § 29.1583(h) that would be substantively identical to the proposed new § 23.1583(m).

4–9. By adding a new § 29.1591 that would be substantively identical to the proposed new § 23.1591.

## PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

4–9. By adding a new § 43.9(d) to read as follows:

**§ 43.9 Content, form and disposition of maintenance, rebuilding and alteration records (except 100-hour, annual, and progressive inspections).**

* * * * *

(d) Each person approving for return to service an aircraft with equipment deviations in accordance with this section must include in the required maintenance record entry a description of each such equipment deviation if the aircraft has an "Equipment Deviation List" which provides for the operation of the aircraft with such equipment deviations.

4–11. By adding a new § 43.11(c) to read as follows:

**§ 43.11 Content, form, and disposition of annual, 100-hour, and progressive inspection records.**

* * * * *

(c) Each person approving for return to service an aircraft with equipment deviations in accordance with this section must include in the required maintenance record entry a description of each such equipment deviation if the aircraft has an "Equipment Deviation List" which provides for the operation of the aircraft with such equipment deviations.

## PART 91—GENERAL OPERATING AND FLIGHT RULES

**§ 91.31 [Amended]**

4–12. By inserting the phrase "Equipment Deviation List" in quotes between the words "Flight Manual" and "approved manual" in the lead-in of § 91.31(b).

4–13. By redesignating present § 91.165 as § 91.165(a), and by adding a new § 91.165(b) to read as follows:

**§ 91.165 Maintenance required.**

* * * * *

(b) For an aircraft having an "Equipment Deviation List," the term "defect" as used in paragraph (a) of this section does not include an equipment deviation if—

(1) The "Equipment Deviation List" of th aircraft provides for the operation of the aircraft with that equipment deviation; and

(2) That equipment deviation is described in the aircraft's maintenance records.

## PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS OF SMALL AIRCRAFT

4–14. By revising § 135.143(b) to read as follows:

**§ 135.143 General requirements.**

* * * * *

(b) No person may operate an aircraft in operations to which this part applies, unless the instruments and equipment required by this part for the operation being conducted have been approved and are in an operable condition.

* * * * *

Issued in Washington, D.C. on May 13, 1975.

J. A. FERRARESE,
*Acting Director,*
*Flight Standards Service.*

[FR Doc.75–13075 Filed 5–19–75;8:45 am]

federal register

TUESDAY, MAY 20, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 98

PART IV

# DEPARTMENT OF JUSTICE

■

# CRIMINAL JUSTICE INFORMATION SYSTEMS

## Title 28—Judicial Administration

## CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 601-75]

## PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

This order establishes regulations governing the dissemination of criminal record and criminal history information and includes a commentary on selective sections as an appendix. Its purpose is to afford greater protection of the privacy of individuals who may be included in the records of the Federal Bureau of Investigation, criminal justice agencies receiving funds directly or indirectly from the Law Enforcement Assistance Administration, and interstate, state or local criminal justice agencies exchanging records with the FBI or these federally-funded systems. At the same time, these regulations preserve legitimate law enforcement need for access to such records.

Pursuant to the authority vested in the Attorney General by 28 U.S.C. 509, 510, 534, and Pub. L. 92-544, 86 Stat. 1115, and 5 U.S.C. 301 and the authority vested in the Law Enforcement Assistance Administration by sections 501 and 524 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Pub. L. 93-83, 87 Stat. 197 (42 U.S.C. § 3701 et seq. (Aug. 6, 1973)), this addition to Chapter I of Title 28 of the Code of Federal Regulations is issued as Part 20 by the Department of Justice to become effective June 19, 1975.

This addition is based on a notice of proposed rule making published in the FEDERAL REGISTER on February 14, 1974 (39 FR 5636). Hearings on the proposed regulations were held in Washington, D.C. in March and April and in San Francisco, California in May 1974. Approximately one hundred agencies, organizations and individuals submitted their suggestions and comments, either orally or in writing. Numerous changes have been made in the regulations as a result of the comments received.

### Subpart A—General Provisions



### Subpart B—State and Local Criminal History Record Information Systems



### Subpart C—Federal System and Interstate Exchange of Criminal History Record Information



Authority: Pub. L. 93-83, 87 Stat. 197, (42 U.S.C. 3701, et seq.; 28 U.S.C. 534), Pub L. 92-544, 86 Stat. 1115.

### Subpart A—General Provisions

**§ 20.1 Purpose.**

It is the purpose of these regulations to assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to ensure the completeness; integrity, accuracy and security of such information and to protect individual privacy.

**§ 20.2 Authority.**

These regulations are issued pursuant to sections 501 and 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Pub. L. 93-83, 87 Stat. 197, 42 U.S.C. 3701, et seq. (Act), 28 U.S.C. 534, and Pub. L. 92-544, 86 Stat. 1115.

**§ 20.3 Definitions.**

As used in these regulations:

(a) "Criminal history record information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.

(b) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system.

(c) "Criminal justice agency" means: (1) courts; (2) a government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

(d) The "administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

(e) "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions shall include, but not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed—civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial—defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.

(f) "Statute" means an Act of Congress or State legislature of a provision of the Constitution of the United States or of a State.

(g) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(h) An "executive order" means an order of the President of the United States or the Chief Executive of a State which has the force of law and which is published in a manner permitting regular public access thereto.

(i) "Act" means the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3701 et seq. as amended.

(j) "Department of Justice criminal history record information system" means the Identification Division and the Computerized Criminal History File systems operated by the Federal Bureau of Investigation.

### Subpart B—State and Local Criminal History Record Information Systems

**§ 20.20 Applicability.**

(a) The regulations in this subpart apply to all State and local agencies and individuals collecting, storing, or disseminating criminal history record information processed by manual or automated operations where such collection, storage, or dissemination has been funded in whole or in part with funds made available by the Law Enforcement Assistance Administration subsequent to July 1, 1973, pursuant to Title I of the Act.

(b) The regulations in this subpart shall not apply to criminal history record information contained in: (1) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons; (2) original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or

long standing custom to be made public, if such records are organized on a chronological basis; (3) court records of public judicial proceedings compiled chronologically; (4) published court opinions or public judicial proceedings; (5) records of traffic offenses maintained by State departments of transportation, motor vehicles or the equivalent thereof for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operators' licenses; (6) announcements of executive clemency.

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates. Nor is a criminal justice agency prohibited from confirming prior criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or whether an information or other formal charge was filed, on a specified date, if the arrest record information or criminal record information disclosed is based on data excluded by paragraph (b) of this section.

**§ 20.21 Preparation and submission of a Criminal History Record Information Plan.**

A plan shall be submitted to LEAA by each State within 180 days of the promulgation of these regulations. The plan shall set forth operational procedures to—

(a) *Completeness and accuracy.* Insure that criminal history record information is complete and accurate.

(1) Complete records should be maintained at a central State repository. To be complete, a record maintained at a central State repository which contains information that an individual has been arrested, and which is available for dissemination, must contain information of any dispositions occurring within the State within 90 days after the disposition has occurred. The above shall apply to all arrests occurring subsequent to the effective date of these regulations. Procedures shall be established for criminal justice agencies to query the central repository prior to dissemination of any criminal history record information to assure that the most up-to-date disposition data is being used. Inquiries of a central State repository shall be made prior to any dissemination except in those cases where time is of the essence and the repository is technically incapable of responding within the necessary time period. (2) To be accurate means that no record containing criminal history record information shall contain erroneous information. To accomplish this end, criminal justice agencies shall institute a process of data collection, entry, storage, and systematic audit that will minimize the possibility of recording and storing inaccurate information and upon finding inaccurate information of a material nature, shall notify all criminal justice agencies known to have received such information.

(b) *Limitations on dissemination.* Insure that dissemination of criminal history record information has been limited, whether directly or through any intermediary only to:

(1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;

(2) Such other individuals and agencies which require criminal history record information to implement a statute or executive order that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct;

(3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data consistent with these regulations, and provide sanctions for violation thereof;

(4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, insure the confidentiality and security of the data consistent with these regulations and with section 524(a) of the Act and any regulations implementing section 524(a), and provide sanctions for the violation thereof;

(5) Agencies of State or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information; and

(6) Individuals and agencies where authorized by court order or court rule.

(c) *General policies on use and dissemination.* Insure adherence to the following restrictions:

(1) Criminal history record information concerning the arrest of an individual may not be disseminated to a non-criminal justice agency or individual (except under § 20.21(b) (3), (4), (5), (6)) if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

(2) Use of criminal history record information disseminated to non-criminal justice agencies under these regulations shall be limited to the purposes for which it was given and may not be disseminated further.

(3) No agency or individual shall confirm the existence or non-existence of criminal history record information for employment or licensing checks except as provided in paragraphs (b) (1), (b) (2), and (b) (5) of this section.

(4) This paragraph sets outer limits of dissemination. It does not, however, mandate dissemination of criminal history record information to any agency or individual.

(d) *Juvenile records.* Insure that dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need or supervision (or the equivalent) to non-criminal justice agencies is prohibited, unless a statute or Federal executive order specifically authorizes dissemination of juvenile records, except to the same extent as criminal history records may be disseminated as provided in § 20.21 (b) (3), (4), and (6).

(e) *Audit.* Insure that annual audits of a representative sample of State and local criminal justice agencies chosen on a random basis shall be conducted by the State to verify adherence to these regulations and that appropriate records shall be retained to facilitate such audits. Such records shall include, but are not limited to, the names of all persons or agencies to whom information is disseminated and the date upon which such information is disseminated.

(f) *Security.* Insure confidentiality and security of criminal history record information by providing that wherever criminal history record information is collected, stored, or disseminated, a criminal justice agency shall—

(1) Institute where computerized data processing is employed effective and technologically advanced software and hardware designs to prevent unauthorized access to such information;

(2) Assure that where computerized data processing is employed, the hardware, including processor, communications control, and storage device, to be utilized for the handling of criminal history record information is dedicated to purposes related to the administration of criminal justice;

(3) Have authority to set and enforce policy concerning computer operations;

(4) Have power to veto for legitimate security purposes which personnel can be permitted to work in a defined area where such information is stored, collected, or disseminated;

(5) Select and supervise all personnel authorized to have direct access to such information;

(6) Assure that an individual or agency authorized direct access is administratively held responsible for (i) the physical security of criminal history record information under its control or in its custody and (ii) the protection of such information from unauthorized accesses, disclosure, or dissemination;

(7) Institute procedures to reasonably protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or man-made disasters;

(8) Provide that each employee working with or having access to criminal history record information should be made

familiar with the substance and intent of these regulations; and

(9) Provide that direct access to criminal history records information shall be available only to authorized officers or employees of a criminal justice agency.

(g) *Access and review.* Insure the individual's right to access and review of criminal history information for purposes of accuracy and completeness by instituting procedures so that—

(1) Any individual shall, upon satisfactory verification of his identity be entitled to review without undue burden to either the criminal justice agency or the individual, any criminal history record information maintained about the individual and obtain a copy thereof when necessary for the purpose of challenge or correction;

(2) Administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete is provided;

(3) The State shall establish and implement procedures for administrative appeal where a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates;

(4) Upon request, an individual whose record has been corrected shall be given the names of all non-criminal justice agencies to whom the data has been given;

(5) The correcting agency shall notify all criminal justice recipients of corrected information; and

(6) The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigatory, or other related files and shall not be construed to include any other information than that defined by § 20.3(b).

### § 20.22 Certification of Compliance.

(a) Each State to which these regulations are applicable shall with the submission of each plan provide a certification that to the maximum extent feasible action has been taken to comply with the procedures set forth in the plan. Maximum extent feasible, in this subsection, means actions which can be taken to comply with the procedures set forth in the plan that do not require additional legislative authority or involve unreasonable cost or do not exceed existing technical ability.

(b) The certification shall include—

(1) An outline of the action which has been instituted. At a minimum, the requirements of access and review under 20.21(g) must be completely operational;

(2) A description of any legislation or executive order, or attempts to obtain such authority that has been instituted to comply with these regulations;

(3) A description of the steps taken to overcome any fiscal, technical, and administrative barriers to the development of complete and accurate criminal history record information;

(4) A description of existing system capability and steps being taken to upgrade such capability to meet the requirements of these regulations; and

(5) A listing setting forth all non-criminal justice dissemination authorized by legislation existing as of the date of the certification showing the specific categories of non-criminal justice individuals or agencies, the specific purposes or uses for which information may be disseminated, and the statutory or executive order citations.

### § 20.23 Documentation: Approval by LEAA.

Within 90 days of the receipt of the plan, LEAA shall approve or disapprove the adequacy of the provisions of the plan and certification. Evaluation of the plan by LEAA will be based upon whether the procedures set forth will accomplish the required objectives. The evaluation of the certification(s) will be based upon whether a good faith effort has been shown to initiate and/or further compliance with the plan and regulations. All procedures in the approved plan must be fully operational and implemented by December 31, 1977, except that a State, upon written application and good cause, may be allowed an additional period of time to implement § 20.21(f)(2). Certification shall be submitted in December of each year to LEAA until such complete compliance. The yearly certification shall update the information provided under § 20.21.

### § 20.24 State laws on privacy and security.

Where a State originating criminal history record information provides for sealing or purging thereof, nothing in these regulations shall be construed to prevent any other State receiving such information, upon notification, from complying with the originating State's sealing or purging requirements.

### § 20.25 Penalties.

Any agency or individual violating subpart B of these regulations shall be subject to a fine not to exceed $10,000. In addition, LEAA may initiate fund cut-off procedures against recipients of LEAA assistance.

## Subpart C—Federal System and Interstate Exchange of Criminal History Record Information

### § 20.30 Applicability.

The provisions of this subpart of the regulations apply to any Department of Justice criminal history record information system that serves criminal justice agencies in two or more states and to Federal, state and local criminal justice agencies to the extent that they utilize the services of Department of Justice criminal history record information systems. These regulations are applicable to both manual and automated systems.

### § 20.31 Responsibilities.

(a) The Federal Bureau of Investigation (FBI) shall operate the National Crime Information Center (NCIC), the computerized information system which includes telecommunications lines and any message switching facilities which are authorized by law or regulation to link local, state and Federal criminal justice agencies for the purpose of exchanging NCIC-related information. Such information includes information in the Computerized Criminal History (CCH) File, a cooperative Federal-State program for the interstate exchange of criminal history record information. CCH shall provide a central repository and index of criminal history record information for the purpose of facilitating the interstate exchange of such information among criminal justice agencies.

(b) The FBI shall operate the Identification Division to perform identification and criminal history record information functions for Federal, state and local criminal justice agencies, and for noncriminal justice agencies and other entities where authorized by Federal statute, state statute pursuant to Public Law 92-544 (86 Stat. 1115), Presidential executive order, or regulation of the Attorney General of the United States.

(c) The FBI Identification Division shall maintain the master fingerprint files on all offenders included in the NCIC/CCH File for the purposes of determining first offender status and to identify those offenders who are unknown in states where they become criminally active but known in other states through prior criminal history records.

### § 20.32 Includable offenses.

(a) Criminal history record information maintained in any Department of Justice criminal history record information system shall include serious and/or significant offenses.

(b) Excluded from such a system are arrests and court actions limited only to nonserious charges, e.g., drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, nonspecific charges of suspicion or investigation, traffic violations (except data will be included on arrests for manslaughter, driving under the influence of drugs or liquor, and hit and run). Offenses committed by juvenile offenders shall also be excluded unless a juvenile offender is tried in court as an adult.

(c) The exclusions enumerated above shall not apply to Federal manual criminal history record information collected, maintained and compiled by the FBI prior to the effective date of these Regulations.

### § 20.33 Dissemination of criminal history record information.

(a) Criminal history record information contained in any Department of Justice criminal history record information system will be made available:

(1) To criminal justice agencies for criminal justice purposes; and

(2) To Federal agencies authorized to receive it pursuant to Federal statute or Executive order.

(3) Pursuant to Public Law 92-544 (86 Stat. 115) for use in connection with licensing or local/state employment or for other uses only if such dissemination

is authorized by Federal or state statutes and approved by the Attorney General of the United States. When no active prosecution of the charge is known to be pending arrest data more than one year old will not be disseminated pursuant to this subsection unless accompanied by information relating to the disposition of that arrest.

(4) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses.

(b) The exchange of criminal history record information authorized by paragraph (a) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates.

**§ 20.34 Individual's right to access criminal history record information.**

(a) Any individual, upon request, upon satisfactory verification of his identity by fingerprint comparison and upon payment of any required processing fee, may review criminal history record information maintained about him in a Department of Justice criminal history record information system.

(b) If, after reviewing his identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he must make application directly to the contributor of the questioned information. If the contributor corrects the record, it shall promptly notify the FBI and, upon receipt of such a notification, the FBI will make any changes necessary in accordance with the correction supplied by the contributor of the original information.

**§ 20.35 National Crime Information Center Advisory Policy Board.**

There is established an NCIC Advisory Policy Board whose purpose is to recommend to the Director, FBI, general policies with respect to the philosophy, concept and operational principles of NCIC, particularly its relationships with local and state systems relating to the collection, processing, storage, dissemination and use of criminal history record information contained in the CCH File.

(a)(1) The Board shall be composed of twenty-six members, twenty of whom are elected by the NCIC users from across the entire United States and six who are appointed by the Director of the FBI. The six appointed members, two each from the judicial, the corrections and the prosecutive sectors of the criminal justice community, shall serve for an indeterminate period of time. The twenty elected members shall serve for a term of two years commencing on January 5th of each odd numbered year.

(2) The Board shall be representative of the entire criminal justice community at the state and local levels and shall include representation from law enforcement, the courts and corrections segments of this community.

(b) The Board shall review and consider rules, regulations and procedures for the operation of the NCIC.

(c) The Board shall consider operational needs of criminal justice agencies in light of public policies, and local, state and Federal statutes and these Regulations.

(d) The Board shall review and consider security and privacy aspects of the NCIC system and shall have a standing Security and Confidentiality Committee to provide input and recommendations to the Board concerning security and privacy of the NCIC system on a continuing basis.

(e) The Board shall recommend standards for participation by criminal justice agencies in the NCIC system.

(f) The Board shall report directly to the Director of the FBI or his designated appointee.

(g) The Board shall operate within the purview of the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770.

(h) The Director, FBI, shall not adopt recommendations of the Board which would be in violation of these Regulations.

**§ 20.36 Participation in the Computerized Criminal History Program.**

(a) For the purpose of acquiring and retaining direct access to CCH File each criminal justice agency shall execute a signed agreement with the Director, FBI, to abide by all present rules, policies and procedures of the NCIC, as well as any rules, policies and procedures hereinafter approved by the NCIC Advisory Policy Board and adopted by the NCIC.

(b) Entry of criminal history record information into the CCH File will be accepted only from an authorized state or Federal criminal justice control terminal. Terminal devices in other authorized criminal justice agencies will be limited to inquiries.

**§ 20.37 Responsibility for accuracy, completeness, currency.**

It shall be the responsibility of each criminal justice agency contributing data to any Department of Justice criminal history record information system to assure that information on individuals is kept complete, accurate and current so that all such records shall contain to the maximum extent feasible dispositions for all arrest data included therein. Dispositions should be submitted by criminal justice agencies within 120 days after the disposition has occurred.

**§ 20.38 Sanction for noncompliance.**

The services of Department of Justice criminal history record information systems are subject to cancellation in regard to any agency or entity which fails to comply with the provisions of Subpart C.

EDWARD H. LEVI,
*Attorney General.*

MAY 15, 1975.

RICHARD W. VELDE,
*Administrator, Law Enforcement Assistance Administration.*

MAY 15, 1975.

APPENDIX—COMMENTARY ON SELECTED SECTIONS OF THE REGULATIONS ON CRIMINAL HISTORY RECORD INFORMATION SYSTEMS

*Subpart A—§ 20.3(b).* The definition of criminal history record information is intended to include the basic offender-based transaction statistics/computerized criminal history (OBTS/CCH) data elements. If notations of an arrest, disposition, or other formal criminal justice transactions occur in records other than the traditional "rap sheet" such as arrest reports, any criminal history record information contained in such reports comes under the definition of this subsection.

The definition, however, does not extend to other information contained in criminal justice agency reports. Intelligence or investigative information (e.g. suspected criminal activity, associates, hangouts, financial information, ownership of property and vehicles) is not included in the definition of criminal history information.

*§ 20.3(c).* The definitions of criminal justice agency and administration of criminal justice of 20.3(c)(d) must be considered together. Included as criminal justice agencies would be traditional police, courts, and corrections agencies as well as subunits of non-criminal justice agencies performing a function of the administration of criminal justice pursuant to Federal or State statute or executive order. The above subunits of non-criminal justice agencies would include for example, the Office of Investigation of the U.S. Department of Agriculture which has as its principal function the collection of evidence for criminal prosecutions of fraud. Also included under the definition of criminal justice agency are umbrella-type administrative agencies supplying criminal history information services such as New York's Division of Criminal Justice Services.

*§ 20.3(e).* Disposition is a key concept in the section 524(b) of the Act and in § 20.21(a)(1) and § 20.21(b)(2). It, therefore, is defined in some detail. The specific dispositions listed in this subsection are examples only and are not to be construed as excluding other unspecified transactions concluding criminal proceedings within a particular agency.

*Subpart B—§ 20.20(a).* These regulations apply to criminal justice agencies receiving Safe Streets funds for manual or automated systems subsequent to July 1, 1973. In the hearings on the regulations, a number of those testifying challenged LEAA's authority to promulgate regulations for manual systems by contending that section 524(b) of the Act governs criminal history information contained in automated systems.

The intent of section 524(b), however, would be subverted by only regulating automated systems. Any agency that wished to circumvent the regulations would be able to create duplicate manual files for purposes contrary to the letter and spirit of the regulations.

Regulations of manual systems, therefore, is authorized by section 524(b) when coupled with Section 501 of the Act which authorizes the Administration to establish rules and regulations "necessary to the exercise of its functions * * *."

The Act clearly applies to all criminal history record information collected, stored, or disseminated with LEAA support subsequent to July 1, 1973.

§ 20.20(b)(c). Section 20.20(b)(c) exempts from regulations certain types of records vital to the apprehension of fugitives, freedom of the press, and the public's right to know.

Section 20.20(b)(ii) attempts to deal with the problem of computerized police blotters. In some local jurisdictions, it is apparently possible for private individuals and/or newsmen upon submission of a specific name to obtain through a computer search of the blotter a history of a person's arrests. Such files create a partial criminal history data bank potentially damaging to individual privacy, especially since they do not contain final dispositions. By requiring that such records be accessed solely on a chronological basis, the regulations limit inquiries to specific time periods and discourage general fishing expeditions into a person's private life.

Subsection 20.20(c) recognizes that announcements of ongoing developments in the criminal justice process should not be precluded from public disclosure. Thus announcements of arrest, convictions, new developments in the course of an investigation may be made within a few days of their occurrence. It is also permissible for a criminal justice agency to confirm certain matters of public record information upon specific inquiry. Thus, if a question is raised: "Was X arrested by your agency on January 3, 1952" and this can be confirmed or denied by looking at one of the records enumerated in subsection (b) above, then the criminal agency may respond to the inquiry.

§ 20.21. Since privacy and security considerations are too complex to be dealt with overnight, the regulations require a State plan to assure orderly progress toward the objectives of the Act. In response to requests of those testifying on the draft regulations, the deadline for submission of the plan was set at 180 days. The kind of planning document anticipated would be much more concise than, for example, the State's criminal justice comprehensive plan.

The regulations deliberately refrain from specifying who within a State should be responsible for preparing the plan. This specific determination should be made by the Governor.

§ 20.21(a)(1). Section 524(b) of the Act requires that LEAA insure criminal history information be current and that, to the maximum extent feasible, it contain disposition as well as current data.

It is, however, economically and administratively impractical to maintain complete criminal histories at the local level. Arrangements for local police departments to keep track of dispositions by agencies outside of the local jurisdictions generally do not exist. It would, moreover, be bad public policy to encourage such arrangements since it would result in an expensive duplication of files.

The alternatives to locally kept criminal histories are records maintained by a central State repository. A central State repository is a State agency having the function pursuant to statute or executive order of maintaining comprehensive statewide criminal history record information files. Ultimately, through automatic data processing the State level will have the capability to handle all requests for in-State criminal history information.

Section 20.21(a)(1) is written with a centralized State criminal history repository in mind. The first sentence of the subsection states that complete records should be retained at a central State repository. The word "should" is permissive; it suggests but does not mandate a central State repository.

The regulations do require that States establish procedures for State and local criminal justice agencies to query central State repositories wherever they exist. Such procedures are intended to insure that the most current criminal justice information is used.

As a minimum, criminal justice agencies subject to these regulations must make inquiries of central State repositories whenever the repository is capable of meeting the user's request within a reasonable time. Presently, comprehensive records of an individual's transactions within a State are maintained in manual files at the State level, if at all. It is probably unrealistic to expect manual systems to be able immediately to meet many rapid-access needs of police and prosecutors. On the other hand, queries of the State central repository for most noncriminal justice purposes probably can and should be made prior to dissemination of criminal history record information.

§ 20.21(b). The limitations on dissemination in this subsection are essential to fulfill the mandate of section 524(b) of the Act which requires the Administration to assure that the "privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes." The categories for dissemination established in this section reflect suggestions by hearing witnesses and respondents submitting written commentary.

§ 20.21(b)(2). This subsection is intended to permit public or private agencies to have access to criminal history record information where a statute or executive order:

(1) Denies employment, licensing, or other civil rights and privileges to persons convicted of a crime;

(2) Requires a criminal record check prior to employment, licensing, etc.

The above examples represent statutory patterns contemplated in drafting the regulations. The sine qua non for dissemination under this subsection is statutory reference to criminal conduct. Statutes which contain requirements and/or exclusions based on "good moral character" or "trust worthiness" would not be sufficient to authorize dissemination.

The language of the subsection will accommodate Civil Service suitability investigations under Executive Order 10450, which is the authority for most investigations conducted by the Commission. Section 3(a) of 10450 prescribes the minimum scope of investigation and requires a check of FBI fingerprint files and written inquiries to appropriate law enforcement agencies.

§ 20.21(b)(3). This subsection would permit private agencies such as the Vera Institute to receive criminal histories where they perform a necessary administration of justice function such as pretrial release. Private consulting firms which commonly assist criminal justice agencies in information systems development would also be included here.

§ 20.21(b)(4). Under this subsection, any good faith researchers including private individuals would be permitted to use criminal history record information for reseach purposes. As with the agencies designated in § 20.21(b)(3) researchers would be bound by an agreement with the disseminating criminal justice agency and would, of course, be subject to the sanctions of the Act.

The drafters of the regulations expressly rejected a suggestion which would have limited access for research purposes to certified research organizations. Specifically "certification" criteria would have been extremely difficult to draft and would have inevitably led to unnecessary restrictions on legitimate research.

Section 524(a) of the Act which forms part of the requirements of this section states:

"Except as provided by Federal law other than this title, no officer or employee of the Federal Government, nor any recipient of assistance under the provisions of this title shall use or reveal any research or statistical information furnished under this title by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this title. Copies of such information shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings."

LEAA anticipates issuing regulations pursuant to Section 524(a) as soon as possible.

§ 20.21(b)(5). Dissemination under this section would be permitted not only in cases of investigations of employment suitability, but also investigations relating to clearance of individuals for access to information which is classified pursuant to Executive Order 11652.

§ 20.21(c)(1). "Active prosecution pending" would mean, for example, that the case is still actively in process, the first step such as an arraignment has been taken and the case docketed for court trial. This term is not intended to include any treatment alternative-type program which might defer prosecution to a later date. Such a deferral prosecution is a disposition which should be entered on the record.

§ 20.21(c)(3). Presently some employers are circumventing State and local dissemination restrictions by requesting applicants to obtain an official certification of no criminal record. An employer's request under the above circumstances gives the applicant the unenviable choice of invasion of his privacy or loss of possible job opportunities. Under this subsection routine certifications of no record would no longer be permitted. In extraordinary circumstances, however, an individual could obtain a court order permitting such a certification.

§ 20.21(c)(4). The language of this subsection leaves to the States the question of who among the agencies and individuals listed in § 20.21(b) shall actually receive criminal records. Under these regulations a State could place a total ban on dissemination if it so wished.

§ 20.21(d). Non-criminal justice agencies will not be able to receive records of juveniles unless the language or statute or Federal executive order specifies that juvenile records shall be available for dissemination. Perhaps the most controversial part of this subsection is that it denies access to records of juveniles by Federal agencies conducting background investigations for eligibility to classified information under existing legal authority.

§ 20.21(e). Since it would be too costly to audit each criminal justice agency in most States (Wisconsin, for example, has 1075 criminal justice agencies) random audits of a "representative sample" of agencies are the next best alternative. The term "representative sample" is used to insure that audits do not simply focus on certain types of agencies.

§ 20.21(f)(2). In the short run, dedication will probably mean greater costs for State and local governments. How great such costs might be is dependent upon the rapidly advancing state of computer technology. So that there will be no serious hardship on States and localities as a result of this requirement, § 20.23 provides that additional time will be allowed to implement the dedication requirement. For example, where local systems now in place contain criminal history information of only that State, used purely for intrastate purposes, in a shared environment, consideration will be given to

granting extensions of time under this provision.

§ 20.21(f) (5), (8). "Direct access" means that any non-criminal agency authorized to receive criminal justice data must go through a criminal justice agency to obtain information.

§ 20.21(g)(1). A "challenge" under this section is an oral or written contention by an individual that his record is inaccurate or incomplete; it would require him to give a correct version of his record and explain why he believes his version to be correct. While an individual should have access to his record for review, a copy of the record should ordinarily only be given when it is clearly established that it is necessary for the purpose of challenge.

The drafters of the subsection expressly rejected a suggestion that would have called for a satisfactory verification of identity by fingerprint comparison. It was felt that states ought to be free to determine other means of identity verification.

§ 20.21(g)(5). Not every agency will have done this in the past, but henceforth adequate records including those required under § 20.21(e) must be kept so that notification can be made.

§ 20.21(g)(6). This section emphasizes that the right to access and review extends only to criminal history information and does not include other information such as intelligence or treatment data.

§ 20.22(a). The purpose for the certification requirement is to initiate immediate compliance with these regulations wherever possible. The term "maximum extent feasible" acknowledges that there are some areas such as the completeness requirement which create complex legislative and financial problems.

NOTE: In preparing the plans required by these regulations, States should look for guidance to the following documents: National Advisory Commission on Criminal Justice Standards and Goals, Report on the Criminal Justice System; Project SEARCH: Security and Privacy Considerations in Criminal History Information Systems, Technical Report #2; Project SEARCH: A Model State Act for Criminal Offender Record Information, Technical Memorandum #3; and Project SEARCH: Model Administrative Regulations for Criminal Offender Record Information, Technical Memorandum #4.

*Subpart C*—§20.31. Defines the criminal history record information system operated by the Federal Bureau of Investigation. Each state having a record in the Computerized Criminal History (CCH) file must have a fingerprint card on file in the FBI Identification Division to support the CCH record concerning the individual.

Paragraph b is not intended to limit the identification services presently performed by the FBI for Federal, state and local agencies.

§ 20.32. The grandfather clause contained in the third paragraph of this Section is designed, from a practical standpoint, to eliminate the necessity of deleting from the FBI's massive files the non-includable offenses which were stored prior to February, 1973.

In the event a person is charged in court with a serious or significant offense arising out of an arrest involving a non-includable offense, the non-includable offense will appear in the arrest segment of the CCH record.

§ 20.33. Incorporates the provisions of a regulation issued by the FBI on June 26, 1974, limiting dissemination of arrest information not accompanied by disposition information outside the Federal government for non-criminal justice purposes. This regulation is cited in 28 CFR 50.12.

§ 20.34. The procedures by which an individual may obtain a copy of his manual identification record are particularized in 28 CFR 16.30–34.

The procedures by which an individual may obtain a copy of his Computerized Criminal History record are as follows:

If an individual has a criminal record supported by fingerprints and that record has been entered in the NCIC CCH File, it is available to that individual for review, upon presentation of appropriate identification, and in accordance with applicable state and Federal administrative and statutory regulations.

Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparison of fingerprints.

*Procedure.* 1. All requests for review must be made by the subject of his record through a law enforcement agency which has access to the NCIC CCH File. That agency within statutory or regulatory limits can require additional identification to assist in securing a positive identification.

2. If the cooperating law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individual's record is available to that agency, it can make an on-line inquiry of NCIC to obtain his record on-line or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Washington, D.C., by mail. The individual will then be afforded the opportunity to see that record.

3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI or, possibly, in the State's central identification agency.

4. The subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracy in his record or provide the information needed to make the record complete.

§ 20.36. This section refers to the requirements for obtaining direct access to the CCH file. One of the requirements is that hardware, including processor, communications control and storage devices, to be utilized for the handling of criminal history data must be dedicated to the criminal justice function.

§ 20.37. The 120-day requirement in this section allows 30 days more than the similar provision in Subpart B in order to allow for processing time which may be needed by the states before forwarding the disposition to the FBI.

[FR Doc.75-13197 Filed 5-19-75;8:45 am]

---

[Order No. 602-75]

## PART 50—STATEMENTS OF POLICY

### Release of Information by Personnel of the Department of Justice Relating to Criminal and Civil Proceedings

This order amends the Department of Justice guidelines concerning release of information by personnel of the Department of Justice relating to criminal and civil proceedings by deleting the provision permitting disclosure of criminal history record information on request.

By virtue of the authority vested in me as Attorney General of the United States, § 50.2(b)(4) of Chapter I, Title 28 of the Code of Federal Regulations is amended to read as follows:

§ 50.2 **Release of information by personnel of the Department of Justice relating to criminal and civil proceedings.**

* * * * *

(b) * * *

* * * * *

(4) Personnel of the Department shall not disseminate any information concerning a defendant's prior criminal record.

* * * * *

MAY 15, 1975.

EDWARD H. LEVI,
*Attorney General.*

[FR Doc.75-13198 Filed 5-19-75;8:45 am]