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PAGES
51177–51407

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TUESDAY, NOVEMBER 4, 1975



highlights

PART I:

ALUMINUM WIRING
CPSC seeks standards or offerors to develop safety standards 51218

BANKING PRACTICES
FRS issues rules regarding membership of state institutions in the Federal Reserve System 51179

BOTTLED WATER
HEW/FDA stays effective date of certain testing requirements 51194

CONTINUED INSIDE

PART II:

INDIAN ORGANIZATIONS
Interior/BIA issues regulations for contracts, grants and education (2 documents); effective 12–4–75 51282

PART III:

FEDERAL ELECTIONS
FEC proposes regulations covering public financing of conventions; comments by 12–4–75 51348
FEC publishes opinions and several requests (3 documents); comments by 11–14–75 51351

PART IV:

MEETINGS POLICY
CPSC rules concerning public notice, attendance and recordkeeping (2 documents); effective 12–4–75 51360

PART V:

PENSION BENEFIT PLAN
Pension Benefit Guaranty Corporation proposes guaranteed benefits and allocation of assets (2 documents); comments by 12–4–75 51368

PART VI:

MOTOR CARRIERS
ICC revises regulations regarding practice and procedure in revenue proceedings; effective 12–4–75 51379

reminders

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

Daily List of Public Laws

NOTE: No acts approved by the President were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

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COTTON
USDA/ASCS rules concerning 1976 crop; effective 10–30–75 51177

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974
Labor/EBS and Treasury/IRS extend comment period on proposed Annual Return/Report forms; comments by 11–19–75 51206

FEDERAL CLAIMS
National Foundation on the Arts and the Humanities issues regulations regarding collection 51196

FEDERAL PROCESS AGENTS
Treasury/FS amends regulations governing surety companies doing business with the United States 51194

FOOD STAMP PROGRAM
USDA/FNS extends comment period on proposed alternatives to the maximum monthly allowable income standards and basis of coupon issuance; comments by 11–13–75 51215

HISTORIC PLACES
Interior/NPS publishes additions, deletions, and corrections of properties included in National Register 51207

METAL AND NONMETAL MINES
Interior/MESA extends comment period on health and safety standards proposal; comments by 12–5–75 51202

OUTER CONTINTAL SHELF
Interior/GS adopts regulations for State consideration of oil and gas development plans 51199

PRIVACY ACT OF 1974
ACTION invites comments by 12–3–75 on additional routine use of records 51216
VA proposes regulations concerning archival records; comments by 12–4–75 51204

PUBLIC UTILITY HOLDING COMPANY ACT
SEC invites comments by 12–12–75 on whether issuers should be authorized to restrict refundability of long-term debt and preferred stock 51204

TELEVISION RECEIVERS
CPSC extends period for developing recommended safety standard until 6–22–76 51222

TOXIC MATERIALS
Labor announces availability of OSHA/NIOSH Standards Completion Project 51252

TRADE ACT OF 1974
Special Representative for Trade Negotiations Office publish determination that Khmer Republic and Vietnam (South) no longer meet eligibility criteria of beneficiary developing countries 51251

TRANSFER AGENTS
SEC adopts registration rule and related form 51181

VESSEL MANIFESTS
Treasury/CS issues advance notice of proposal permitting certain representatives of the press and others access to information; comments by 1–5–76 51201

VINYL CLAD FENCE FABRIC
ITC determination of no injury or likelihood as a result of importation from Canada 51243

MEETINGS—
Defense Manpower Commission, 11–21–75 51223
DOD/Navy: Board of Visitors, United States Naval Academy, 11–19 and 11–20–75 51206
EPA: State-Federal FIFRA Implementation Advisory Committee, Working Group on Resources and Funding, 11–18–75 51224
HEW: Board of Advisors to the Fund for the Improvement of Postsecondary Education, 11–17 and 11–18–75 51215
FDA: Image Receptor Conference on Film-Screen Combinations, 11–13 and 11–15–75 51215
Labor/BLS: Business Research Advisory Council's Committee on Consumer and Wholesale Prices, 12–3–75 51252
National Foundation on the Arts and the Humanities: Fellowships Panel, 12–1, 12–8, 12–12, 12–15, 12–17 and 12–19–75 51245
NSF: Advisory Panel for Economics, 11–21 and 11–22–75 51245
National Magnet Laboratory Visiting Committee, 11–20 and 11–21–75 51245
NRC: Advisory Committee on Reactor Safeguards, 11–5–75 51246
SBA: Boston District Advisory Council, 12–3–75 51251
Cleveland District Advisory Council, 11–20–75 51251
San Francisco District Advisory Council, 11–24–75 51251
VA: Special Medical Advisory Group, 11–24 and 11–25–75 51251

contents

ACTION
Notices
Privacy Act of 1974:
Additional routine uses for record systems 51216

AGRICULTURAL MARKETING SERVICE
Rules
Oranges and grapefruit grown in Texas (3 documents) 51177

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE
Rules
Cotton (Upland); 1976 base acreage allotments and national production goals 51177

AGRICULTURE DEPARTMENT
See also Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Food and Nutrition Service.

CIVIL AERONAUTICS BOARD
Rules
Supplemental air transportation; filing of depository account reports; correction 51180
Notices
Hearings, etc.:
Air Pacific Ltd 51216
Allegheny Airlines, Inc 51216

COAST GUARD
Rules
Drawbridge operations:
Oregon 51195
Proposed Rules
Drawbridge operations:
Washington 51202

COMMISSION ON THE REVIEW OF THE NATIONAL POLICY TOWARD GAMBLING
Notices
Hearings:
Gambling and related activities in Miami 51218

CONSUMER PRODUCT SAFETY COMMISSION

Rules

Meetings, advance public notice, public attendance, and record-keeping (2 documents) 51360

Notices

Aluminum wire connections; development of standards 51218
Television receivers; extension of standard development period 51222

CUSTOMS SERVICE

Proposed Rules

Vessel manifests; availability of information 51201

DEFENSE DEPARTMENT

See Navy Department.

DEFENSE MANPOWER COMMISSION

Notices

Meeting:
Commissioners 51223

EMPLOYEE BENEFITS SECURITY OFFICE

Notices

Annual return/report forms; extension of comment period 51254

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Rules

Architect-engineer contracts; bidding, research and development cost 51196

ENVIRONMENTAL PROTECTION AGENCY

Rules

Air quality implementation plans:
Idaho 51195
Procurement; debarred, suspended, and ineligible bidders 51196

Proposed Rules

Air quality implementation plans:
Oklahoma 51203

Notices

Meetings:
State-Federal FIFRA Implementation Advisory Committee 51224
Pesticide registration; applications 51223

FEDERAL AVIATION ADMINISTRATION

Proposed Rules

Airworthiness directives:
Hawker Siddeley Aviation Ltd 51202

FEDERAL ELECTION COMMISSION

Proposed Rules

Federal campaign funds; public financing of conventions 51348

Notices

Advisory opinions and advisory opinion requests (3 documents) 51351

FEDERAL HIGHWAY ADMINISTRATION

Rules

Motor carrier safety:
Parts and accessories necessary for safe operation 51198

FEDERAL MARITIME COMMISSION

Notices

Agreement filed:
Transportacion Maritime Mexicana, S.A 51224
Complaints filed:
E.S.B. Inc. v. Moore McCormack Lines, Inc 51224
Madeplac S.A. Industria De Madeiras et al 51224

FEDERAL POWER COMMISSION

Notices

Hearings, etc.:
Algonquin Gas Transmission Co 51225
California Co 51225
Central Illinois Public Service Co 51226
Central Vermont Public Service Co 51226
Chattanooga Gas Co., et al 51226
Clarke Corp., et al 51227
Colorado Interstate Gas Co 51227
Department of Water Resources of the State of California 51227
Detroit Edison Co 51230
Duke Power Co 51230
El Paso Electric Co. (3 documents) 51230
El Paso Natural Gas Co. (2 documents) 51231
Iowa Power and Light Co 51232
Louisville Gas and Electric Co 51232
New England Power Co 51233
Niagara Mohawk Power Corp 51233
Northwest Pipeline Corp 51233
Ohio Power Co 51234
Pacific Power and Light Co 51234
Public Service Co. of New Hampshire (3 documents) 51234
Southern Natural Gas Co 51235
Southwestern Electric Power Co 51235
Sun Oil Co., et al 51236
Swanton Village, Vermont 51236
Texas Eastern Transmission Corp 51236
Transcontinental Gas Pipe Line Corp 51237
Transwestern Pipeline Co. (3 documents) 51237
U—T Offshore System 51238
Wisconsin Electric Power Co. and Wisconsin Michigan Power Co 51239

FEDERAL RESERVE SYSTEM

Rules

State banking institutions; transfer agents 51179

Notices

Applications, etc.:
ANCORP Bancshares, Inc 51239
Bancorporation of Montana 51240
Citizens Bancorporation 51240
Dale Sprague Enterprises, Inc 51241
First Amtenn Corp 51241
First Financial Corp. of Tampa Fla 51242

FEDERAL TRADE COMMISSION

Rules

Prohibited trade practices:
Antonovich Bros., Inc., et al 51180
S. Scheinfeld & Son, Inc., et al 51180

FISCAL SERVICE

Rules

Federal process agents of surety companies 51194

FISH AND WILDLIFE SERVICE

Rules

Public access, use and recreation:
Kofa Game Range; Arizona 51199

Notices

Endangered species permits; application 51206

FOOD AND DRUG ADMINISTRATION

Rules

Food and food products:
Processing and bottling of bottled drinking water; stay of certain sampling and testing requirements and denial of extension of effective date of certain coding requirements 51194

Notices

Meetings:
Advisory committee meetings, correction 51215
Image Receptor Conference on Film-Screen Combinations 51215

FOOD AND NUTRITION SERVICE

Notices

Food stamp program:
Maximum allowable monthly income standards; extension of comment period 51215

FOREIGN-TRADE ZONES BOARD

Notices

Foreign trade zone applications:
Chicago, Ill 51242

GEOLOGICAL SURVEY

Rules

Drilling and development programs:
Oil and gas sulpher operations in Outer Continental Shelf 51199

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See Food and Drug Administration.

Notices

Meeting:
Fund for the Improvement of Postsecondary Education, Board of Advisors 51215

HEARINGS AND APPEALS OFFICE

Notices

Applications, etc.:
Republic Steel Corp 51214

INDIAN AFFAIRS BUREAU

Rules

Indian Self-Determination and Education Act and Education Contracts (2 documents) 51282

INTERIOR DEPARTMENT

See also Fish and Wildlife Service; Geological Survey; Hearings and Appeals Office; Indian Affairs Bureau; Mining Enforcement and Safety Administration; National Park Service.

CONTENTS

INTERNAL REVENUE SERVICE

Notices

Annual return/report forms; extension of comment period 51206

INTERNATIONAL TRADE COMMISSION

Notices

Import and export investigations:
tions:
Vinyl clad fence fabric from Canada 51243

INTERSTATE COMMERCE COMMISSION

Rules

Hopper cars; distribution of 51198
Motor carrier revenue proceedings; procedures to be followed 51379
Securities; expanded definition of; stay of effective date pending judicial review 51199

Notices

Fourth section applications for relief 51257
Hearing Assignments (2 documents) 51257
Motor carriers:
Temporary authority applications 51258
Transfer proceedings 51258

JUSTICE DEPARTMENT

Notices

Appointment of examiners pursuant to Voting Rights Act:
Mississippi 51206

LABOR DEPARTMENT

See also Employee Benefit Security Office; Labor Statistics Bureau; Occupational Safety and Health Administration.

Notices

Adjustment assistance:
Anaconda Co., Hastings-on-Hudson, N.Y. 51254
Clarostat Manufacturing Co., Orange, Va. 51255
Jayson Shoe Manufacturing Co., Inc., Birch Tree, Mo. 51256
Kay-Townes, Inc., Rome, Ga. 51255
Murata Manufacturing Corp., Rockmart, Ga. 51256

LABOR STATISTICS BUREAU

Notices

Meeting:
Consumer and Wholesale Prices Business Research Advisory Council 51252

MANAGEMENT AND BUDGET OFFICE

Notices

Clearance of reports; list of requests 51247

MINING ENFORCEMENT AND SAFETY ADMINISTRATION

Proposed Rules

New and revised health and safety standards; extension of comment period 51202

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Rules

Claims under the Federal Claims Collection Act of 1966; collection of 51196

Notices

Meetings:
Fellowship Panel Advisory mittee 51245

NATIONAL PARK SERVICE

Notices

Historic Places National Register 51207

NATIONAL SCIENCE FOUNDATION

Notices

Meetings:
Economics Advisory Panel 51245
National Magnet Laboratory Visiting Committee 51245

NAVY DEPARTMENT

Notices

Meeting:
Board of Visitors, United States Naval Academy 51206

NUCLEAR REGULATORY COMMISSION

Notices

Applications, etc.:
Power Authority of the State of New York 51246
Rochester Gas and Electric Co. 51246
Wisconsin Electric Power Co. 51247
Meeting:
Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Guides 51246
Regulatory guide; issuance and availability 51246

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Notices

Standards Completion Project, availability of draft technical standards 51252

PENSION BENEFIT GUARANTY CORPORATION

Proposed Rules

Guaranteed benefits; limitations on 51373
Terminating pension plan; allocation of assets 51368

SECURITIES AND EXCHANGE COMMISSION

Rules

Transfer agents; registration procedures 51181

Proposed Rules

Public Utility Holding Company Act of 1935; refundability of long-term debt and preferred stock; restriction 51204

Notices

Hearings, etc.:
Capital Investors Corp 51248
Century Petroleum Corp 51249
Dallas Oil and Gas, Inc. 51249
Delta Capital Corp 51250
Royal Properties, Inc 51250

SMALL BUSINESS ADMINISTRATION

Notices

Authority delegations:
Assistant Branch Manager; correction 51250
Meetings:
Boston District Advisory Council 51251
Cleveland District Advisory Council 51251
San Francisco District Advisory Council 51251

SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS OFFICE

Notices

Beneficiary developing countries; termination of designation:
Khmer Republic and South Vietnam 51251

STATE DEPARTMENT

Rules

Privacy Act of 1974; policies and procedures 51194

TRANSPORTATION DEPARTMENT

See also Coast Guard; Federal Aviation Administration; Federal Highway Administration.

TREASURY DEPARTMENT

See also Customs Service; Fiscal Service; Internal Revenue Service.

VETERANS ADMINISTRATION

Proposed Rules

Privacy Act of 1974:
Safeguarding personal information in records 51204

Notices

Meeting:
Special Medical Advisory Group 51251

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 List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

7 CFR

722 51177
906 (3 documents) 51177

11 CFR

PROPOSED RULES:

120 51348
121 51348
122 51348
123 51348
124 51348

12 CFR

208 51179

14 CFR

208 51179

PROPOSED RULES:

39 51202

16 CFR

13 51180
1001 51360

17 CFR

200 51183
240 51184
249b 51184

PROPOSED RULES:

Ch. II 51204

19 CFR

PROPOSED RULES:

103 51201

21 CFR

128d 51194

22 CFR

6a 51194

25 CFR

271 51286
272 51300
273 51303
274 51310
275 51316
276 51316
277 51327

29 CFR

PROPOSED RULES:

2608 51368
2609 51373

30 CFR

250 51199

PROPOSED RULES:

55 51202
56 51202
57 51202

31 CFR

224 51194

33 CFR

117 51195

PROPOSED RULES:

117 51202

38 CFR

PROPOSED RULES:

1 51204

40 CFR

52 51195

PROPOSED RULES:

52 51203

41 CFR

9–7 51196
14H–70 51331
15–1 51196

45 CFR

1150 51196

49 CFR

393 51198
1033 51198
1104 51380
1115 51199

50 CFR

28 51199

CUMULATIVE LIST OF PARTS AFFECTED—NOVEMBER

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 November.

5 CFR
213 51099

7 CFR
722 51177
906 51177
PROPOSED RULES:
909 51052
1060 51052
1061 51052
1068 51052
1069 51052
1076 51052

11 CFR
PROPOSED RULES:
120 51348
121 51348
122 51348
123 51348
124 51348

12 CFR
208 51179

13 CFR
121 51033
PROPOSED RULES:
103 51069

14 CFR
71 51033
208 51179
PROPOSED RULES:
39 51202
71 51058

15 CFR
4b 51168

16 CFR
13 51180
1001 51360
1012 51360

17 CFR
200 51183
240 51184
249b 51184

17 CFR—Continued
PROPOSED RULES:
Ch. II 51204

18 CFR
2 51033
157 51034

19 CFR
PROPOSED RULES:
103 51201

20 CFR
405 51055

21 CFR
121 51034
128d 51194
PROPOSED RULES:
102 51052

22 CFR
6a 51194

24 CFR
1914 51045
1915 51047

25 CFR
271 51286
272 51300
273 51303
274 51310
275 51316
276 51316
277 51327

29 CFR
PROPOSED RULES:
2608 51368
2609 51373

30 CFR
250 51199
PROPOSED RULES:
55 51202
56 51202
57 51202

31 CFR
51 51035
224 51194

33 CFR
117 51195
263 51133
264 51146
275 51146
384 51132
PROPOSED RULES:
117 51202

34 CFR
256 51038

38 CFR
PROPOSED RULES:
1 51204

40 CFR
52 ..... 51043, 51044
180 51044
PROPOSED RULES:
52 51195

41 CFR
1–30 51038
9–7 51196
14H–70 51331
15–1 51196
51–8 51168

43 CFR
Appendix 51038

45 CFR
118 51010
1150 51196

47 CFR
73 51038–51043
PROPOSED RULES:
83 51059

49 CFR
393 51198
1033 51198
1104 51380
1115 51199
PROPOSED RULES:
571 51059
572 51059

50 CFR
28 51199

FEDERAL REGISTER PAGES AND DATES—NOVEMBER

Pages	*Date*
51009–51176	3
51177–51407	4

rules and regulations

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

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

Title 7—Agriculture

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 722—COTTON

Subpart—1976 Crop of Upland Cotton; Base Acreage Allotments and National Production Goal

Sections 722.463 to 722.465 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.) (referred to as the "Act"), with respect to the 1976 crop of upland cotton (referred to as "cotton"). The purpose of these provisions is to (1) proclaim a national production goal; (2) establish a national base acreage allotment; and (3) apportion the national base acreage allotment to States. Section 722.466 is issued pursuant to the Agricultural Act of 1949, as amended (7 U.S.C. 1421 et seq.). This section establishes the cropland set-aside percentage as zero. The latest available statistics of the Federal Government have been used in making determinations under these provisions.

A notice that the Secretary was preparing to make determinations with respect to these provisions was published in the FEDERAL REGISTER on July 18, 1975 (40 FR 30274) in accordance with 5 U.S.C. 553. The views and recomendations received in response to such notice have been duly considered.

Cotton producers need to know the major provisions of the 1976 upland cotton program as soon as possible in order to effectively plan their 1976 farming operations. It is essential, therefore, that these provisions be made effective as soon as possible. Accordingly, §§ 722.463 to 722.466 shall become effective upon the filing of this document with the Director, Office of the Federal Register. The material previously appearing in these sections as "Subpart—1975 Crop of Upland Cotton: Base Acreage Allotments and National Production Goal" remains in full force and effect as to the crop to which it was applicable.

Sections 722.463 through 722.466 and the title to the subpart are amended to read as follows:

Subpart—1976 Crop of Upland Cotton; Base Acreage Allotments and National Production Goal

Sec.

722.463 National production goal for the 1976 crop of cotton.
722.464 National base acreage allotment for the 1976 crop of cotton.
722.465 Apportionment of national base acreage allotment to the States.
722.466 Cropland set-aside percentage.

AUTHORITY: Secs. 301, 342a, 350; 52 Stat. 1358, as amended; sec. 103(e), 84 Stat. 1375, as amended (7 U.S.C. 1301, 1342a, 1350, 1421; 1444(e)).

§ 722.463 National production goal for the 1976 crop of cotton.

The national production goal for the 1976 crop of cotton is hereby proclaimed to be in the amount of 12,376,000 standard bales of cotton determined in accordance with the formula prescribed under section 342a of the Act, based on the following data:

	480 lb net weight bales
(1) Estimated domestic consumption, 1976-77 marketing-year	6,800,000
(2) Estimated exports, 1976-77 marketing-year	4,500,000
(3) Allowance for market expansion (5 pct of sum of (1) and (2))	565,000
(4) Adjustments to assure adequate stocks	511,000
Total	12,376,000
(5) 50 pct of the average offtake for the preceding 3 marketing-years (1973, 1974, and estimated 1975)	5,601,000

§ 722.464 National base acreage allotment for the 1976 crop of cotton.

The national base acreage allotment for the 1976 crop of cotton shall be 11,000,000 acres determined in accordance with section 350(a) of the Act.

§ 722.465 Apportionment of national base acreage allotment to the States.

The national base acreage allotment of 11,000,000 acres is apportioned to the States in accordance with section 350(b) of the Act as follows:

States:	*State allotment (acres)*
Alabama	640,235
Arizona	228,710
Arkansas	921,313
California	510,019
Florida	20,098
Georgia	556,573
Illinois	1,881
Kansas	8
Kentucky	4,667
Louisiana	383,807
Mississippi	1,053,233
Missouri	247,612
Nevada	2,419
New Mexico	118,706
North Carolina	294,878
Oklahoma	511,777
South Carolina	449,488
Tennessee	364,772
Texas	4,679,430
Virginia	10,374

§ 722.466 Cropland set-aside percentage.

There will be no set-aside requirement in effect for the 1976 crop of cotton under section 103(e)(4)(A) of the Agricultural Act of 1949, as amended.

NOTE: It is hereby certified that the economic and inflationary impacts of this proposed regulation have been carefully evaluated in accordance with Executive Order 11821.

Effective date: October 30, 1975.

Signed at Washington, D.C., on October 30, 1975.

EARL L. BUTZ,
Secretary.

[FR Doc.75-29540 Filed 10-30-75;1:28 pm]

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

[Amdt. 18]

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

Container and Pack Requirements

Correction

In FR Doc. 27864 appearing on page 48494 in the issue of Thursday, October 16, 1975, the following changes should be made:

1. Container dimensions in the second and third lines of § 906.340(a)(1)(i) reading "16½ x 10½ x 7¼" should read "13¼x10½x7¼".

2. Container dimensions in the second and third lines of § 906.340(a)(1)(ii) reading "13¼ x 10¾ x 9½" should read "16½ x 10¾ x 9½".

[Orange Reg. 27]

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

Limitation of Shipments

This regulation sets minimum grade and size requirements for oranges grown in the Lower Rio Grande Valley in Texas for the period November 3, 1975, through November 7, 1976. These requirements are designed to promote orderly marketing in the interest of producers and consumers.

On October 10, 1975, notice of proposed rulemaking was published in the FEDERAL REGISTER (40 FR 47796) regarding a proposed regulation to be made effective pursuant to the marketing agreement, as amended, and Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This notice allowed interested persons 15 days during which they could submit written data, views, or arguments pertaining to this proposed regulation. None were submitted. The proposed regulation was recommended by the Texas Valley

Citrus Committee established pursuant to the said marketing agreement and order. This program is effective under the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601–674).

This action reflects the Department's appraisal of the need for regulation and of the crop and current and prospective market conditions. Shipment of oranges from the production area is now in progress, and such shipments are regulated by grade and size through November 2, 1975, under § 906.354 Orange Regulation 26 (39 FR 36852). Fruit in such shipments is required to grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, U.S. Combination (with not less than 60 percent, by count, of the oranges in any lot thereof grading at least U.S. No. 1), or U.S. No. 2, and be at least 2⅜ inches in diameter. The grade and size requirements, which would become effective November 3, 1975, are the same as the requirements currently in effect and are necessary to ensure the continued shipment of ample supplies of fruit of the better grades and more desirable sizes in the interest of both growers and consumers. This action is necessary to maintain orderly marketing conditions by preventing the demoralizing effect on the market caused by the shipment of lower-quality and smaller-sized fruit when more than ample supplies of the more desirable grades and sizes are available to serve consumers' needs. The issuance of this regulation is consistent with the objectives of the act of promoting orderly marketing and protecting the interest of consumers.

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

It is hereby further found that good cause exists for not postponing the effective date of this regulation until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice of proposed rulemaking concerning this regulation, with an effective date as hereinafter specified, was published in the FEDERAL REGISTER (40 FR 47796), and no objection to this regulation or such effective date was received; (2) 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; and (3) shipment of oranges from the production area is now in progress, and this regulation should be applicable insofar as practicable, to all shipments of such oranges in order to effectuate the declared policy of the act.

§ 906.356 Orange Regulation 27.

Order. (a) During the period November 3, 1975, through November 7, 1976, no handler shall handle:

(1) Any oranges of any variety, grown in the production area, unless such oranges grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, U.S. Combination (with not less than 60 percent, by count, of the oranges in any lot thereof grading at least U.S. No. 1), or U.S. No. 2;

(2) Any oranges of any variety, grown in the production area, which are smaller than pack size 288, as such size is specified in § 51.691(c) of the U.S. Standards for Oranges (Texas and States other than Florida, California, and Arizona), except that the minimum diameter limit for pack size 288 oranges in any lot shall be 2⁵⁄₁₆ inches;

(3) Any oranges of any variety, grown as aforesaid, for which inspection is required unless an appropriate inspection certificate has been issued with respect thereto not more than 48 hours prior to the time of shipment; or

(4) Any oranges of any variety, grown as aforesaid, unless such oranges meet all the applicable container and pack requirements which are in effect pursuant to the aforesaid marketing agreement and order during the period.

(b) Terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order; and terms relating to grade and diameter, when used herein, have the same meaning as is given to the respective term in the United States Standards for Oranges (Texas and States other than Florida, California, and Arizona) (7 CFR 51.680–51.714).

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

Dated: October 31, 1975.

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

[FR Doc.75-29668 Filed 10-31-75;12:04 pm]

[Grapefruit Reg. 27]

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

Limitation of Shipments

This regulation sets minimum grade and size requirements for grapefruit grown in the Lower Rio Grande Valley in Texas for the period November 3, 1975, through November 7, 1976. These requirements are designed to promote orderly marketing in the interest of producers and consumers.

On October 10, 1975, notice of proposed rulemaking was published in the FEDERAL REGISTER (40 FR 47796) regarding a proposed regulation to be made effective pursuant to the marketing agreement, as amended, and Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This notice allowed interested persons 15 days during which they could submit written data, views, or arguments pertaining to this proposed regulation. None were submitted. The proposed regulation was recommended by the Texas Valley Citrus Committee established pursuant to the said marketing agreement and order. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

This action reflects the Department's appraisal of the need for regulation and of the crop and current and prospective market conditions. Shipment of grapefruit from the production area is now in progress, and such shipments are regulated by grade and size through November 2, 1975, under § 906.355 Grapefruit Regulation 26 (39 FR 36851; 39257; 40 FR 4117). Fruit in such shipments is required to grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, or U.S. No. 2, and be at least 3⁵⁄₁₆ inches in diameter.

The regulation, which would become effective November 3, 1975, is comparable to the one effective during the 1974–75 season. The minimum size requirement of 3⁵⁄₁₆ inches in diameter during the first part of the season is designed to delay harvest of smaller fruit until it reaches its full size about the end of February. At such time it is desirable to lower the minimum size requirement to 3⁵⁄₁₆ inches as most of the fruit has reached its full size, as much of the larger sized fruit has been shipped, and as the available supplies of grapefruit have diminished.

This action is necessary to ensure the continued shipment of ample supplies of fruit of the better grades and more desirable sizes in the interest of producers and consumers and to maintain orderly marketing conditions by preventing the demoralizing effect on the market caused by the shipment of lower quality and smaller sized fruit when more than ample supplies of the more desirable grades and sizes are available to serve consumers' needs. The issuance of this regulation is consistent with the objectives of the act of promoting orderly marketing and protecting the interest of consumers.

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

It is hereby further found that good cause exists for not postponing the effective date of this regulation until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice of proposed rulemaking concerning this regulation, with an effective date as hereinafter specified, was published in the FEDERAL REGISTER (40 FR 47796), and no objection to this regulation or such effective date was received; (2) 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; and (3) shipment of grapefruit from the production area is now in progress, and this regulation should be applicable, insofar as practicable, to all shipments of such grapefruit in order to effectuate the declared policy of the act.

§ 906.357 Grapefruit Regulation 27.

Order. (a) During the period November 3, 1975, through November 7, 1976, no handler shall handle:

(1) Any grapefruit of any variety, grown in the production area, unless such grapefruit grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, or U.S. No. 2;

(2) Any grapefruit of any variety, grown in the production area, which are smaller than pack size 96, as such size is specified in § 51.630(c) of the U.S. Standards for Grapefruit (Texas and States other than Florida, California and Arizona), except that the minimum diameter limit for pack size 96 grapefruit in any lot shall be $3\frac{7}{16}$ inches: *Provided,* That during the period February 23, 1976, through November 7, 1976, no handler shall handle any grapefruit of any variety, grown in the production area, which are smaller than pack size 112, as such size is specified in § 51.630(c) of the aforesaid U.S. Standards for Grapefruit, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be $3\frac{7}{16}$ inches:

(3) Any grapefruit of any variety, grown as aforesaid, for which inspection is required unless an appropriate inspection certificate has been issued with respect thereto not more than 48 hours prior to the time of shipment; or

(4) Any grapefruit of any variety, grown as aforesaid, unless such grapefruit meet all the applicable container and pack requirements which are in effect pursuant to the aforesaid marketing agreement and order during the period.

(b) Terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order; and terms relating to grade and diameter, when used herein, shall have the same meaning as is given to the respective term in the United States Standards for Grapefruit (Texas and States other than Florida, California and Arizona) (7 CFR 51.620–51.653).

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

Dated: October 31, 1975.

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

[FR Doc. 75-29669 Filed 10-31-75;12:05 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

Transfer Agents for Certain Registered Securities

By notice of proposed rulemaking published in the FEDERAL REGISTER on September 4, 1975 (40 FR 40857), the Board of Governors proposed to amend its Regulation H, "Membership of State Banking Institutions in the Federal Reserve System," (12 CFR 208) to require that, on or after December 1, 1975,[1] no State member bank or any of its subsidiaries shall act as a transfer agent, as defined in section 3(a)(25) of the Act, with respect to any security registered under section 12 of the Act or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section, unless it has registered with the Board in conformity with the requirements of Form TA–1.[2]

This amendment relating to State member banks is proposed to assist in the development of a modern nationwide system for the safe and efficient handling of securities transactions in a manner which best serves the financial community and the investing public. Congress has directed the Board to regulate certain transfer agent activities to facilitate this purpose.

In light of comments received, the frequency and time for filing amendments has been relaxed. The rule as adopted requires items 1–6 of Form TA–1 to be amended twenty-one calendar days following the date on which such information becomes inaccurate, misleading or incomplete. Information as to the issues which the bank services must be updated annually if such information has become inaccurate, misleading or incomplete.

Form TA–1 as adopted has been revised and reorganized to clarify its requirements and simplify the registration process.

The Form is designed to identify and to provide the Board with basic information regarding the size and nature of the registrant's transfer agent activities and to assist in the development of appropriate regulatory standards.

The Form has been revised to eliminate the requirement that the registrant disclose the identity of entities who act as transfer agent, cotransfer agent, registrar or co-registrar for issues with respect to which the registrant performs transfer agent functions. As revised, the Form requires the registrant to identify the issues for which it performs transfer agent functions and the capacities in which it acts for each issue and requires the registrant to update the information annually.

The information requested on differences and out-of-proof issues has been revised to clarify the information required.

Pursuant to the amendment, which is adopted pursuant to sections 17, 17A and 23(a) of the Act, a new paragraph (f) is added to § 208.8, as set forth below:

§ 208.8 Banking practices.

* * * * *

(f) *State member banks as transfer agents.* (1) On or after December 1, 1975, no State member bank or any of its subsidiaries shall act as transfer agent, as defined in section 3(a)(25) of the Securities Exchange Act of 1934, ("Act") with respect to any security registered under section 12 of the Act or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section, unless it shall have filed a registration statement with the Board in conformity with the requirements of Form TA–1, which registration statement shall have become effective as hereinafter provided. Any registration statement filed by a State member bank or its subsidiary shall become effective on the thirtieth day after filing with the Board unless the Board takes affirmative action to accelerate, deny or postpone such registration in accordance with the provisions of section 17A(c) of the Act. Such filings with the Board will constitute filings with the Securities and Exchange Commission for purposes of section 17(c)(1) of the Act.

(2) If the information contained in Items 1–6 of Form TA–1 becomes inaccurate, misleading or incomplete for any reason, the bank or its subsidiary shall, within twenty-one calendar days thereafter file an amendment to Form TA–1 correcting the inaccurate, misleading or incomplete information. Within thirty calendar days following the close of any calendar year (beginning with the period from the date as of which the registration statement is prepared to December 31, 1976) during which the information required by Item 7 of Form TA–1 becomes inaccurate, misleading or incomplete, the bank or its subsidiary shall file an amendment to Form TA–1 correcting the inaccurate, misleading or incomplete information.

[1] See section 31(a) of Pub. L. 94–29 (June 4, 1975).

[2] A copy of Form TA–1 is filed as part of the original document. Copies are available on request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to any Federal Reserve Bank.

(3) Each registration statement on Form TA-1 or amendment thereto shall constitute a "report" or "application" within the meaning of section 17, 17A (c) and 32(a) of the Act.

By order of the Board of Governors, October 17, 1975.

[SEAL] THEODORE E. ALLISON, *Secretary of the Board.*

[FR Doc.75-29547 Filed 11-3-75;8:45 am]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

[Reg. ER-937, Amdt. 5]

PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

Quarterly Filings of Depository Account Reports With the Board; Deletion

Correction

In FR Doc. 75-28705, appearing at page 49771 in the issue for Friday, October 24, 1975, the information in the brackets at the beginning of the document should read as set forth above.

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. C-2732]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Antonovich Bros., Inc., et al.

Subpart—Misbranding or mislabeling: § 13.1185 Composition; 13.1185-30 Fur Products Labeling Act; § 13.1212 Formal regulatory and statutory requirements; 13.1212-30 Fur Products Labeling Act. Subpart—Misrepresenting oneself and goods—Goods: § 13.1590 Composition; 13.1590-30 Fur Products Labeling Act; § 13.1623 Formal regulatory and statutory requirements; 13.-1623-30 Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 Composition; 13.1845-30 Fur Products Labeling Act; § 13.1852 Formal regulatory and statutory requirements; 13.1852-35 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; Sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f)

In the Matter of Antonovich Bros., Inc., a Corporation, and Daniel Antonovich, and David Antonovish, Individually and as Officers of Said Corporation.

Consent order requiring a New York City manufacturer, wholesaler and retailer of fur coats and other fur garments, among other things to cease misbranding and mislabeling their fur products in violation of the Fur Products Labeling Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows: [1]

ORDER

It is ordered, That the respondents Antonovich Bros., Inc., a corporation, its successors and assigns, and its officers, and Daniel Antonovich and David Antonovich, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary or other device in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce; or in connection with the introduction into commerce, or the transportation or distribution in commerce, of any fur, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

2. Failing to set forth the term "natural" as part of the information required to be disclosed on a label under the Fur Products Labeling Act and the rules and regulations promulgated thereunder to describe such fur product which is not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Failing to set forth on a label the item number or mark assigned to such fur product.

4. Failing to set forth on a label the true animal name of the fur used in such fur product.

5. Setting forth information required under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form on a label pertaining to such fur product.

6. Setting forth required information on a label in handwriting.

It is further ordered, That each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include each individual respondent's current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

[1] Copies of the Complaint, Decision and Order, filed with the original document.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist contained herein.

The Decision and Order was issued by the Commission, September 29, 1975.

CHARLES A. TOBIN, *Secretary.*

[FR Doc.75-29556 Filed 11-3-75;8:45 am]

[Docket No. C-2731]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

S. Scheinfeld & Son., Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.30 Composition of goods; 13.30-75 Textile Fiber Products Identification Act; 13.30-100 Wool Products Labeling Act; § 13.73 Formal regulatory and statutory requirements; 13.73-90 Textile Fiber Products Identification Act. Subpart—Concealing, obliterating or removing law required and informative marking: § 13.523 Textile fiber product tags or identification. Subpart—Failing to maintain records: § 13.1051 Failing to maintain records; 13.1051-30 Formal regulatory and/or statutory requirements. Subpart—Invoicing products falsely: § 13.1108 Invoicing products falsely; 13.1108-80 Textile Fiber Products Identification Act. Subpart—Misbranding or mislabeling: § 13.1185 Composition; 13.1185-80 Textile Fiber Products Identification Act; 13.1185-90 Wool Products Labeling Act; § 13.1212 Formal regulatory and statutory requirements; 13.1212-80 Textile Fiber Products Identification Act; 13.1212-90 Wool Products Labeling Act. Subpart—Misrepresenting oneself and goods—Goods: § 13.1623 Formal regulatory and statutory requirements; 13.1623-80 Textile Fiber Products Identification Act; 13.1623-90 Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 Formal regulatory and statutory requirements; 13.1852-70 Textile Fiber Products Identification Act; 13.1852-80 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 72 Stat. 1717; Secs. 2-5, 54 Stat. 1128-1130; 15 U.S.C. 45, 70, 68)

In the Matter of S. Scheinfeld and Son, Incorporated, a corporation, and Joseph Scheinfeld, individually and as an officer of said corporation.

Consent order requiring a South Kearny, N.J., wholesale dealer in wool blend and textile fabrics, among other things to cease falsely and deceptively labeling wool and textile products; and to notify those that purchased subject products that they were mislabeled. Further, respondents are required to discontinue substituting their labels for those on textile fabrics they purchase for resale unless they comply with provisions of the Textile Fiber Products Identification Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows: [1]

ORDER

It is ordered, That respondents S. Scheinfeld and Son, Incorporated, a corporation, its successors and assigns, and its officers, and Joseph Scheinfeld, individually and as an officer of said corporation and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, manufacture for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale, in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products as to the name or amount of the constituent fibers contained therein.

2. Failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by section 4(b) of the Textile Fiber Products Identification Act.

B. Removing or mutilating, or causing or participating in the removal or mutilation of, the stamp, tag, label or other identification required by the Textile Fiber Products Identification Act to be affixed to any textile fiber product, after such textile fiber product has been shipped in commerce, and prior to the time such textile fiber product is sold and delivered to the ultimate consumer without substituting therefor labels conforming to section 4 of said Act and the rules and regulations promulgated thereunder and in the manner prescribed by section 5(b) of the Act.

C. Failing to maintain and preserve, as required by section 6(b) of the Textile Fiber Products Identification Act, such records of the fiber content of textile fiber products as will show the information set forth on the stamps, tags, labels or other identification removed by respondents, together with the name or names of the person or persons from whom such textile fiber products were received, when substituting stamps, tags, labels or other identification pursuant to section 5(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents S. Scheinfeld and Son, Incorporated, a corporation, its successors and assigns, and its officers, and Joseph Scheinfeld, individually and as an officer of said corporation and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents notify by delivery of a copy of this order by registered mail, each of their customers that purchased the textile and wool products which gave rise to this complaint of the fact that such products were misbranded.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this Order to each of its operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist contained herein.

The Decision and Order was issued by the Commission September 29, 1975.

CHARLES A. TOBIN,
Secretary.

[FR Doc.75-29557 Filed 11-3-75;8:45 am]

[1] Copies of the Complaint, Decision and Order, filed with the original document.

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release 34-11759]

Registration of Transfer Agents

The Securities and Exchange Commission (the "Commission") announced today the adoption of Rule 17Ac2-1 (17 CFR 240.17Ac2-1) and related Form TA-1 (17 CFR 249b.100) under the Securities Exchange Act of 1934 (the "Act"),[1] effective immediately. The rule and form set forth the procedure for transfer agents for which the Commission is the appropriate regulatory agency, as defined in section 3(a)(34)(B)[2] of the Act, to register with the Commission.

Each federal bank regulatory agency (i.e., the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation) is publishing, concurrently with the publication of this rule and registration form, a substantially similar rule and an identical registration form for transfer agents which are required to register with it.

(i) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia, or a subsidiary of any such bank;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company, or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i) or (iii) of this subparagraph;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), or a subsidiary thereof; and

(iv) the Commission in the case of all other clearing agencies and transfer agents.

On August 28, 1975, in Securities Exchange Act Release No. 11622, 40 FR 40858, September 4, 1975, the Commission published for public comment proposed Rule 17Ac2-1 and related Form

[1] 15 U.S.C. 78a et seq.

[2] Section 3(a)(34)(B) of the Act, 15 U.S.C. 78c(a)(34)(B), defines the term "appropriate regulatory agency" when used with respect to a clearing agency or transfer agent to be:

TA–1.[3] In light of the comments received by the Commission in response thereto, the Commission has adopted Rule 17Ac2–1 and related Form TA–1 with certain modifications from the form in which they were proposed.

Background. As amended by the Securities Acts Amendments of 1975 (the "1975 Act"), which was signed into law on June 4, 1975,[4] the Act provides for federal regulation of the securities handling process, including clearing agencies, depositories, and transfer agents, with a view to facilitating the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. In some areas the Commission's authority is exclusive; in other areas the Commission's authority is shared with federal bank regulatory agencies. One of the areas in which the Commission and the federal bank regulatory agencies have shared regulatory authority is the registration of transfer agents.

Pursuant to section 17A(c) of the Act,[5] a transfer agent must register with the appropriate regulatory agency (the Commission or the appropriate federal bank regulatory agency) if it performs the function of a transfer agent with respect to any security registered under section 12 of the Act[6] or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section. Such registration must be effective on December 1, 1975;[7] otherwise, it shall be unlawful for any transfer agent subject to the registration requirements but not so registered, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the function of a transfer agent with respect to such securities.

Under section 17A(c) of the Act, a transfer agent subject to the registration requirements registers by filing with the appropriate regulatory agency for such transfer agent an application for registration containing information and documents prescribed by the appropriate regulatory agency. Registration of a transfer agent becomes effective thirty days after receipt of the application for registration by the appropriate regulatory agency, unless the appropriate regulatory agency takes affirmative action to accelerate, deny or postpone registration in accordance with the provisions of section 17A(c) of the Act.

A transfer agent which is subject to the registration requirements and which is a national bank or a subsidiary of any such bank or a bank operating under the Code of Law for the District of Columbia or a subsidiary of any such bank registers with the Comptroller of the Currency. A transfer agent which is subject to the registration requirements and which is a State member bank of the Federal Reserve System or a subsidiary of any such bank or a bank holding company or a subsidiary of a bank holding company which is a bank[8] (other than a bank which registers with the Comptroller of the Currency or the Federal Deposit Insurance Corporation) registers with the Board of Governors of the Federal Reserve System. A transfer agent which is subject to the registration requirements and which is a State chartered bank insured by the Federal Deposit Insurance Corporation (other than a bank which is a member bank of the Federal Reserve System) or a subsidiary thereof registers with the Federal Deposit Insurance Corporation. All other transfer agents which are subject to the registration requirements register with the Commission.

Definition of the term "transfer agent." The term "transfer agent" is defined in section 3(a)(25) of the Act[9] to mean any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (i) countersigning such securities upon issuance, (ii) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar, (iii) registering the transfer of such securities, (iv) exchanging or converting such securities, or (v) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates. The term "transfer agent" does not include any insurance company or separate account which performs such functions solely with respect to variable annuity contracts or variable life policies which it issues or any registered clearing agency which performs such functions solely with respect to options contracts which it issues.

Section 17A(c) of the Act precludes a person from performing any transfer agent function set forth in section 3(a)(25) of the Act with respect to any security registered under section 12 of the Act or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section, unless such person is registered as a transfer agent with the appropriate regulatory agency. Thus, an issuer who performs any one or more of the transfer agent functions specified in section 3(a)(25) of the Act with respect to such securities, even if it employs a transfer agent to perform other specified transfer agent functions, would be required to register under the Act. For example, an issuer who engages a transfer agent to countersign certificates, monitor the issuance of certificates, and prepare for the issuer information to enable the issuer to record the transfer of the securities on the corporate security holder records maintained by such issuer would also be required to register, since the issuer would be performing the function of registering the transfer of such securities on the corporate security holder records, a transfer agent function.

Rule 17Ac2–1. Rule 17Ac2–1 requires a transfer agent for which the Commission is the appropriate regulatory agency to apply for registration with the Commission on, and in accordance with the instructions contained in, Form TA–1. Registration shall become effective on the thirtieth day after filing unless the Commission takes affirmative action to accelerate, deny or postpone such registration. The rule further provides that the filing of any amendment to an application for registration, which has not become effective, will postpone the effective date of the registration until the thirtieth day after the date on which the amendment was filed, unless the Commission takes affirmative action to accelerate, deny or postpone the registration in accordance with the Act.

The rule as adopted also requires items 1–6 of Form TA–1 to be amended twenty-one calendar days following the date on which such information becomes inaccurate, misleading or incomplete. Information as to the issues which the registrant services must be updated within thirty calendar days following the close of any calendar year (beginning with the period from the date as of which registrant's application is prepared to December 31, 1976) during which the information has become inaccurate, misleading or incomplete.

Finally, the rule provides that every registration or amendment filed pursuant to Rule 17Ac2–1 constitutes a "report" or "application" within the meaning of sections 17, 17A(c), and 32(a) of the Act.[10]

Commission acceleration of registration filed on or prior to November 17, 1975. Under section 17A(c)(2) of the Act, an application for registration filed by a transfer agent with the appropriate regulatory agency shall be effective thirty days after receipt of such application by such appropriate regulatory agency or within such shorter period of time as such appropriate regulatory agency may determine. Section 17A(c) of the Act, as made effective by section 31(a) of the 1975 Act, would make it unlawful on or after December 1, 1975, for any transfer agent, unless registered with the appropriate regulatory agency, to make use of the mails or any means or instrumentality of interstate commerce to perform the function of a transfer agent with respect to certain securities. Absent an order accelerating the effectiveness of registration, transfer agents

[3] The comment period expired on September 29, 1975. Comments are contained in Commission File No. S7–583, which is available for public inspection.

[4] Pub. L. 94–29 (June 4, 1975).

[5] 15 U.S.C. 78q–1(c).

[6] 15 U.S.C. 781.

[7] Section 17A(c) of the Act becomes effective on December 1, 1975. See section 31(a) of the 1975 Act.

[8] Section 3(a)(34) of the Act provides that for purposes of that section the terms "bank holding company" and "subsidiary of a bank holding company" have the meanings given them in Section 2 of the Bank Holding Company Act of 1956.

[9] 15 U.S.C. 78c(a)(25).

[10] 15 U.S.C. 78q, 78q–1(c) and 78ff(a).

required to register must file an application for registration with the appropriate regulatory agency before November 1, 1975.

In view of the fact that Rule 17Ac2–1 and related Form TA–1 have just been adopted and that there may be a brief delay in circulating Form TA–1 to all interested parties, the Commission has determined that to require transfer agents to file Form TA–1 before November 1, 1975, would not be practicable.

Accordingly, the Commission intends to enter orders making effective on December 1, 1975, any properly completed application for registration on Form TA–1 which is filed on or before November 17, 1975, unless affirmative action is taken to deny or postpone such registration in accordance with the provisions of the Act. In addition, the Commission intends to enter orders which will provide that any amendment to a Form TA–1, which properly completed registration form was filed on or before November 17, 1975, shall not operate to postpone the December 1, 1975, effective date of the registration.

Receipt of Form TA–1 by the Commission. Procedurally, with respect to an application for registration on Form TA–1 filed with the Commission pursuant to Rule 17Ac2–1, the Commission will acknowledge receipt of Form TA–1 and such registration will become effective on the thirtieth day after filing (and in the case of applications filed on or prior to November 17, 1975, on December 1, 1975) unless the registrant receives notification that such registration has not become effective for any reason.

Form TA–1, 17 CFR 249b.100. Form TA–1, as adopted, has been revised and reorganized to clarify its requirements and to simplify the registration process. It continues to be a common form for the registration of all transfer agents.

The Form is designed to identify, and to provide the Commission with basic information regarding, the size and nature of the registrant's transfer agent activities and to assist in the development of appropriate regulatory standards.

The information requested includes the name of the registrant, the address of the principal place of the registrant's business, the address of the principal office(s) for transfer agent activities, the name of the person in charge of the registrant's transfer agent activities, the registrant's form of organization, and the types of transfer agent activities engaged in by the registrant.

The Form has been revised to eliminate the requirement that the registrant disclose the identity of entities who act as transfer agent, co-transfer agent, registrar or co-registrar for issues with respect to which the registrant performs transfer agent functions. As revised, the Form requires the registrant to identify the issues for which it performs transfer agent functions and the capacities in which it acts for each issue and requires the registrant to update the information annually.

The Form has been clarified to indicate that a response to items on Form TA–1 should encompass all securities for which registrant performs a transfer agent function, except as otherwise specified in the Form.

The Form also requires information as to whether or not the registrant is audited, the registrant's insurance coverage in connection with its transfer agent activities, and the number of employees engaged in transfer agent activities.

The item pertaining to differences and out-of-proof conditions has been revised to clarify the information required.

Statutory basis and competitive considerations. Rule 17Ac2–1 and Form TA–1 are adopted pursuant to sections 2, 17, 17A and 23(a) of the Securities Exchange Act of 1934.[11] In accordance with section 23(a) of the Act, the Commission has considered the impact which the adoption of Rule 17Ac2–1 and related Form TA–1 would have on competition, and finds that the adoption of Rule 17Ac2–1 and Form TA–1 will not impose any burden on competition. The Commission has adopted Rule 17Ac2–1 and related Form TA–1 effective immediately having found, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(d), that such action is necessary in order to provide an orderly and timely procedure for the registration of transfer agents.

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

The text of the amendment pertaining to the Commission's regulations with respect to delegated authority. Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding new paragraph (a)(15) to § 200.30–3 and (a)(3) to § 200.30–11, respectively, as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(15) Pursuant to section 17A(c)(2) of the Act (15 U.S.C. 78q–1(c)(2)), to authorize the issuance of orders accelerating registration of transfer agents for which the Commission is the appropriate regulatory agency before the expiration of thirty days following the dates on which applications for registration as a transfer agent are filed.

* * * * *

§ 200.30–11 Delegation of authority to Director, Office of Reports and Information Services.

* * * * *

(a) * * *

(3) Pursuant to section 17A(c)(2) of the Act (15 U.S.C. 78q–1(c)(2)), to authorize the issuance of orders accelerating registration of transfer agents for which the Commission is the appropriate regulatory agency before the expiration of thirty days following the dates on which applications for registration as a transfer agent are filed.

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[11] 15 U.S.C. 78b, 78q, 78q–1 and 78w(a).

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

The text of Rule 17Ac 2–1. Chapter II of 17 CFR Part 240 is hereby amended by adding a new § 240.17Ac2–1 to read as follows:

§ 240.17Ac2–1 Application for registration of transfer agents.

(a) An application for registration, pursuant to section 17A(c) of the Act, of a transfer agent for which the Commission is the appropriate regulatory agency, as defined in section 3(a)(34)(B) of the Act, shall be filed with the Commission on Form TA–1, in accordance with the instructions contained therein and shall become effective on the thirtieth day following the date on which the application is filed, unless the Commission takes affirmative action to accelerate, deny or postpone such registration in accordance with the provisions of section 17A(c) of the Act.

(b) The filing of any amendment to an application for registration as a transfer agent pursuant to paragraph (a) of this section, which registration has not become effective, shall postpone the effective date of the registration until the thirtieth day following the date on which the amendment is filed, unless the Commission takes affirmative action to accelerate, deny or postpone the registration in accordance with the provisions of section 17A(c) of the Act.

(c) Within twenty-one calendar days following the date on which any information reported at items 1–6 of Form TA–1 becomes inaccurate, misleading or incomplete, the registrant shall file an amendment on Form TA–1 correcting the inaccurate, misleading or incomplete information. Within thirty calendar days following the close of any calendar year (beginning with the period from the date as of which registrant's application is prepared to December 31, 1976) during which the information required by item 7 of Form TA–1 becomes inaccurate, misleading or incomplete, the registrant shall file an amendment on Form TA–1 correcting the inaccurate, misleading or incomplete information.

(d) Every registration and amendment filed pursuant to this section shall constitute a "report" or "application" within the meaning of sections 17, 17A(c), and 32(a) of the Act.

PART 249b—FURTHER FORMS, SECURITIES EXCHANGE ACT OF 1934

Part 249b and Form TA–1. Chapter II of Title 17 of the Code of Federal Regulations is hereby amended by adding a new Part 249b and a new § 249b.100 thereunder to read as follows:

Sec.

249b.1–249b.99	[Reserved]
249b.100	Form TA–1, uniform form for registration as a transfer agent and for amendment to registration as a transfer agent pursuant to section 17A of the Securities Exchange Act of 1934.

AUTHORITY: 15 U.S.C. 78a et seq.

§§ 249b.1–249b.99 [Reserved]

§ 249b.100 Form TA–1, uniform form for registration as a transfer agent pursuant to section 17A of the Securities Exchange Act of 1934.

This form shall be used for application for registration as a transfer agent and for amendment to registration as a transfer agent pursuant to Section 17A of the Securities Exchange Act of 1934.

The Text of Form TA–1 is attached below.

Delegation of authority. The regulations of the Commission relating to general organization are concurrently being amended to delegate authority to the Directors of the Office of Reports and Information Services and the Division of Market Regulation to issue orders accelerating registration of transfer agents for which the Commission is the appropriate regulatory agency under section 17A(c)(2) of the Act.

Effective immediately. The Commission finds that the foregoing action regarding delegations of authority relates solely to agency organization, procedure or practice and that, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), notice and public procedure are not necessary. Accordingly, the foregoing action becomes effective immediately.

Copies of Form TA–1. Copies of Form TA–1 may be obtained from the Publications Section, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 and at each of the Commission's regional offices. Copies of Form TA–1 will be available on or about the week of October 20, 1975.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 22, 1975.

INSTRUCTIONS FOR USE OF FORM TA-1

UNIFORM FORM FOR REGISTRATION AS A TRANSFER AGENT AND FOR AMENDMENT TO REGISTRATION AS A TRANSFER AGENT PURSUANT TO SECTION 17A OF THE SECURITIES EXCHANGE ACT OF 1934 (the "Act")

I— General Instructions for Preparing and Filing Form TA-1

1. Form TA-1 is to be used by transfer agents to apply for registration and to amend registration with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation or the Securities and Exchange Commission. As used hereinafter, the term "Form TA-1" includes the form and any required schedules and attachments thereto.

2. Transfer agents should register as follows:

   A. A national bank or a subsidiary of any such bank or a bank operating under the Code of Law for the District of Columbia or a subsidiary of any such bank registers with the *Comptroller of the Currency.*

   B. A State member bank of the Federal Reserve System or a subsidiary of any such bank or a bank holding company or a subsidiary of a bank holding company which is a bank (other than a bank which is required to register with the Comptroller of the Currency or the Federal Deposit Insurance Corporation) registers with the *Board of Governors of the Federal Reserve System.*

   C. A bank insured by the Federal Deposit Insurance Corporation (other than a bank which is a member bank of the Federal Reserve System) or a subsidiary thereof registers with the *Federal Deposit Insurance Corporation.*

   D. All other transfer agents register with the *Securities and Exchange Commission.*

3. Transfer agents are required to file six completed copies of Form TA-1 with the appropriate regulatory agency, as described in instruction 2 immediately above, in accordance with the following instructions:

   A. For transfer agents registering with the *Comptroller of the Currency,* six copies of Form TA-1 are to be filed with the Office of the Comptroller of the Currency, Administrator of National Banks, Washington, D. C. 20219.

   B. For transfer agents registering with the *Board of Governors of the Federal Reserve System,* four copies of Form TA-1 are to be filed with the Board of Governors of the Federal Reserve System, Washington, D. C. 20551, and two copies of Form TA-1 are to be filed with the Federal Reserve Bank of the District in which registrants' principal banking operations are conducted.

   C. For transfer agents registering with the *Federal Deposit Insurance Corporation,* six copies of Form TA-1 are to be filed with the Federal Deposit Insurance Corporation, Washington, D. C. 20429.

   D. For transfer agents registering with the *Securities and Exchange Commission,* six copies of Form TA-1 are to be filed with the Securities and Exchange Commission, Washington, D. C. 20549.

   An exact copy of Form TA-1 should be retained for your records.

4. The date on which a Form TA-1 is received by the appropriate regulatory agency shall be the date of filing thereof if all the requirements with respect to filing have been complied with. A Form TA-1 which is not prepared and executed in compliance with applicable requirements may be returned as not acceptable for filing. However, acceptance of Form TA-1 shall not constitute any finding that it has been filed as required or that the information submitted is true, current or complete.

5. Copies of Form TA-1 and Schedules A and B may be duplicated and are acceptable for filing provided an *original, manual signature* is affixed to the execution section of each copy. Except as set forth in instruction 20, Form TA-1 and Schedules A and B may be duplicated by any method producing legible copies, of type size identical to that in the Form, on good quality, unglazed, white paper, 8½ x 11 inches in size.

6. If Form TA-1 is filed by a corporation, it shall be signed in the name of the corporation by a principal officer duly authorized; if it is filed other than by a corporation, it shall be signed by a duly authorized principal of the organization filing the Form. As used in this Form, principal officer means the chairman of the board of directors, vice chairman of the board of directors, chairman of the executive committee, president, vice president, treasurer, secretary, comptroller, or any other person performing a similar function.

7. If the space provided for any answer on Form TA-1 is insufficient, the complete answer shall be prepared on Schedule A, which shall be attached to the Form.

8. Individuals' names, except for executing signatures, shall be given in full wherever required (last name, first name, middle name). The full middle name is required. Initials are not acceptable unless the individual legally has only an initial.

9. Unless the context otherwise requires, "registrant" means the entity on whose behalf Form TA-1 is filed, whether as a registration or as an amendment to a previously filed Form TA-1.

10. The information contained in Form TA-1 shall be amended upon the happening of certain events (See instruction 15 relating to amendments to Form TA-1).

11. Section 17(c)(1) of the Act, among other things, requires every transfer agent who files a registration form or amendment thereto with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency or the Federal Deposit Insurance Corporation to file a copy of such registration form or amendment with the Securities and Exchange Commission. The Securities and Exchange Commission and the federal bank regulatory agencies have developed procedures pursuant to which the federal bank regulatory agencies will transmit a copy of any registration form or amendment filed with them to the Securities and Exchange Commission. Accordingly, such filings with the federal bank regulatory agencies by transfer agents for which the Securities and Exchange Commission is not the appropriate regulatory agency will constitute filings with the Securities and Exchange Commission for purposes of Section 17(c)(1) of the Act.

12. The term "transfer agent" is defined in Section 3(a)(25) of the Act to mean any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (i) countersigning such securities upon issuance, (ii) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar, (iii) registering the transfer of such securities, (iv) exchanging or converting such securities, or (v) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates. The term "transfer agent" does not include any insurance company or separate account which performs such functions solely with respect to variable annuity contracts or variable life policies which it issues or any registered clearing agency which performs such functions solely with respect to options contracts which it issues.

13. In response to any item (*except item 7(a)*) of Form TA-1 which requires information about "transfer agent activities," "transfer agent functions," "transfer agent operations," "securities" or "issues," the response should encompass all securities (*e.g.*, municipal securities, debt securities, preferred stock, common stock) for which registrant acts as transfer agent, as defined in Section 3(a)(25) of the Act. The response should not be limited to securities registered under Section 12 of the Act or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of Section 12 of the Act. (See instruction 19 in responding to item 7 of Form TA-1).

II—Instruction Relating to Filing Form TA-1 as a Registration Form

14. If Form TA-1 is being filed as a registration form, all applicable items are required to be answered in full. If any item is not applicable, respond with "none" or "N/A" (not applicable), as appropriate.

III—Instructions Relating to Filing Form TA-1 as an Amendment to a Registration Form

15. Within twenty-one calendar days following the date on which information reported at items 1-6 of Form TA-1 becomes inaccurate, incomplete or misleading, the registrant shall file an amendment on Form TA-1 correcting the inaccurate, incomplete or misleading information. Within thirty calendar days following the close of any calendar year (beginning with the period from the date as of which registrant's application is prepared to December 31, 1976) during which the information required by item 7 of Form TA-1 becomes inaccurate, incomplete or misleading, the registrant shall file an amendment on Form TA-1 correcting the inaccurate, incomplete or misleading information. The information reported at items 8-12 of Form TA-1 need not be amended after registration has become effective.

16. If an item is amended, the registrant must answer all other items on the page on which the amended item appears and must file six copies of the new page, each with an updated and properly completed execution page. Unless a schedule or an attachment is being amended, it is not necessary to file a new schedule or attachment pertaining to an unamended item on a page which is filed because such page contains an amended item.

IV—Instructions as to SPECIFIC ITEMS on Form TA-1

17. Item 1 — Indicate the agency with which Form TA-1 is to be filed and whether the Form is filed as a registration or an amendment.

18. Item 2(a) — Include a street address; a post office box number alone is not acceptable.

19. Item 7(a) — At the option of registrant, the response to this item may be limited to "issues" or "securities" registered under Section 12 of the Act or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of Section 12 of the Act.

V—Instructions Relating to Schedule B of Form TA-1

20. Six copies of a facsimile of a computer run providing the information called for by Schedule B may be attached if the facsimile is in the format called for by Schedule B, the type size is legible, and the facsimile is reduced to 8-½ x 11 inches in size.

21. Schedule B shall be amended by filing six copies, showing all additions and deletions and so designating them. Each copy shall be filed with an updated and properly completed execution page. Any change in the capacity in which the registrant acts for an issue shall be shown both as a deletion of all capacities previously set forth for the issue and as an addition showing the correct capacity or capacities in which the registrant acts for the issue.

VI—Notice.

22. Under Sections 17, 17A(c) and 23(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Securities and Exchange Commission ("the appropriate regulatory agency") are authorized to solicit the information required to be supplied by this Form from applicants for registration as a transfer agent. Disclosure to the appropriate regulatory agency of the information requested in Form TA-1 (except for the disclosure by an individual registrant of his Social Security Number as an IRS Employee Identification Number, which is voluntary) is a prerequisite to the processing of applications for registration as a transfer agent. The information will be used for the principal purpose of determining whether the appropriate regulatory agency should allow an application for registration to become effective or should deny, accelerate or postpone registration to an applicant. Social Security Numbers, if furnished, will be used only to assist the appropriate regulatory agency in identifying applicants and, therefore, in promptly processing applications. Information supplied on this Form will be included routinely in the public files of the appropriate regulatory agency and will be available for inspection by any interested person.

FORM TA-1 EXECUTION PAGE	UNIFORM FORM FOR REGISTRATION AS A TRANSFER AGENT AND FOR AMENDMENT TO REGISTRATION AS A TRANSFER AGENT PURSUANT TO SECTION 17A OF THE SECURITIES EXCHANGE ACT OF 1934	OFFICIAL USE

ATTENTION: INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACT CONSTITUTE FEDERAL CRIMINAL VIOLATIONS (See 18 U.S.C. 1001 and 15 U.S.C. 78ff (a))

GENERAL: Form TA-1 is to be used to register as a transfer agent and to amend registration as a transfer agent with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation or the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934 (the "Act"). Read all instructions before preparing the Form. Please print or type all responses.

1. This form is filed with _____ as
(Name of Agency)

☐ A REGISTRATION ☐ AN AMENDMENT

2. (a) Exact name, principal business address, mailing address, if different, and telephone number of registrant:

Full Name of Registrant: IRS Empl. Ident. No.:

Name under which transfer agent activities are conducted, if different:

If name of registrant is hereby amended, state name under which registered previously:

If name under which transfer agent activities are conducted is hereby amended, state name given previously:

Address of registrant's principal place of business:

(Number and Street) (City) (State) (Zip Code)

Mailing Address, if different:

(Number and Street) (City) (State) (Zip Code)

Telephone Number: (Area Code) (Telephone Number)

EXECUTION: The Registrant submitting this Form, any Schedules and any attachments and the person by whom it is executed represent hereby that all information contained herein is true, current and complete. It is understood that all required items, Schedules and attachments are integral parts of this Form and that the submission of any amendment to items 1-6 represents that all unamended parts of items 1-6 and any Schedules and any attachments to items 1-6 remain true, current and complete as previously submitted. An amendment to item 7 and Schedule B and any attachments thereto represents that all unamended parts of item 7 and Schedule B and any attachments thereto and items 1-6 and any Schedules and attachments thereto remain true, current and complete as previously submitted.

Registrant agrees and consents that the notice of any proceeding under Section 17A of the Act involving registrant by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation or the Securities and Exchange Commission may be given by sending such notice by registered or certified mail or confirmed telegram to the registrant at the address of its principal office for transfer agent activities as given in response to Item 2(b), "Attention Officer in Charge of Transfer Agent Activities." If more than one office is listed in item 2(b), the first office listed shall constitute the principal office for purposes of the aforementioned notice.

Dated the _____ day of _____ 19__

_____
(Name of transfer agent)

_____
(Manual signature of principal officer or duly authorized principal)

Title: _____

ALL OF THE ITEMS ON THIS PAGE MUST BE ANSWERED AND COMPLETED IN FULL

DO NOT WRITE BELOW THIS LINE . . . . . FOR OFFICIAL USE ONLY

ACT CODE	FILE DATE	EFFECT DATE	JURISDICTION	GEOG. CODE			

SEC 1928 (10-75)

FORM TA-1 Page 1

OFFICIAL USE

2. (b) Address of principal office (s) for transfer agent activities:

(Number and Street) (City) (State) (Zip Code)

1.

2. (c) Name, title and telephone number of person in charge of registrant's transfer agent activities:

Name:

Title: Telephone : (Area Code) (Telephone Number)

3. (a) If registrant is a corporation or a national association:

Date on which registrant became incorporated or was organized and jurisdiction in which incorporated or under which it is organized:

Date: Jurisdiction:

(b) If registrant is not a corporation or a national association, describe on Schedule A the form of organization under which registrant conducts its business and identify the jurisdiction in which registrant is organized.

4. Does registrant have any arrangement with any person other than an issuer or a transfer agent, as defined in Section 3(a)(25) of the Act, under which, with regard to registrant's transfer agent functions, such other person processes, keeps or maintains any records or accounts of registrant or issuers relating to transfer agent functions? YES ☐ NO ☐

If the answer is "yes", furnish on Schedule A, as to each such arrangement, the full name and principal business address of the other person and a brief summary of each such arrangement. As used in this question the term "person" includes any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or any other entity.

FORM TA-1 Page 2

OFFICIAL USE

5. (a) Does registrant act as a transfer agent solely for its own securities? YES ☐ NO ☐

(b) Does registrant act as a transfer agent solely for securities of a person, as defined in item 4 of Form TA-1, that controls, or is controlled by, or is under common control with, the registrant? YES ☐ NO ☐

6. Check below types of business activities engaged in by registrant:

(a) Countersigning securities upon issuance ☐

(b) Monitoring the issuance of securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar ☐

(c) Registering the transfer of securities ☐

(d) Exchanging or converting securities ☐

(e) Transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates ☐

(f) Activities related to transfer agent functions:

(1) Acting as dividend disbursing agent or paying agent ☐

(2) Effecting dividend reinvestment ☐

(3) Processing stock subscriptions ☐

(4) Mailing of stockholders notices, proxies and other materials ☐

7. (a) In accordance with instruction 19, list on Schedule B issues serviced as transfer agent in the following capacities, as these terms are commonly used in the transfer agent industry transfer agent, co-transfer agent, registrar or co-registrar.

(b) Does Schedule B include only securities registered pursuant to Section 12 of the Act, or securities which would be required to be registered except for the exemption from registration contained in subsection (g) (2) (B) or (g) (2) (G) of Section 12 of the Act? YES ☐ NO ☐

(c) State the total number of issues serviced as a transfer agent which are not set forth in Schedule B. _____

8. If registrant is not a bank insured by the Federal Deposit Insurance Corporation, answer items (a) and (b) below:

(a) Are the registrant's transfer agent activities subject to regulation by an agency of a state or political subdivision? *(If yes, specify name of agency.)* YES ☐ NO ☐

NAME OF STATE OR POLITICAL SUBDIVISION NAME OF AGENCY

(b) Have the registrant's transfer agent activities been the subject of periodic examinations by an agency of a state or political subdivision? *(If yes, specify name of agency.)* YES ☐ NO ☐

NAME OF STATE OR POLITICAL SUBDIVISION NAME OF AGENCY

FORM TA-1 Page 3

OFFICIAL USE

9. (a) Is registrant audited by an independent public accountant? YES ☐ NO ☐

(b) If registrant is audited by an independent public accountant, does the audit include a review of internal controls related to transfer agent activities? YES ☐ NO ☐

(c) Fiscal year of registrant: MO. ____ DAY ____

10. (a) How many full-time and part-time employees does registrant have engaged in transfer agent activities? FULL-TIME ____ PART-TIME ____

(b) How many years has registrant performed transfer agent activities? ____

(c) Indicate the average monthly number of certificates registrant issued during each of the following calendar quarters: *(Indicate by an asterisk (*) placed adjacent to the number reported whether any original issues occurred in any period requested below):*

PERIOD	Average Monthly Number of Certificates Issued
1. October 1, 1974 - December 31, 1974	
2. January 1, 1975 - March 31, 1975	
3. April 1, 1975 - June 30, 1975	
4. July 1, 1975 - September 30, 1975	

11. (a) With regard to transfer agent activities, provide the following information regarding the type of insurance carried or provided:

TYPE OF INSURANCE	YES	NO	AMOUNT OF COVERAGE	AMOUNT OF DEDUCTIBLE
1. Blanket Bond	☐	☐	$	$
2. Fidelity	☐	☐		
3. Errors and Omissions	☐	☐		
4. Mail Policy	☐	☐		
5. Air Courier	☐	☐		
6. Lost Instrument	☐	☐		
7. Other Insurance related solely to transfer agent activities *(Specify on Schedule A)*	☐	☐		

(b) If registrant's transfer agent activities are not covered by any insurance, has provision been made for self-insurance? YES ☐ NO ☐

If yes, indicate on Schedule A the provisions made for self-insurance *(e.g., accounting reserve or funded reserve)* and the amount thereof.

12. (a) What are registrant's internal policies and procedures for reconciling differences *(including clerical and posting errors and out-of-proof conditions)* in its transfer agent operations? *(Describe on Schedule A).*

(b) Indicate, as of September 30, 1975, the number of issues, if any, out-of-proof beyond thirty calendar days, and for each issue, identify the issue and state the number and market value of the shares or debt securities by which the issue is out-of-proof. *(Specify on Schedule A).*

An out-of-proof condition exists if the total number of all securities reflected in the stockholder or debt holder records differs from the total number of shares or debt securities issued and outstanding pursuant to corporate action.

SCHEDULE A OF FORM TA-1

OFFICIAL USE

1. Full name of Registrant exactly as stated in Item 2(a) of Form TA-1.

2. Item of Form (Identify)	Answer

SCHEDULE B OF FORM TA-1

List issues serviced as transfer agent, co-transfer agent, registrar or co-registrar. For each issue provide the following information:

(See Instructions 19,20 and 21 before completing this Schedule)

This is: A Registration Form ☐
An Amendment ☐

1. Full name of Registrant exactly as stated in item 2(a) of Form TA-1.			Capacity or Capacities in which registrant acts for issue CHECK THE APPROPRIATE COLUMN(S):				If this is an amendment, CHECK ONE		OFFICIAL USE ONLY
Name of Issuer	Issue	CUSIP Number *(If Applicable)*	Transfer Agent 1/	Co-transfer Agent 1/	Registrar 1/	Co-Registrar 1/	This is an addition to issues or capacities previously listed on Schedule B	This is a deletion of issues or capacities previously listed on Schedule B	

For purposes of this Schedule B, the terms transfer agent and co-transfer agent include the person performing similar functions with respect to debt securities and the terms registrar and co-registrar include the person performing similar functions with respect to

[FR Doc.75-29495 Filed 10-29-75;4:35 pm]

Title 21—Food and Drugs

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

[Docket No. 75-0298]

PART 128d—PROCESSING AND BOTTLING OF BOTTLED DRINKING WATER

Stay of Certain Sampling and Testing Requirements and Denial of Extension of Effective Date of Certain Coding Requirements

The Commissioner of Food and Drugs issued, in the FEDERAL REGISTER of March 12, 1975 (40 FR 11566), new Part 128d (21 CFR Part 128d), setting forth current good manufacturing practices for bottled water. This notice stays a portion of the sampling and testing requirement.

The effective date for compliance with the regulation was April 11, 1975. A request for a stay of that effective date and a request for a modification of the regulation were received:

1. The American Bottled Water Association (ABWA), 1411 West Olympic Blvd., Los Angeles, CA 90015, the petitioner for the regulation, has requested that the effective date of certain requirements of the regulation be extended beyond April 11, 1975. ABWA stated that equipment that can code small containers on an automatic production line in accordance with the requirements of § 128d.7(e) (21 CFR 128d.7(e)) is not readily available to the bottled water industry.

Because there was no detailed support for a "blanket" stay of the effective date of that part of the current good manufacturing practice regulation (CGMPR) that concerns coding of small containers, the Commissioner concludes that the request should not be granted.

2. The ABWA also requested that the Commissioner reconsider the requirement for semiannual sampling and testing of source water from all sources. The ABWA stated that for the Commissioner to maintain the semiannual requirement for sampling and testing of such waters would be inconsistent with the proposed National Interim Primary Drinking Water Standards, which were published by the Environmental Protection Agency (EPA) in the FEDERAL REGISTER of March 14, 1975 (40 FR 11990). The ABWA pointed out that the EPA proposal calls for annual testing of water from surface sources and for testing once every 3 years for water obtained from ground sources. The ABWA stated that "we feel that the requirement for two surveys a year should be reduced to once a year." Further, the ABWA suggested "that if the municipal source was approved by the appropriate regulatory authority, then it was reported as being 'safe drinking water.'"

The Commissioner reiterates what he stated in paragraph 2. of the preamble to the March 12, 1975 regulation: That water from municipal sources must be treated in the same manner as water from other sources because the sampling of the municipal supply is not usually performed in the bottling plant. Consequently, there are many points between the municipal water treatment facility and the bottling plant where contamination of the plant's water supply could develop.

However, because of the inconsistency between the EPA's proposed interim requirements and the FDA's CGMPR on the frequency of source water sampling and testing, the Commissioner concludes that the request of the ABWA to reduce the requirements for sampling and testing is reasonable. Therefore, the requirement that all sources of water be sampled and tested semiannually is being partially stayed so that no more than an annual sampling and testing of all source water, including water from municipal supplies, will be required pending publication of the EPA final primary drinking water standards. When the EPA publishes its final standards, the Commissioner will reevaluate the sampling and testing requirements. He will then state, in a FEDERAL REGISTER notice, his conclusions concerning all CGMPR requirements that are different from EPA's requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 402(a)(4), 409, 701(a), 52 Stat. 1046, 1055, 72 Stat. 1785–1788 as amended (21 U.S.C. 342(a)(4), 348, 371(a))) and under authority delegated to the Commissioner (21 CFR 2.120), notice is given that the subject order became effective April 11, 1975 except as follows:

Section 128d.5(a)(3) (21 CFR 128d.5(a)(3)), which requires that water supplies must be tested at least twice per year, is stayed insofar as it requires more than once a year testing; and during such stay, water samples taken from approved sources are required to be tested no more than once per year.

Dated: October 28, 1975.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.75-29524 Filed 11-3-75;8:45 am]

Title 22—Foreign Relations

CHAPTER I—DEPARTMENT OF STATE

[Dept. Reg. No. 108.716]

PART 6a—PRIVACY ACT POLICIES AND PROCEDURES

Correction

In FR Doc. 75-26279 appearing at page 45607 in the issue of Thursday, October 2, 1975, the penultimate line of § 6a.3 should be transferred to appear following the 16th line of that section. The text should then read: "* * * and other information helpful in identifying the record. This information will facilitate the timely search of record systems * * *"

Title 31—Money and Finance: Treasury

CHAPTER II—FISCAL SERVICE, DEPARTMENT OF THE TREASURY

PART 224—FEDERAL PROCESS AGENTS OF SURETY COMPANIES

Miscellaneous Amendments

The Department of the Treasury finds it necessary to amend its regulations at 31 CFR Part 224 (Treasury Department Circular No. 901) governing Federal process agents of surety companies doing business with the United States. The amended regulations will:

(1) Correct an erroneous reference in the first paragraph of Part 224.

(2) Require surety companies to provide Federal process agent appointment information to the Treasury once per year, rather than on a current basis as presently required.

(3) Give a new address for obtaining a list of the divisional offices of the court in each judicial district for which powers of attorney should be furnished the clerk at the main office for filing.

The Department finds that notice to the public of the amendments to 31 CFR Part 224 is not necessary under 5 U.S.C. 553, inasmuch as the changes merely correct erroneous or outdated information, and relieve burdens formerly imposed on surety companies doing business with the United States. Therefore, Title 31 of the Code of Federal Regulations, Subtitle B, Chapter II, Part 224, is amended as follows:

1. The table of sections is amended by revising section headings 224.5, 224.6 and 224.7; and by deleting section heading 224.8. Section headings 224.5, 224.6 and 224.7 are revised to read:

Sec.
224.5 Filing process agent appointment information with the Treasury.
224.6 Process agents; termination of authority.
224.7 United States district courts; location of divisional offices.

§ 224.1 [Amended]

2. In § 224.1 Amend "section 1 of the act approved July 30, 1947 (61 Stat. 646; 6 U.S.C., Sup., 7)" to read "6 U.S.C. 7."

3. Section 224.5 is revised to read:

§ 224.5 Filing process agent appointment information with the Treasury.

In order that the Treasury may have an official record of such appointments, the company making the appointments will forward to the Department by May 15 each year, an annual report on a form which will be provided, showing the Federal judicial districts in which process agents have been appointed.

§ 224.6 [Deleted]

4. Delete § 224.6.

5. Section 224.7 is redesignated § 224.6, and is revised to read:

§ 224.6 Process agents; termination of authority.

Whenever the authority of a process agent is terminated by reason of revoca-

tion, disability, removal from the district, or any other cause, it shall be the duty of the company to immediately make a new appointment.

§ 224.7 [Amended]

6. Section 224.8 is redesignated § 224.7 and is amended as follows: In § 224.7: Amend "Administrative Office of the United States Courts, Supreme Court Building, Washington, D.C. 20544" to read "Assistant Comptroller for Auditing, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226."

(5 U.S.C. 301, 6 U.S.C. 6–13)

Dated: October 23, 1975.

DAVID MOSSO,
Fiscal Assistant Secretary.

[FR Doc.75-29521 Filed 11-3-75;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 75-155]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Skipanon River, Oregon

On June 26, 1972, the Commandant, U.S. Coast Guard, found that the highway bridge across the Skipanon River at Warrenton, Oregon, was not constructed, maintained, and operated as a drawbridge in accordance with the Bridge Permit issued September 15, 1916, and the Drawbridge Operation Regulations, 33 CFR 117.740(a). The State of Oregon was therefore ordered to restore the bridge to the originally approved plans and operate it in accordance with the regulations.

The State of Oregon has elected to construct a new bridge in the approximate same location. However, because of the modifications, the bridge cannot, as a practical matter, be opened on signal in compliance with the regulations. The bridge can be operated on a limited schedule.

Pursuant to an agreement between the United States and the State of Oregon, the existing regulations in 33 CFR 117.740(a) pertaining to this bridge are suspended and the highway bridge will be operated as provided in the agreement.

The immediately adjacent railroad bridge now required to open on signal would be affected because of its close proximity to the highway bridge, and to require the bridge to operate differently would serve no useful purpose. Accordingly, the existing regulations 33 CFR 117.740(a) as they apply to the railroad bridge are suspended, and the railroad bridge will be operated on the time schedule established for the highway bridge.

The agreement was negotiated to secure compliance with the Commandant's order of June 26, 1972, in contemplation of litigation. Therefore, public procedure would be impracticable.

In consideration of the foregoing, § 117.740 is amended by adding two notes after paragraph (a)(5) to read as follows:

§ 117.740 Youngs Bay, Lewis and Clark River and Skipanon River, Oregon; bridges.

* * * * *

NOTE 1: Pursuant to an agreement between the United States and the State of Oregon, the regulations in paragraph (a) pertaining to the highway bridge on the Skipanon River are suspended. The agreement states, in part—

The State of Oregon agrees to schedule two openings of the existing bridge each week to permit the passage of maritime traffic on the Skipanon River. This schedule will be subject to the approval of the Coast Guard. The two weekly openings will be scheduled no closer than every three days. The State will not schedule openings during peak vehicular traffic hours.

The State of Oregon will not be required to open the bridge at the scheduled time unless a request to do so is received by the State, or the State's agent for that purpose, within twelve hours of the scheduled opening.

The State of Oregon will not be required to open the bridge during peak vehicular traffic hours. Peak vehicular traffic hours are agreed to be between 0730 and 0930, and 1630 and 1830 on Mondays through Fridays, excluding holidays.

The State of Oregon agrees to post appropriate public notices on the bridge and in local periodicals, advising the public of the schedule of openings and the procedures for passing through the bridge.

NOTE 2: The regulations in paragraph (a) pertaining to the railroad bridge on the Skipanon River are suspended, and the railroad bridge will operate on the schdule established for the highway bridge in NOTE 1.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; (33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 5 U.S.C. 553(b)(3))).

Effective date. This revision shall become effective on November 8, 1975.

Dated: October 24, 1975.

D.J. RILEY,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc.75-29573 Filed 11-3-75;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 449-7]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Idaho: Approval of Revision

Section 110 of the Clean Air Act, as amended, and the implementing regulations of 40 CFR Part 51, require each State to submit a plan which provides for the attainment and maintenance of the national ambient air quality standards throughout the State. On May 31, 1972 (37 FR 10842), pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator of the Environmental Protection Agency (EPA) approved, with specific exceptions, the State of Idaho Air Quality Implementation Plan.

On July 1, 1974, the Governor of Idaho submitted for the Administrator's approval several revisions to the Implementation Plan, including Regulation T, *Air Pollution Source Permits*, an addition to the "Rules and Regulations for the Control of Air Pollution in Idaho."

On August 23, 1974 (39 FR 30496), EPA published a notice of proposed rulemaking in the FEDERAL REGISTER and invited public comment on whether the proposed revision should be approved or disapproved. No comments were received on the revisions during the 30-day public comment period.

Regulation T establishes a State procedure for issuing Air Pollution Source Permits. The Regulation states that the permits shall provide, where appropriate, an interim schedule of compliance for those sources which may not be in compliance with applicable regulations at the time of issuance. Under the requirements of 40 CFR 51.4, the State must conduct one or more public hearings prior to the submission to the Administrator of any compliance schedule or revision to a compliance schedule. As originally submitted, the Regulation did not contain adequate public hearing procedures. Because of this, the Administrator experienced difficulty in approving the Regulation to the extent that it did not meet the requirements of section 110 of the Clean Air Act, as amended, and 40 CFR 51.4. However, on July 28, 1975, the State of Idaho submitted a revised Regulation T for EPA approval which includes provisions for public hearings that satisfy the requirements of 40 CFR 51.4.

The Administrator has determined that it would serve no useful purpose to repropose the regulation since there was no public response to the August 23, 1974 proposal and the changes to the regulation were made at the request of EPA. The Administrator is therefore today approving Regulation T in its entirety as a revision to the federally approved State Implementation Plan. The Administrator finds good cause for making this rulemaking effective immediately as the regulation is already in effect under State law and EPA's approval imposes no additional burdens on the affected parties.

This Notice of Final Rulemaking is issued under the authority of section 110 of the Clean Air Act, as amended. (42 U.S.C. 1857c-5.)

Dated: October 29, 1975.

JOHN QUARLES,
Acting Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart N—Idaho

1. Section 52.670 is amended by revising paragraph (c)(2) to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) Supplemental information was submitted on: * * *

(2) March 2, May 5 and June 9, 1972; February 15, July 23, and October 16, 1973; July 1, 1974 (Indirect Source Regulation and compliance schedules): January 10 (Regulation C), January 24 (Regulation A), and July 28, 1975 (Regulation T).

[FR Doc.75-29634 Filed 11-3-75;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 9—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

[ERDA Temporary Reg. No. 13]

PART 9-7—CONTRACT CLAUSES

Cost Principles; Bidding, Research and Development

OCTOBER 28, 1975.

1. *Purpose.* ERDA Temporary Regulation No. 11 dated July 21, 1975, established new cost principles covering bidding costs and research and development costs and made changes to the clause in §§ 9-7.5006-10. In addition to the above changes, the clause in 9-7.5006-12, Allowable costs and fixed fee (architect-engineer contracts), is changed to conform to the new cost principles.

2. *Effective date.* This regulation becomes effective November 4, 1975.

3. *Expiration date.* This regulation will remain in effect until canceled or until its provisions are incorporated into a permanent ERDA-PR.

4. *Explanation of changes.* Section 9-7.5006-12 is amended as follows:

a. Paragraph (d)(19) is revised;

b. A new paragraph (d)(20) is added; and

c. Paragraph (e)(18) is deleted and reserved.

§ 9-7.5006-12 Allowable costs and fixed fee (architect-engineer contracts).

* * * * *

(d) * * *

(19) *The costs of preparing bids and proposals,* in accordance with § 9-15.205-3.

NOTE: This paragraph should be deleted for on-site architect-engineer contracts.

(20) *Independent research and development costs* in accordance with § 9-15.205-35.

NOTE: This paragraph should be deleted for on-site architect-engineer contracts.

* * * * *

(e) * * *

(18) [Reserved].

* * * * *

§ 9-15.205-35 [Amended]

d. In ERDA-PR Temporary Regulation No. 11 make the following pen-and-ink change: § 9-15.205-35(e)—change "FPR 1-15.205-25(e)" to "FPR 1-15.205-35(e)".

(Sec. 105, Energy Reorganization Act of 1974 (Pub. L. 93-438))

ROMAN C. BRAUN,
Acting Director of Procurement.

[FR Doc.75-29553 Filed 11-3-75;8:45 am]

CHAPTER 15—ENVIRONMENTAL PROTECTION AGENCY

[FRL-439-3]

PART 15-1—GENERAL

Subpart 15-1.6—Debarred, Suspended, and Ineligible Bidders

Subpart 15-1.6, Debarred, Suspended, and Ineligible Bidders is hereby revised to provide changes in this subpart, to adjust to revised numbering of one subparagraph, to conform to revised numbering in 41 CFR 1-1.6 and to correct our revision of September 20, 1974, (Part 15-1 General, Supart 15-1.6 Debarred, Suspended, and Ineligible Bidders) Volume 39, 39 FR 33797, which mistakenly referred to a previously deleted subsection, 41 CFR 15-1.602-1(b). 41 CFR 15-1.603 is revised as to references to subparagraphs to conform to amendments in CFR 1-1.6.

Effective date. Inasmuch as this regulation concerns a procurement matter and is exempt from the requirement for a public comment period, it will become effective November 4, 1975.

Dated: October 30, 1975.

RUSSELL E. TRAIN,
Administrator.

Subpart 15-1.6—Debarred, Suspended or Ineligible Bidders

§ 15-1.602-1 [Amended]

Section 15-1.602-1(b) is deleted.

Section 15-1.603 is revised to read as follows:

§ 15-1.603 Treatment to be accorded firms and individuals in debarred, suspended, or ineligible status.

The Deputy Assistant Administrator for Administration makes the determinations required by CFR 1-1.603(a).

(40 U.S.C. 486(c), 63 Stat. 377, as amended)

[FR Doc.75-29635 Filed 11-3-75;8:45 am]

Title 45—Public Welfare

CHAPTER XI—NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

SUBCHAPTER A—GENERAL

SUBCHAPTER B—NATIONAL ENDOWMENT FOR THE ARTS

PART 1150—COLLECTION OF CLAIMS UNDER THE FEDERAL CLAIMS COLLECTION ACT OF 1966

Notice is hereby given that in order to establish a separate subchapter for regulations applicable solely to the National Endowment for the Arts, the parts included in existing Chapter XI of Title 45 pertaining to the National Foundation on the Arts and the Humanities are designated as Subchapter A, General and the following will be designated Part 1150 of a new Subchapter B—National Endowment for the Arts. Part 1150 sets forth regulations of the National Endowment for the Arts implementing the Federal Claims Collection Act of 1966 in conformity with the standards jointly promulgated by the Attorney General and the Comptroller General in 4 CFR Parts 101 through 105.

Accordingly, Chapter XI of Title 45 Code of Federal Regulations is amended as follows:

1. The table of parts is revised to designate existing parts as Subchapter A—General and to add Subchapter B—National Endowment for the Arts consisting of Part 1150—Collection of Claims Under the Federal Claims Collection Act of 1966 reading as set forth above.

2. Part 1150 is added to read as follows:

Sec.

1150.1 Scope.
1150.2 Incorporation of joint standards by reference.
1150.3 Subdivision and joining of claims.
1150.4 Referral of claims to the General Counsel.
1150.5 Accounting control.
1150.6 Record retention.
1150.7 Suspension or revocation of eligibility.
1150.8 Standards for collection of claims.
1150.9 Standards for compromise of claims.
1150.10 Standards for suspension or termination of collection action.
1150.11 Referral to GAO or Justice Department.

AUTHORITY: Federal Claims Collection Act of 1966.

§ 1150.1 Scope.

This subpart sets forth the regulations of the National Endowment for the Arts implementing the Federal Claims Collection Act of 1966 (the Act) in conformity with the standards jointly promulgated by the Attorney General and the Comptroller General in 4 CFR Parts 101 through 105. The Act (a) requires the head of an agency or his designee to attempt collection of all claims of the United States for money or property arising out of the activities of the National Endowment for the Arts; and (b) authorizes the head of an agency or his designee to compromise such claims that do not exceed $20,000 exclusive of interest, or to suspend or terminate collection action where it appears that no person liable on such claims has the present or prospective financial ability to pay any significant sum thereon or that the cost of collecting such claim is likely to exceed the amount of recovery.

§ 1150.2 Incorporation of joint standards by reference.

All administrative actions to collect claims arising out of the activities of the National Endowment for the Arts shall be performed in accordance with the applicable standards prescribed in 4 CFR Parts 101 through 105, which are incorporated by reference and supplemented in this subpart.

§ 1150.3 Subdivision and joining of claims.

(a) A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one not exceeding $20,000 exclusive of interest for the purpose of compromise or termination of collection action. Such a claim may not be subdivided to avoid the monetary ceiling established by the Act. (b) Joining of two or more single claims in a demand upon a particular debtor for payment totaling more than $20,000 does not preclude compromise or termination of collection action with respect to any one of such claims that does not exceed $20,000 exclusive of interest.

§ 1150.4 Referral of claims to the General Counsel.

(a) *Authority of the General Counsel.* The General Counsel shall exercise the powers and perform the duties of the head of the agency to compromise or to suspend or terminate collection action on all claims not exceeding $20,000 exclusive of interest. Claims shall be referred to the General Counsel well within the applicable statue of limitations (28 U.S.C. 2415 and 2416), but in no event more than 2 years after the claims accrued.

(b) *Exclusions.* There shall be no compromise or terminated collection action with respect to any claim: (1) As to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim; (2) based in whole or in part on conduct in violation of the anti-trust laws; (3) based on tax statutes; or (4) arising from an exception made by the General Accounting Office in the account of an accountable officer. Such claims shall be promptly referred to the Justice Department or GAO, as appropriate.

§ 1150.5 Accounting control.

The General Counsel shall process all claims collections through the appropriate accounting office and report the collection, compromise, suspension and termination of all claims to the appropriate accounting office for recording.

§ 1150.6 Record retention.

The file of each claim on which administrative collection action has been completed shall be retained by the appropriate office or the General Counsel not less than 1 year after the applicable statute of limitations has run.

§ 1150.7 Suspension or revocation of eligibility.

(a) In the event a contractor, grantee, or other participant in programs sponsored by the Endowment fails to pay his debts to the Endowment within a reasonable time after demand, the fact shall be reported by the Grants, Audit, or other appropriate office to the General Counsel, who shall place such defaulting participant's name on the Endowment's list of debarred, suspended and ineligible contractors and grantees and the participant will be so advised.

(b) The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 is to be reported at once to the General Counsel who shall so advise the Treasury Department. The Treasury Department will notify the Endowment when a surety's certificate of authority to do business with the Government has been revoked or forfeited.

§ 1150.8 Standards for collection of claims.

(a) *Demand for payment.* Appropriate written demands shall be made upon the debtor which shall include information relating to the consequences of his failure to cooperate.

(b) *Collection by offset.* Collection by offset will be administratively undertaken on claims which are liquidated or certain in amount in every instance where this is feasible.

(c) *Liquidation of collateral.* When the Endowment holds security or collateral that may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, such procedures should be followed if the debtor fails to pay his debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure.

(d) *Collection in installments.* Claims with accrued interest should be collected in full or one lump sum whenever this is possible. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments.

(e) *Interest.* In the event prejudgment interest is not mandated by statute, contract or regulation, the interest shall be assessed at 7 percent. Prejudgment interest may be waived as an inducement to voluntary payment. In such cases demand letters should inform the debtor that prejudgment interest will be collected if suit becomes necessary. When a debt is paid in installments and interest is collected, installment payments will first be applied to the payment of accrued interest and then to principal in accordance with the so-called "U.S. Rule" unless a different rule is prescribed by statute, contract or regulation. Prejudgment interest shall not be demanded or collected on civil penalty and forfeiture claims unless the statute under which the claim arises authorizes the collection of such interest.

(f) *Omission not a defense.* Failure to comply with any standard prescribed in 4 CFR Chapter II or in this subpart shall not be available as a defense to any debtor.

§ 1150.9 Standards for compromise of claims.

(a) *Compromise offer.* An offer to compromise may be accepted (1) if there is real doubt concerning the National Endowment for the Arts' ability to prove its case in court for the full amount claimed; (2) if the cost of collecting the claim does not justify the enforced collection of the full amount; (3) if in connection with statutory penalties or forfeitures established as an aid to enforcement and to compel compliance, the National Endowment for the Arts' enforcement policy will be adequately served by acceptance of the sum to be agreed upon, or (4) for other reasons deemed valid by the General Counsel (or his designee) and made a part of the claim record.

(b) *Documentary evidence of compromise.* No compromise of a claim shall be final or binding on the Endowment unless it is in writing and signed by the appropriate officer who has authority to compromise the claim pursuant to this subpart.

§ 1150.10 Standards for suspension or termination of collection action.

(a) *Suspension of collection action.* Collection action shall be suspended temporarily on a claim when the debtor cannot be located after diligent effort but there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim, having consideration for its size and the amount which may be realized. Collection action may be suspended temporarily on a claim when the debtor owns no substantial equity in realty and is presently unable to make payment on the National Endownment for the Arts' claim or effect a compromise, but his future prospects justify retention of the claim for periodic review and action and (1) the applicable statute of limitations has been tolled or started anew or (2) future collection can be effected by offset notwithstanding the statute of limitations. Suspension as to a particular debtor should not defer the early liquidation of security for the debt.

(b) *Termination of collection action.* Collection action may be terminated and the Endowment file closed for the following reasons: (1) No substantial amount can be collected; (2) the debtor cannot be located; (3) the cost will exceed recovery; (4) the claim is legally without merit; or (5) the claim cannot be substantiated by evidence.

§ 1150.11 Referral to GAO or Justice Department.

(a) *Claims referred.* Claims which cannot be collected, compromised, or terminated in accordance with 4 CFR Parts 101 to 105 will be referred to the General Accounting Office in accordance with 31 U.S.C. 71 or to the Department of Justice if the Endownment has been granted an exception from referrals to the General Accounting Office. Also, if there is doubt as to whether collection action should be suspended or terminated on a claim, the claim may be referred to the General Accounting Office for advice. When recovery of a judgment is prerequisite to imposition of administrative sanctions, the claim may be referred to the Justice Department for litigation

even though termination of collection activity might otherwise be considered.

(b) *Prompt referral.* Such referrals shall be made as early as possible consistent with aggressive collection action and in any event, well within the statute of limitations for bringing suit against the debtor.

NANCY HANKS,
Chairman, National Endowment for the Arts.

[FR Doc.75-29520 Filed 11-3-75;8:45 am]

Title 49—Transportation

CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

[Notice No. 75-22]

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Catalytic Heater

● **Purpose. This amendment of § 393.77 (Heaters) of the Federal Motor Carrier Safety Regulations is to conform the section to the requirements of § 177.834(l) of this title, (Hazardous Materials Regulations).** ●

Section 177.834(*l*) of this title was recently amended, after notice of proposed rulemaking, to permit the use of a catalytic heater in connection with the transportation of flammable liquid or gas, if the heater meets certain requirements specified under § 177.834(*l*), (40 FR 46106 (October 6, 1975). Therefore, this amendment of § 393.77 is purely a technical one. It simply calls attention to and cross references the substantive changes in § 177.834(*l*) of this title. Notice of proposed rulemaking for this purpose is not needed.

This amendment: (1) Adds to § 393.77 (a) a sentence which makes it clear that a catalytic heater, which is used in the transportation of flammable liquid or gas, is within § 393.77's definition of a "heater"; and (2) adds subdivision (l) to § 393.77(c)(15), which identifies the proper certification marking required on a catalytic heater that is used in the transportation of flammable liquid or gas.

In consideration of the foregoing, 49 CFR 393.77 is amended, effective upon the date of issuance, as stated below:

Issued on October 23, 1975.

ROBERT A. KAYE,
Director, Bureau of Motor Carrier Safety.

In § 393.77 the introductory text of paragraph (a) is revised and paragraph (c)(15)(l) added to read as follows:

§ 393.77 Heaters.

* * * * *

(a) *Definition.* The term "heater" means any device or assembly of devices or appliances used to heat the interior of any motor vehicle. This includes a catalytic heater which must meet the requirements of § 177.834(l) of this title when flammable liquid or gas is transported.

* * * * *

(c) * * *

(15) * * *

(l) *Exception.* The certification for a catalytic heater which is used in transporting flammable liquid or gas shall be as prescribed under § 177.834(l) of this title.

(Sec. 204, Interstate Commerce Act, as amended (49 U.S.C. 304), sec. 6, Department of Transportation Act (40 U.S.C. 1655), and the delegations of authority by the Secretary of Transportation and the Federal Highway Administrator at 49 CFR 1.48 and 49 CFR 389.4)

[FR Doc.75-29563 Filed 11-3-75;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 1223]

PART 1033—CAR SERVICE

Distribution of Covered Hopper Cars

At a session of the Interstate Commerce Commission, Division 3, held in Washington, D.C., on the 30th day of October 1975.

It appearing, that an acute shortage of covered hopper cars for transporting shipments of grain, grain products, soybeans, or soybean meal exists in certain sections of the country; that some carriers have placed substantial numbers of large-capacity covered hopper cars in unit-train service for the movement of grain under tariff provisions which require that these cars remain in this service for five or more consecutive trips in the service of a single shipper; that such practices are depriving shippers, unable to ship to the destinations to which such services are available or unable to comply with tariff provisions applicable to such movements with respect to availability of tonnage in a single day or ability to receive grain in such quantities, of an equitable share of the supply of large covered hoppers; that present regulations and practices with respect to the use, supply, control, movement, and distribution of covered hopper cars are ineffective in assuring a proper allocation of such cars. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1223 Service Order No. 1223.

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

(1) *Restrictions on use of covered hopper cars.* Effective at 11:59 p.m. October 31, 1975, no common carrier by railroad shall permit the use in unit-grain-train services of more than twenty percent (20%) of its ownership of jumbo covered hopper cars. (See exception)

(2) *Repetitive trips prohibited.* All tariff provisions authorizing or requiring the shipper, consignee, or other party who has arranged for shipment of grain in unit-grain-train services, to specify the next point or shipper authorized to load a specific group of unit-grain-train cars are hereby suspended. Carriers need not allocate such cars to shipments requiring less than twenty cars, but may use such cars for any shipper desiring cars for unit-grain-train services in accordance with his proportional share of the available grain cars. In distributing cars consideration shall be given to the sequence of car orders, the amount of grain immediately available for shipment and the ratio of grain cars ordered to grain cars furnished during the previous seven-day period.

(3) *Increased use in unit trains prohibited.* No common carrier by railroad shall increase the proportion of its ownership of covered hopper cars operated in unit-grain-train services above the proportion operated in unit-grain-train services on October 31, 1975.

(4) *Exception.* Exceptions to this order may be authorized to carriers by the Railroad Service Board, Interstate Commerce Commission, Washington, D.C. 20423, upon written application stating the number of additional cars to be used in unit-grain-train services, the points between which such cars are to be used and the effect upon the carrier's ability to supply cars to other grain shippers who are dependent on it for their car supplies.

(5) *Substitution of small cars for jumbo cars prohibited.* No common carrier shall substitute smaller covered hopper cars for jumbo covered hopper cars for use in unit-grain-train services.

(6) *Monthly reports required.* Each common carrier by railroad owning jumbo covered hopper cars shall report to Mr. R. D. Pfahler, Chairman, Railroad Service Board, Interstate Commerce Commission, Washington, D.C. 20423, on or before the tenth day of each month the number of jumbo covered hopper cars owned, as of the first of the month, the number in unit-grain-train services, the number in general grain services, the number in other services, the number of unit-grain-trains operated during the previous month, and the number of trips made by such trains.

(b) *Definitions.*—(1) *Unit-graintrains.* Unit-graintrains are hereby defined as trains of twenty (20) or more covered hoppers organized and operated as a unit from a single point of origin or concentration point, to one destination or distribution point in order to comply with published tariff requirements.

(2) *Jumbo covered hopper cars of railroad ownership.* Jumbo covered hopper cars of railroad ownership are hereby defined as cars listed in the Official Railway Equipment Register, I.C.C. R.E.R. No. 397 issued by W. J. Trezise, or successive issues thereof as bearing reporting marks issued to railroads and having mechanical designation "LO" and having cubical capacities of 4,000 cu. ft. or

larger and weight-carrying capacities of 180,000 lbs. or greater.

(c) *Rules and regulations suspended.* In the event that the operation of any unit-grain-train is discontinued prior to December 1, 1975, as a result of this order, the discontinuance of such a train shall be deemed to have completed the tariff responsibility as to total volume required to be shipped and as to the number of consecutive trips required to be made by such unit-grain-train. The operation of all other tariff provisions or of other rules and regulations, insofar as they conflict with the provisions of this order, is hereby suspended.

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

(e) *Effective date.* This order shall become effective at 11:59 p.m., October 31, 1975.

(f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., February 29, 1976, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, 17(2), 24 Stat. 379, 383, 384, as amended; (49 U.S.C. 1, 12, 15, 17(2)). Interprets or applies secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; (49 U.S.C. 1(10–17), 15(4), and 17(2)))

It is further ordered, That a copy of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Division 3.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-29633 Filed 11-3-75;8:45 am]

[Ex Parte No. 275]

PART 1115—ISSUANCE OF SECURITIES, ASSUMPTION OF OBLIGATIONS AND FILING OF CERTIFICATES AND REPORTS

Expanded Definition of Term "Securities"; Stay Pending Judicial Review

Upon consideration of the record in the above-entitled proceeding including the petition of the Association of the American Railroads (AAR) filed October 16, 1975, seeking a stay of the effective date of the Commission's order; and

It appearing, that by Report and Order of the Commission Upon Further Consideration, 348 I.C.C. 288 (1975), the Commission expanded the definition of the terms "securities"; and "assume any obligation or liability" that the order was to become effective on January 5, 1976 and that the notice was published in the FEDERAL REGISTER at page 47504 on October 9, 1975; and that the order will become effective on December 8, 1975;

It further appearing, that on October 15, 1975, AAR filed a petition for Review of the Commission's order in the above-entitled proceeding in the United States Court of Appeals for the District of Columbia, action No. CA 75-2011.

It further appearing, that good cause exists for staying the effective date of the Commission's order until completion of judicial review:

It is ordered, That the effective date of the order of the Commission, served October 3, 1975, be, and it is hereby, postponed pending further order of the Commission.

Dated at Washington, D.C., this 21st day of October 1975.

By the Commission, Chairman Stafford.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-29632 Filed 11-3-75;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Kofa Game Refuge, Arizona

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. However, due to the controversy concerning administration of the area and the Federal Court decision to stay the Secretary's order providing the Bureau of Land Management sole jurisdiction over the area and the need to protect the proposed wilderness areas as de facto wilderness, and continuing recreational use of the area, the following special regulation is issued and is effective November 4, 1975.

ARIZONA

KOFA GAME RANGE

For purposes of protecting wilderness values and the fragile desert environments of the Kofa Game Range, all motorized vehicular travel is restricted to designated routes of travel. Maps delineating such routes may be obtained at the office of the U.S. Fish and Wildlife Service, 356 W. First Street, Yuma Arizona between the hours of 8 a.m. and 5 p.m., Mondays through Fridays, (except holidays).

The provisions of this special regulation supplement the regulations which govern access, use, and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1975.

JERRY L. STEGMAN,
Acting Regional Director,
Albuquerque, New Mexico.

OCTOBER 23, 1975.

[FR Doc.75-29558 Filed 11-3-75;8:45 am]

Title 30—Mineral Resources

CHAPTER II—GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

PART 250—OIL AND GAS SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

Drilling and Development Programs

On pages 42559 and 42560 of the September 15, 1975, edition of the FEDERAL REGISTER (40 FR 42559–42560) there was published a proposal to modify regulation 30 CFR 250.34, Drilling and Development Programs. Page 43036 of the September 18, 1975, edition (40 FR 43036) contained a correction. The intent of the proposed modification is to set forth procedures for State consideration of developments proposed by lessees of Federal Outer Continental Shelf Lands. The proposed modification will provide affected States with information and an opportunity to review and comment concerning developments of oil and gas by such lessees. Lessees will be required to deliver information on planned developments to affected States before submitting development plans to the U.S. Geological Survey.

The regulation recognizes that development plans often contain information which the lessee considers to be confidential. Two specific classes of information often contained in development plans are exempted from disclosure under the Freedom of Information Act. These will not be disclosed under the proposed modification.

The Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343) provides in section 5(b)(2) that leases may be cancelled for failure to comply with "regulations issued under this Act and in force and effect on the date of issuance of the lease." In keeping with this provision, the revised regulation 30 CFR 250.34 herein promulgated will be applicable only to leases issued after the date of this rulemaking.

Interested persons were given until October 15, 1975, to submit comments regarding the proposed modification of 30 CFR 250.34. The notice of the proposed modification indicated that significant comments would be published at the time of the final rulemaking. Because of the volume of the comments received, they are not published herein but are available on request from the Director of the U.S. Geological Survey, National Center, Reston, Virginia 22092. The comments received represented a wide range of views on the necessity, value, legality and consequences of the proposed modification.

After considering the comments received, the following revisions were made in the proposed modifications:

1. Added provisions to paragraphs (b) and (c) allowing States to waive review of development plans and receipt of information.

2. Added provisions to paragraphs (b) and (c) requiring that Governors' comments on development plans and information be sent to both the Supervisor and the lessee.

3. Added a procedure to paragraph (b) for treatment of amendments to development plans made before their approval.

4. Clarified requirements for information under paragraph (c). (Further clarification will be forthcoming in relevant OCS Orders).

5. Added a provision to paragraph (c) which allows previously published information to be incorporated by reference rather than duplicated in the information for States.

6. Added a provision to paragraph (c) providing for extension of the term of the lease in cases where review requires delays in excess of the 60-day period.

7. Added to paragraph (e) the condition that the Supervisor determine that proposed modifications of approved development plans significantly affect the interest of a State before requiring that the procedures under paragraphs (b) and (c) be applied.

The proposed modification to 30 CFR 250.34 is adopted as set forth below and is effective immediately. OCS Orders will be issued subsequently to define more specifically the content and timing of information to be provided by lessees to the States.

THOMAS S. KLEPPE,
Secretary of the Interior.

OCTOBER 31, 1975.

Section 250.34 is revised to read as follows:

§ 250.34 Drilling and development programs.

(a) *Exploratory drilling plan.* Prior to commencing each exploratory drilling program on a lease, including the construction of platforms, the lessee shall submit a plan to the Supervisor for approval. Each plan for the leased area shall include (1) a description of drilling vessels, platforms, or other structures showing the location, the design, and the major features thereof, including features pertaining to pollution prevention and control; (2) the general location of each well including surface and projected bottom hole location for directionally drilled wells; (3) structural interpretations based on available geological and geophysical data; and (4) such other pertinent data as the Supervisor may prescribe.

(b) *Development plan.* Prior to commencing each development program on a lease, the lessee shall submit a plan to the Supervisor for approval. The plan shall include all information specified in paragraph (a) of this section in detail. The development plan except for those portions which the lessee shall designate, with the Supervisor's approval, as (1) trade secrets and commercial or financial information which are privileged or confidential or (2) geological and geophysical information, data and maps concerning wells, shall be provided by the Supervisor to the Governors of directly affected States, as designated by the Supervisor. Any State not wishing to review a development plan may so indicate to the Supervisor. Prior to the Supervisor's approval of the plan, a period of 60 days, commencing with the date of the Governors' receipt of the development plan, shall be provided to each Governor for review of the plan and the submission of comments, to both the Supervisor and the lessee. If the Governors' comments are received before the 60 day period ends, the Supervisor may then proceed to act upon the plan without further delay. After the 60 day period ends, the Supervisor may act upon the plan even if comments have not been received from the Governor. Amendments to development plans may be submitted during the period before this approval. Such amendments shall be sent by the Supervisor to the Governors who have received copies of the development plans. In such cases, the Supervisor shall determine if the amendment is significant and warrants an extension of the 60 day review period.

(c) Information for States. Prior to submission of a development plan, the lessee shall deliver to the Governor of each directly affected State, as designated by the Supervisor, information about the development to be proposed. Any State not wishing to have such information may so indicate to the Supervisor. The final delivery of such information shall be made at least 30 days before submission of the relevant development plan, at which time the lessee shall notify both the Governor of each directly affected State and the Supervisor that such final delivery has been made. When submitting a development plan, the lessee shall certify to the Supervisor that he has, at least 30 days before such submission, provided the required information about the development proposed in that plan to the Governor of each directly affected State. The information provided to the States under this paragraph (c) which is not to be a part of the development plan itself, shall include a description of all offshore and onshore facilities and operations proposed by the lessee or directly related to the proposed development, including location, size, requirements for land, labor, materials and energy, and timing of development and operation, and other related information as may be required by the Supervisor. Information available in previously published documents, such as Environmental Impact Statements, may be incorporated by reference. Copies of all information given to Governors under this paragraph shall be provided to the Supervisor. A State provided such information shall indicate to the Supervisor and to the lessee at the earliest practicable time whether the State concurs that the information meets the requirements of this paragraph and any subsequent implementing Orders issued by the Supervisor. If a State fails to provide such notification within 30 days after final delivery of the information, the State's concurrence will be conclusively presumed. If a State notifies the Supervisor that the information does not in its judgment satisfy the requirements, then the Director shall review the information, the specific comments of the Governor, and the position of the lessee and shall make a determination either that the information satisfies the requirements or that the lessee must provide additional information. The Director shall make his review and determination as expeditiously as possible after receipt of such notification. In the event the Director determines that the information satisfies the requirements, then the 60 day period for comments shall begin on the date of his determination. In the event the Director determines that the requirement has not been satisfied, the 60 day comment period will not begin until the State shall have received the additional information required. If, with respect to any non-producing lease, the procedures specified under paragraphs (B) and (C) require delay in excess of the 60 days for review specified in those paragraphs, and the delay is in the interest of conservation and is not caused by the lessee, there shall, if the lessee so requests, be a suspension of operations for a period equal to the delay in excess of 60 days and the lease shall be extended for a period of time equal to the period of suspension.

(d) *Drilling applications.* Prior to commencing drilling operations either under an exploratory or development plan, the lessee shall submit an Application for Permit to Drill (Form 9-331C) to the Supervisor for approval. The application shall include the integrated blowout prevention, mud, casing, and cementing program for the well, and shall meet the requirements specified in § 250.41(a), and contain the information specified in § 250.91(a), and shall conform with the approved exploratory or development plan.

(e) *Modifications.* The lessee shall submit: (1) All requests for modifications of an approved exploratory or development plan in writing to the Supervisor for approval and (2) all notices of changes to plans set forth in approved Application for Permit to Drill on Sundry Notices and Reports on Wells (Form 9-331), except that these requirements shall not relieve the lessee from taking appropriate action to prevent or abate damage, waste, or pollution of any natural resource or injury to life or property. When the Supervisor shall determine that the proposed modification of an approved development plan is major and would directly and significantly affect the interest of a State, he shall require the lessee to follow the same procedures with respect to the State as those provided in § 250.34 (b) and (c).

[FR Doc.75-29777 Filed 11-3-75;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

[19 CFR Part 103]

AVAILABILITY OF INFORMATION; VESSEL MANIFESTS

Advance Notice of Proposed Rulemaking

The United States Customs Service is considering amending § 103.11 of the Customs Regulations (19 CFR 103.11) which permits accredited representatives of the press and regularly established associations access to certain specified information from vessel manifests. This advance notice of proposed rulemaking is being issued to solicit the views of the public as to whether the current practice should be continued, broadened, curtailed, or eliminated.

Section 103.11 presently provides as follows:

Section 103.11 Information for the press and associations—(a) *Disclosure to members of the press.* Although the following classes of information are exempt from the requirement of disclosure under the provisions of § 103.10, accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications may be permitted to examine vessel manifests and summary statistical reports of imports and exports and to copy therefrom for publication information and data not of a confidential nature, subject to the following rules:

(1) Of the information and data appearing on outward manifests, only the general character, destination, and quantity (or value) of the commodity, name of vessel, and country of destination may be copied and published. Where the manifests show both quantity and value, either may be copied and published, but not both in any instance.

(2) Commercial or financial information, such as the names of the shippers and consignees, marks and numbers, and both quantities and value of commodities shall not be copied from outward manifests or any other papers.

(3) Of the information shown on inward manifests, only the name of the consignee, the general character of the commodity, the quantity (or value), name of vessel, and the country of dispatch shall be copied and published. When an inward manifest shows both quantity and value of the commodity, either may be copied and published, but not both in any instance.

(b) *Review of data.* All copies and notations from inward or outward manifests shall be submitted for examination by a Customs officer designated for that purpose.

(c) *Disclosure to members of associations.* Accredited representatives of regularly established associations, whether incorporated or not, shall be permitted to obtain information from, but not examine, vessel manifests for the purpose of securing data relative to merchandise of the kind or class in the importation of which the association is interested, subject to the foregoing rules, but this authority does not extend to attorneys, agents, or customhouse brokers acting on behalf of individual importers.

(d) *Suspension of disclosure.* (1) Except as provided in section 103.14 [relating to testimony or production of documents in court], upon written application of a consignee or importer, access to the name of such consignee or importer on a manifest will thereafter be refused.

(2) If any individual shall abuse the privilege granted him of examining inward and outward manifests or shall make any improper use of any information or data obtained from such manifests or other papers filed in the customhouse, both he and the party or publication which he represents shall thereafter be denied access to such papers.

The disclosure and publication practices embodied in § 103.11 with respect to the press were promulgated in substantially similar form by T.D. 38139, issued September 25, 1919; likewise, similar authority with respect to associations was extended in T.D. 38233, issued January 6, 1920. Over the years, the publication of the trade data made available by virtue of § 103.11, and its predecessors, has proven to be a valuable source of information for the trading community.

Although the information available to the press and associations is termed "not of a confidential nature" by § 103.11(a), the amendments made to 5 U.S.C. 552 in 1967 by Pub. L. 90–23 (popularly known as the Freedom of Information Act) raised the possibility that the information contained in vessel manifests (heretofore made available to the press and associations) is actually exempt from disclosure as confidential business information pursuant to 5 U.S.C. 552(b)(4). However, inasmuch as it was the intent of Congress in enacting the Freedom of Information Act to expand, rather than to contract, the general availability of information, the pre-Freedom of Information Act procedures as to disclosure of this information have been continued.

The continuance of these procedures has resulted in a situation where the Customs Service makes certain information available to the press for publication, or to associations for their use, while denying the same information to individuals who may request it on the grounds that it is confidential business information and as such is exempt from disclosure under 5 U.S.C. 552(b)(4). The Customs Service is of the opinion that the inconsistency inherent in this situation must be resolved by either making the specific information now available to the press and associations under § 103.11 of the Customs regulations available to any individual on the grounds that it is nonconfidential information, or by denying the press and associations, as well as individuals, access to the information on the grounds that it is confidential business information and, therefore, exempt from disclosure.

Confidential business information is business information the disclosure of which is likely "to cause substantial harm to the competitive position of the person from whom the information was obtained." ("National Parks and Conservation Association v. Rogers C. B. Morton, Secretary, Department of the Interior, et al.," 498 F. 2d 765 (1974).)

Over the years that the present procedures have been in effect very few persons have protested to the Customs Service the disclosure of this information on the grounds such disclosure would be harmful to them. In those cases where someone did protest, information concerning those particular persons was denied to the press and associations. For this reason, Customs questions whether the continued disclosure of this information would cause substantial harm to the competitive positions of the persons to whom the information relates.

The Customs Service also has been requested to amend § 103.11 to permit the press to publish the names of shippers from outward manifests in addition to the information currently permitted to be published, except when, upon written application to the Customs Service, the shipper requests that his name be kept confidential. A similar proposal published in the FEDERAL REGISTER on March 10, 1959 (24 FR 1719), was not adopted following receipt of several hundred comments, the great majority of which opposed the proposal.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. The Customs Service would especially appreciate comments addressed to the following questions:

1. Would continued disclosure of the information currently available to the press and associations under the provisions of section 103.11 be likely to cause substantial harm to the competitive position of the person about whom the information was obtained?

2. Would similar disclosure of the names of shippers taken from outward manifests be likely to cause substantial harm to the competitive position of the person about whom the information was obtained?

3. Section 103.11(d) provides that the information available to the press and associations will not be disclosed to them if the individual about whom the infor-

mation was obtained requests in writing that it be kept confidential. Does this provide adequate protection to those about whom the information is obtained? If not, what further safeguards are recommended?

4. To what extent does the furnishing of this information to the public by publication in the news media and to associations serve the public interest? If it is determined to withhold this information from the press and associations and thus from the public, what effects would this have on the trading community?

5. What course of action should Customs take in this matter?

Comments on these specific questions should be given in detail and opinions expressed should be fully supported. Additional recommendations concerning this matter are welcomed. The data, views, or arguments may be addressed to the Commissioner of Customs, Attention: Regulations Division, Washington, D.C. 20229. To insure consideration of such communications, they must be received on or before January 5, 1976.

Written material or suggestions submitted will be available for public inspection in accordance with § 103.8(b) of the Customs regulations (19 CFR 103.8(b)), at the Regulations Division, Headquarters, United States Customs Service, Washington, D.C., during regular business hours.

After consideration of the data and comments received in response to this notice, and if it is decided to broaden, curtail, or eliminate § 103.11 of the Customs regulations, a notice of proposed rulemaking will be issued.

VERNON D. ACREE,
Commissioner of Customs.

Approved: October 28, 1975.

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[FR Doc.75-29565 Filed 11-3-75;8:45 am]

DEPARTMENT OF THE INTERIOR

Mining Enforcement and Safety Administration

[30 CFR Parts 55, 56, 57]

NEW AND REVISED HEALTH AND SAFETY STANDARDS

Extension of Comment Period

On Thursday, September 25, 1975, pursuant to section 6 of the Federal Metal and Nonmetallic Mine Safety Act, as amended (30 U.S.C. 725), a notice of proposed rulemaking was published as Part III of the FEDERAL REGISTER of Thursday, September 25, 1975, (40 FR 44272-44285).

The notice invited interested persons to submit written data, views, and arguments concerning the proposed miscellaneous amendments to Parts 55, 56, and 57, Subchapter N, Chapter I, Title 30, Code of Federal Regulations and informed interested persons who may be adversely affected by a proposed health and safety standard, which is designated as a mandatory standard under subsections (b) and (c) of section 6 of the Act (30 U.S.C. 725 (b) and (c)) and which has not been recommended as a mandatory standard by the Federal Metal and Nonmetal Mine Safety Advisory Committee, of their right to timely file objections and request a public hearing on the proposed standard.

Several respondents have indicated that additonal time was necessary in order to compile relevant information and to respond to the proposed new and revised health and safety standards. In view of such requests, the period for submitting comments, filing objections and requesting a public hearing is hereby extended from Thursday, November 6, 1975, to and including Friday, December 5, 1975. Comments, objections, and a request for public hearing should be submitted in writing to the Administrator, Mining Enforcement and Safety Administration, Department of the Interior, Room 618, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: October 31, 1975.

HARRY C. MCKITTRICK,
Deputy Assistant Secretary of the Interior.

[FR Doc.75-29658 Filed 11-3-75;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGD 75 179]

CHEHALIS RIVER, WASHINGTON

Proposed Drawbridge Operation Regulations

At the request of the Washington State Highway Commission, the Coast Guard is considering amending the regulations for the highway drawbridge across the Chehalis River at Aberdeen to permit closed periods during the morning and evening peak vehicular traffic periods. The draw is presently required to open on signal at all times.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Thirteenth Coast Guard District.

The Commander, Thirteenth Coast Guard District, will forward any comments received before December 9, 1975, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended as follows:

§ 117.775 [Amended]

1. By deleting § 117.775(b)(8).

2. By adding a new § 117.776 immediately after § 117.775 to read as follows:

§ 117.776 State highway bridge across Chehalis River, Aberdeen, Washington.

(a) From 7:15 a.m. to 8:15 a.m. and 4:15 p.m. to 5:15 p.m., Monday through Friday, except federal holidays, the draw need not open for the passage of vessels of less than 5,000 gross tons. At all other times, the draw shall open on signal.

(b) The opening signal is two short blasts followed quickly by one long blast.

(c) The regulations set forth in § 117.-775(a) shall apply to this bridge.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; (33 U.S.C. 499, 49 U.S.C. 1655(g)(2)); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(c)(4))

Dated: October 30, 1975.

D. J. RILEY,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc.75-29572 Filed 11-3-75;8:45 am]

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 15130]

HAWKER SIDDELEY AVIATION LIMITED H.S. 748 AIRPLANES, SERIES 2A AIRPLANES

Proposed Airworthiness Directive

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Hawker Siddeley Aviation Limited 748, series 2A airplanes. There have been reports of failures in the propeller feathering system on these airplanes which have resulted in propeller overspeeding and destruction of an engine. Since this condition is likely to exist or develop in other airplanes of the same type design, the proposed airworthiness directive would require the installation of an electrical back-up system to the manual propeller feathering system on Hawker Siddeley Aviation Limited H.S. 748, Series 2A airplanes.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received

on or before December 4, 1975, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

HAWKER SIDDELEY AVIATION LIMITED. Applies to Hawker Siddeley Aviation Limited H.S. 748, Series 2A airplanes, certificated in all categories.

Compliance is required within the next 300 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent failure of propeller feathering, install an electrical back-up to the primary manual feathering system in accordance with the instructions contained in Hawker Siddeley Aviation Service Bulletin 61/18, Modification 4609, as revised April 11, 1974, or an equivalent approved by the Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Region, FAA-American Embassy, APO New York 09667.

Issued in Washington, D.C., on October 28, 1975.

R. P. SKULLY,
Director,
Flight Standards Service.

[FR Doc.75-29539 Filed 11-3-75;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 451-6]

OKLAHOMA

Proposed Approval and Promulgation of Implementation Plans and Strategy for Control of Sulfur Oxides

On May 31, 1972 (37 FR 10887), pursuant to section 110 of the Clean Air Act, 42 U.S.C. 1857 C-5, the Administrator approved, with some exceptions, the plan submitted by the State of Oklahoma for the implementation of the National Ambient Air Quality Standards (NAAQS). The plan, as submitted on January 28, 1972, did not incorporate strategies for attainment and maintenance of sulfur oxide standards. All air quality control regions in Oklahoma were designated Priority III with respect to sulfur oxides, indicating that emissions of sulfur oxides were low and ambient air measurements showed a quality better than secondary NAAQS. For this reason, Oklahoma elected not to submit a formal strategy for control of sulfur oxides.

Since the submittal of the State Implementation Plan on January 28, 1972, further evaluations have been made. While source emissions and ambient air concentrations remain low, causing no immediate threat to the NAAQS, the possibility of increased contaminants in the future, prompted the State to adopt formal regulations and to develop a control strategy to assure continued maintenance of standards. In addition, the Administrator disapproved the Oklahoma State Implementation Plan as well as other State plans as a group on March 8, 1973 (38 FR 6279) with regard to maintenance of standards. The disapproval notice was reaffirmed on February 25, 1974 at 39 FR 7270. The Oklahoma proposed revision offers correction to this deficiency in the plan as it relates to the maintenance of sulfur oxide standards.

The control strategy, submitted by the Governor on March 4, 1975, after public hearing, exhibits the application of available control technology. This control, coupled with an efficient system for review of new or modified sources, an adequate surveillance system, and a program for monitoring and enforcing the strategy, leads to an effective program for maintaining a good quality of air in Oklahoma. Therefore, notice is hereby given that the Administrator of the Environmental Protection Agency intends to approve the Oklahoma control strategy and regulations for the attainment and maintenance of NAAQs for surfur oxides.

The 1970 emissions inventory used in the initial plan, reported a total of 158,592 tons per year emission with process point sources contributing 138,349 tons or 87 percent of the total. These emissions occurred essentially from two nonferrous smelters and nine petroleum refineries. At the present time (1974 inventory), emissions from process sources produce 33,767 tons per year. The large reductions are the result of on-going reductions are the result of on-going control efforts by the Oklahoma State Department of Health. Emissions are expected to gradually increase, however, due to an extended period of growth. This growth is mainly concentrated in fuel burning sources. Projected facilities, mainly coal fired power plants will increase sulfur oxides emissions by an estimated 132,000 tons per year. This increase will bring the emissions level to the approximately levels reported in 1970 inventory.

With regard to the Oklahoma regulations it should be pointed out that new source emission limitations under Sections 16.1, 16.3, and 16.5 of Regulation 16 are being incorporated in the Implementation Plan. Other sections of Regulation 16 referring to property-line ambient air quality sulfur oxide measurements and are not considered part of the plan. However, the control strategy submitted with the regulation on October 3, 1975 contains emission limitations for existing sources which are considered part of the Implementation Plan. If any existing source experiences a modification which would increase emissions over levels stated in Table II of the control strategy, the existing source would be governed by the new source regulations. The emission regulations relating to new sources cover categories which are considered to be the major potential sources of sulful oxides emissions and are compatible with the Federal "New Source Performance Standard for Stationary Sources," as well as emission standards recommended in Appendix B of "Requirement for Preparation, Adoption, and Submittal of Implementation Plans," as published in the FEDERAL REGISTER, August 14, 1971.

The control strategy and regulations as well as other related information are available for public inspection during normal business hours at the offices of:

Environmental Protection Agency, Region VI, 1600 Patterson Street, Dallas, Texas 75201.
Environmental Protection Agency, Public Information Reference Unit, Room 2922, EPA Library, 401 "M" Street SW., Washington, D.C. 20460.
Oklahoma State Department of Health, Northeast 10th Street and Stonewall, Oklahoma City, Oklahoma 73105.

The Oklahoma strategy and regulations have been subjected to public hearing in accordance with 40 CFR 51.4 and the control effort exhibits available control technology deemed to be adequate to maintain the NAAQS for sulfur oxides. Therefore, further public hearings are not anticipated. However, interested persons may participate in this rulemaking by submitting written comments to the Regional Administrator, Environmental Protection Agency, Region VI, 1600 Patterson Street, Dallas, Texas 75201. Relevant comments received within 30 days of this notice will be considered.

This notice of proposed rulemaking is issued under the authority of section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 1857C-5(a).

Dated: October 21, 1975.

JOHN C. WHITE,
Regional Administrator,
Environmental Protection Agency.

Subpart LL—Oklahoma

It is proposed to amend Part 52 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

1. In § 52.1920, paragraph (c) is amended by adding a paragraph (3) as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

(3) Sections 16.1, 16.3, and 16.5 of Regulation No. 16, Control of Emissions of Sulfur Compounds and Control Strategy including emission limitations on existing sources as adopted on December 1, 1974 and submitted by the Governor on March 4, 1975.

2. New § 52.1930 is added as follows:

§ 52.1930 Control strategy: Sulfur oxides (sulfur dioxide).

(a) The requirements of § 51.13 of this chapter are met with regard to attainment and maintenance of the National Standards for sulfur oxides and the applicable sections of Regulation 16 and control strategy are hereby approved. The disapproval of the Oklahoma Plan regarding maintenance of the Na-

tional Standards for sulfur oxides, found in § 52.22(a), is hereby revoked.

[FR Doc.75-29636 Filed 11-3-75;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Ch. II]

[S7-596]

LONG TERM DEBT AND PREFERRED STOCK

Authorized Refundability Restrictions; Invitation To Comment

Invitation for comments on whether issuers subject to the Public Utility Holding Company Act of 1935 should be authorized to restrict, up to ten years, the refundability of long-term debt and preferred stock.

The Commission's Statement of Policy Regarding First Mortgage Bonds and Preferred Stock issued by companies subject to the Public Utility Holding Company Act of 1935 ("Act") (Holding Company Act Release Nos. 13105 and 13106, February 16, 1956) originally required that such securities be redeemable at the option of the issuer "at any time upon reasonable notice and with reasonable redemption premiums, if any." We have applied the same requirements to all long-term debt. Unrestricted refundability gives effect to the statutory policy, as expressed in section 1(b)(5), which calls for economy in the raising of capital. Following an extensive reexamination of this redemption policy, we modified our standard to permit issuers subject to the Act to include a refunding limitation which would prohibit, for a period of not more than five years after sale, the refunding of senior securities by the issuance of new senior securities at lower interest or preferred dividend costs (Holding Company Act Release Nos. 16369, May 8, 1969, and 16758, June 22, 1970). We then stated (Holding Company Act Release Nos. 16369, p. 2 and 16758, p. 2):

> The Commission wishes to emphasize that it will continuously review the effects of its redemption policies, including specifically the foregoing modification, and based on experience with the modification make such adjustments in these policies as may from time to time be deemed appropriate, including a rescission of the present modification, an extension of the allowed five-year nonrefunding period, or any other change experience would warrant.

It has been suggested that this policy should be further modified to permit, if desired by the issuer, an extension of the restriction on refundability up to ten years.

The cost of money on "A" rated issues has increased since 1969. Using Moody's as a rating service, the average yield on this grade of security was 9% for both bonds and preferred stocks in 1969. It was 10% on bonds and 11½% on preferred stocks in 1974. During the first six months of 1975 the unweighted average was 9⅞% on bonds and 10½% on preferred stocks.

In the period of June 1, 1974, through September 30, 1975, a significant number of issues of senior securities by electric and gas utilities have included a 10-year restriction on refundability. This is shown in the following table:

[In millions]

Total issues	Long-term debt [1]		Preferred stocks	
	Dollar volume	Number of issues	Dollar volume	Number of issues
June 1974 to January 1975	$1,820	33	$ 955	33
February to September 1975	2,806	52	1,330	45
Total	4,626	85	2,285	78
Issues with 10-year clause:				
June 1974 to January 1975	680	14	451	16
February to September 1975	960	18	296	10
Total	1,640	32	747	26
Percent with 10-year clause to total:				
June 1974 to January 1975	37.4	42.4	47.2	48.5
February to September 1975	34.2	34.6	22.3	22.2
Total	35.5	37.6	32.7	33.3

[1] Issues with a maturity of 10 years or less not included.

We have been informed that some major institutions have been reluctant or unwilling to purchase senior securities without a 10-year call restriction. Actually no one pretends to know what the cost of money is likely to be six years hence and thereafter. An institutional investor who insists upon a 10-year call restriction does so as a hedge against the mere contingency that the cost of money can decline. Perhaps he is in a position to exact this concession solely because of the keen competition for funds in the capital market. The issuer, for his part, may be willing to forego the privilege of refunding six to ten years hence in order to secure funds that are urgently needed now.

In 1969–1970 there were indications that the issuer could realize savings of about 25 to 30 basis points in current cost of money (Holding Company Act Release Nos. 16211, p. 5 and 16685, p. 5), and we modified our policy in recognition of such claims to savings. One of the questions is whether an extension of the call restriction to ten years would yield discernible and demonstrable savings in cost to the issuer.

It appears appropriate to examine the need or advisibility of extending up to ten years the nonrefundability restriction for long-term debt and preferred stock. Accordingly, comments of the registered public utility holding companies, underwriters, institutional investors and any other interested persons should be directed to the following questions, among others:

1. Have issuers or underwriters been advised that institutional investors are unwilling to purchase long-term debt or preferred stock without a 10-year call restriction? Specify which institutions have such a policy and state by whom so advised. State also whether there has been a change in such institutional policy in the current year.

2. Have issuers and underwriters been informed by institutional investors that a lower cost of money would be acceptable for including a 10-year nonrefunding provision? If so, specify the percentage of cost savings.

3. Assume an issue of $25 million and a cost of money of 25% less at the end of the fifth year than the rate at which the issue was first sold. What would be the additional cost to the issuer because of inability to refund during the sixth to the tenth years?

All interested persons are invited to submit their comments in writing to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 on or before December 12, 1975. All such communications should be filed in triplicate and should refer to File No. S7-596, and will be available for public inspection.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.75-29538 Filed 11-3-75;8:45 am]

VETERANS ADMINISTRATION

[38 CFR Part 1]

SAFEGUARDING PERSONAL INFORMATION IN VETERANS ADMINISTRATION RECORDS

Proposed Regulatory Development

Notice is hereby given that the Veterans Administration is considering promulgating new paragraphs (h), (i), and (j) of § 1.576 of Title 38, Code of Federal Regulations. The proposed paragraphs implement the provisions of section 552a (1), title 5, United States Code insofar as they affect Veterans Administration records stored with General Services Administration, now or in the future. At the time the Veterans Administration promulgated the § 1.575 series, Part 1, Title 38, Code of Federal Regulations (40 FR 33943, August 12, 1975), it was not anticipated that the provisions of 5 U.S.C. 552a(1) would require individual agency implementation. In retrospect, however, it is believed desirable for us to do so.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont

Avenue NW., Washington, D.C. 20420. All relevant material received before December 4, 1975, will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays), during the mentioned 30-day period and for 10 days thereafter. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Assistance Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Notice is given that it is proposed to make this amendment effective September 27, 1975, the effective date of section 3, Pub. L. 93-579.

In § 1.576, paragraphs (h), (i) and (j) are added to read as follows:

§ 1.576 General policies, conditions of disclosure, accounting of certain disclosures, and definitions.

* * * * *

(h) The Veterans Administration will, for the purposes of 5 U.S.C. 552a, consider that it maintains any agency record which it deposits with the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44, United States Code. Any such record will be considered subject to the provisions of § 1.575 series implementing 5 U.S.C. 552a and any other applicable Veterans Administration regulations. The Administrator of General Services is not authorized to disclose such a record except to the Veterans Administration, or under regulations established by the Veterans Administration which are not inconsistent with 5 U.S.C. 552a.

(i) The Veterans Administration will, for the purposes of 5 U.S.C. 552a, consider that a record is maintained by the National Archives of the United States if it pertains to an identifiable individual and was transferred to the National Archives prior to September 27, 1975, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government. Such records are not subject to the provisions of 5 U.S.C. 552a except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of 5 U.S.C. 552a) will be published in the FEDERAL REGISTER.

(j) The Veterans Administration will also, for the purpose of 5 U.S.C. 552a, consider that a record is maintained by the National Archives of the United States if it pertains to an identifiable individual and is transferred to the National Archives on or after September 27, 1975, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government. Such records are exempt from the requirements of 5 U.S.C. 552a except subsections (e)(4) (A) through (G) and (e)(9) thereof.

Approved: October 29, 1975.

By direction of the Administrator.

[SEAL] ODELL W. VAUGHN,
Deputy Administrator.

[FR Doc.75-29567 Filed 11-3-75;8:45 am]

notices

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

ANNUAL RETURN/REPORT FORMS

Extension of Comment Period

In the FEDERAL REGISTER of September 30, 1975, (40 FR 45134) the Department of Labor and the Department of the Treasury, Interal Revenue Service, published the proposed annual return/report forms to be filed by a plan administrator of an employee pension or welfare benefit plan or an employer as required by section 104 of the Employee Retirement Income Security Act of 1974 and section 6058(a) of the Internal Revenue Code of 1954. As a result of the large number of comments received on the forms, including numerous requests for an extension of the comment period, and further consideration of some of the issues raised in the forms and instructions, the period for commenting on the proposed forms is hereby extended. The notice accompanying the publication of the proposed forms provided for a comment period closing on October 30, 1975; however, this period is now extended until November 19, 1975.

In addition to recommendations regarding the proposed forms and instructions, the Department of Labor is soliciting comments on an additional issue. In light of further consideration of the reporting requirements for small plans, the Department of Labor is considering requiring that all plans regardless of size (contrary to the instructions printed with the proposed forms), engage an independent qualified public accountant to conduct an audit of the plan's books and records and prepare an opinion as required under section 103(a)(3)(A) of the Act.

Copies of the FEDERAL REGISTER issue containing the proposed forms may be obtained by writing or calling Distribution Manager A:FM:P, Room 1237, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. 20224, Telephone (202) 964-3132, or Public Information Office, Room N5641, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20216, Telephone (202) 523-7408.

Three copies of any comments or recommendations should be sent to the Chairman, Tax Forms Coordinating Committee, Room 1515, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. 20224.

Issued in Washington, D.C., this 31st day of October 1975.

ALVIN D. LURIE,
Assistant Commissioner (Employee Plans and Exempt Organizations), Internal Revenue Service.

JAMES D. HUTCHINSON,
Administrator for Pension and Welfare Benefit Programs.

[FR Doc.75-29670 Filed 11-3-75;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Navy

BOARD OF VISITORS, UNITED STATES NAVAL ACADEMY

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act [5 U.S.C. App. I] notice is hereby given that the Board of Visitors, United States Naval Academy, will hold a semiannual meeting on November 19 and 20, 1975, at the United States Naval Academy, Annapolis, Maryland. The session on November 19 will commence at 1:30 p.m. and terminate at 4:30 p.m. The session on November 20 will commence at 9 a.m. and terminate at 12 noon.

The purpose of the meeting will be to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs and academic methods of the Naval Academy. The meeting will be open to the public.

Dated: October 29, 1975.

LARRY G. PARKS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General.

[FR Doc.75-29555 Filed 11-3-75;8:45 am]

DEPARTMENT OF JUSTICE

Office of the Attorney General

TUNICA COUNTY, MISSISSIPPI

Appointment of Examiners

In the matter of certification of the Attorney General pursuant to section 6 of the Voting Rights Act of 1965 (Pub. L. 89-110).

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d (Supp. V), I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fifteenth Amendment to the Constitution of the United States in Tunica County, Mississippi. This county is included within the scope of the determination of the Attorney General and the Director of the Census made on August 6, 1965, under section 4(b) of the Voting Rights Act of 1965 and published in the FEDERAL REGISTER on August 7, 1965 (30 FR 9897).

EDWARD H. LEVI,
Attorney General of the United States.

OCTOBER 31, 1975.

[FR Doc.75-29757 Filed 11-3-75;8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Kings Island, Post Office Box 400, Kings Mills, Ohio 45034. Mr. Donald R. Dietlein.

OMB NO. 42-R1470

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

4. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
To buy 10 Bengal tigers and ship them in interstate commerce in the course of a commercial activity, for breeding in captivity.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Kings Island
P.O. Box 400
Kings Mills, Ohio 45034
ATTN: Donald R. Dietlein (513) 984-1440

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT | WEIGHT
DATE OF BIRTH | COLOR HAIR | COLOR EYES
PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER
OCCUPATION

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OF BUSINESS, AGENCY, OR INSTITUTION
Kings Island is a theme park for the entertainment for mass audiences. One of the five themes has an educational guide tour of a 100 acre zoological exhibition.

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
Dudley S. Taft, Exec. V.P.(513) 721-1414

IF "APPLICANT" IS A CORPORATION, PRIVATE STOCK OR NOT INCORPORATED
Kings Island is owned by the Taft Broadcasting Company of Ohio

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Kings Island is located 25 miles north of Cincinnati, Ohio on Interstate 71.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☐ NO
(If yes, list license or permit number)

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☐ NO
(If yes, list jurisdiction and type of document)

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$

10. DESIRED EFFECTIVE DATE
1 Dec. 1975

11. DURATION NEEDED
Indefinite

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (see 50 CFR 13.12(b)) MUST BE ATTACHED; IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
Public law 93-205; 50 CFR, subpart C, paragraph 17-22.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (To ask)
Donald R. Dietlein

DATE
October 6, 1975

9-200
11-74

1. It is requested that Kings Island be given a permit to obtain 10 Bengal tigers (*Panthera tigris*) and transport them interstate for the purpose of propagation. This request is for 5 males and 5 females, all approximately 18 months old.

2. All ten tigers were born in captivity.

3. The 10 acre area for these tigers has trees, open grassland, and a larger pool. The public will be allowed to see this area by an enclosed ground level monorail. The perimeter fence will be 12 feet high with a 2 feet overhang. The fence will have two strains of wire that will carry an electrical charge similar to a cattle fence. The holding house will consist of 12 individual compartments (5 x 10 ft) with a wood sleeping bench. Connected to this house will be a 30' x 30' enclosed area for those animals that have to be separated from the other animals for any reason.

4. Mr. Donald Dietlein will be in charge of the tiger preserve. He was General Curator of the National Zoo, under his charge was the tiger collection of the National Zoo. He was Zoological Coordinator of Lion Country Safari, Inc. before assuming his present position of Corporate Zoological Director. Mr. Nick Reindle, Zoological Manager of Kings Island, has had four years experience with large cats when he held the position of Senior Ranger, of Lion Country Safari, Richmond and Atlanta. Dr. George Reed is the contract veterinarian. Dr. Reed has had two years of large cat experience with Lion Country Safari.

5. Kings Island will participate in cooperative breeding programs and if requested, contribute to data banks.

6. Shipping: Each tiger will be crated separately. Each crate will measure 8'x4'x4'. *The tigers will travel by vehicle from Center Hill, Florida to Cincinnati, Ohio.* During the 14 hour trip, an attendant will water them and check periodically as to their well being.

7. Tigers have not been kept at Kings Island, therefore, there is no history of this species at that park. For the past two years, lions have been kept at this park. No deaths were caused by disease, malnutrition, or bad management. The tigers will be compatible before being brought to Kings Island.

8. Kings Island is very successful in breeding lions. Kings Island practices select breeding by vasectomy. Only predetermined males are allowed to breed. With the breeding success of lions in the open preserve concept, Kings Island believes that they can be successful in the propagation of tigers.

9. This group of tigers will be available for physiological as well as behavioral studies by qualified institutions.

10. Approximately 2 million people will take the monorail ride through the preserve in 1976. As the public rides through the tiger section, they will be told a little of the natural history of the animal as well as the meaning of the Endangered Species Classification.

Documents and other information submitted in connection with the application are available for public inspection during normal business hours at the Service's office in Suite 600, 1612 K Street, NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, Post Office Box 19183, Washington, D.C. 20036. All relevant comments received on or before December 4, 1975 will be considered.

Dated: October 29, 1975.

LOREN K. PARCHER,
Acting Chief, Division of Law Enforcement, U.S. Fish and Wildlife Service.

[FR Doc.75-29527 Filed 11-3-75;8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Additions, Deletions, and Corrections

By notice of the FEDERAL REGISTER of February 4, 1975, Part II, there was published a list of the properties included in the National Register of Historic Places. Further notice is hereby given that certain amendments or revisions in the nature of additions, deletions, or corrections to the previously published list are adopted as set out below.

It is the responsibility of all Federal agencies to take cognizance of the properties included in the National Register as herein amended and revised in accordance with section 106 of the National Historic Preservation Act of 1966, 80 Stat. 915, 16 U.S.C. 470 et seq. (1970 ed.), and the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800.

The following properties have been added to the National Register of Historic Places since October 7, 1975. National Historic Landmarks are designated by NHL; properties recorded by Historic American Buildings Survey are designated by HABS; properties recorded by Historic American Engineering Record are designated by HAER:

ARIZONA

Apache County

St. Johns, *Barth Hotel*, 187 E. Commercial St. (9-5-75)

Coconino County

Grand Canyon, *Ranger's Dormitory*, off AZ 64 in Grand Canyon National Park (9-5-75)

Pima County

Tucson vicinity, *Santa Ana del Chiquiburitac Mission Site*, NW of Tucson (9-18-75)

Yuma County

Wenden vicinity, *Harquahala Peak Observatory*, E of Wenden off U.S. 60 (10-3-75)

ARKANSAS

Hot Spring County

Malvern vicinity, *Lake Catherine Quarry*, NW of Malvern off U.S. 270 (9-11-75)

Pulaski County

Little Rock, *Deane House*, 1701 Arch St. (9-5-75)

CALIFORNIA

Lassen County

Shingletown vicinity, *Nobles Emigrant Trail*, E of Shingletown in Lassen Volcanic National Park (10-3-75)

Mariposa County

Yosemite Village, *Degnan House and Bakery*, Southside Dr., Yosemite National Park (9-5-75)

Shasta County

Nobles Emigrant Trail. Reference—see Lassen County.

COLORADO

Denver County

Denver, *Loretto Heights Academy*, 3001 S. Federal Blvd. (9-18-75)
Denver, *St. Mark's Parish Church*, 1160 Lincoln St. (9-18-75)

CONNECTICUT

Fairfield County

Ridgefield, *Lounsbury, Phineas Chapman, House (Grovelawn)*, 316 Main St. (10-3-75)
Stamford, *Fort Stamford Site*, Westover Rd. (9-10-75)

Hartford County

New Britain, *Walnut Hill District*, irregular pattern roughly bounded by Winthrup, Arch, and Lake Sts., and Walnut Hill Park (9-2-75)
Windsor Locks, *Windsor Locks Passenger Station*, Main St. (9-2-75)

New Haven County

Guilford, *Acadian House*, Union St. (9-5-75) HABS.
New Haven, *New Haven City Hall and County Courthouse (Annex)* 161 Church St. (9-5-75)
Waterbury, *Waterbury Brass Mill Site*, Idlewood Ave. in Hamilton Park (9-5-75)

DISTRICT OF COLUMBIA

Washington

Old Engine Company No. 6, 438 Massachusetts Ave., NW. (9-5-75)
Page, Thomas Nelson, House, 1759 R St., NW. (9-5-75)

GEORGIA

Clarke County

Athens, *Dearing Street Historic District*, roughly bounded by Broad and Baxter Sts., Milledge Ave., and includes both sides of Finley St. and Henderson Ave. (9-5-75)

Crisp County

Cordele vicinity, *Cannon Site*, W of Cordele off GA 230 (9-5-75)

GUAM

Finegayan, *South Finegayan Latte Stone Park*, 74 Golden Shower Lane (9-5-75)

IDAHO

Custer County

Challis vicinity, *Challis Bison Jump Site*, S of Challis off U.S. 93 (9-5-75)

ILLINOIS

Cook County

Chicago, *Western Methodist Book Concern Building*, 12 W. Washington St. (9-11-75) HABS.

Rock Island County

Rock Island, *Old Main, Augustana College*, 7th Ave. between 35th and 38th Sts. (9-11-75)
Rock Island, *Weyerhaeuser House*, 3052 10 Ave. (9-11-75)

INDIANA

Allen County

Fort Wayne, *Embassy Theater and Indiana Hotel*, 121 W. Jefferson St. (9-5-75)

Hamilton County

Carmel vicinity, *Kinzer, John, House*, E of Carmel on SR 234 (9-5-75)

Marion County

Indianapolis, *Prosser House*, 1454 E. 10th St. (9-5-75) HABS.

Putnam County

Greencastle, *East College of DePauw University*, 300 Simpson St. (9-25-75)

Vigo County

Terre Haute, *Allen Chapel African M. E. Church*, 224 Crawford St. (9-5-75)

Wayne County

Richmond, *Bethel A.M.E. Church*, 200 S. 6th St. (9-5-75)

IOWA

Appanoose County

Centerville, *Stratton House*, 303 E. Washington St. (9-9-75)

Linn County

Cedar Rapids, *Mittvatsky House*, 1035 2nd St., SE (9-5-75)

KANSAS

Morris County

Council Grove, *Hays, Seth, House*, 203 Wood St. (9-25-75)

Shawnee County

Topeka, *Columbian Building*, 112-114 W. 6th St. (9-5-75)

KENTUCKY

Bourbon County

Millersburg, *McKee-Vimont Row Houses*, Main St. (9-9-75)

Bracken County

Augusta, *Water Street (River Side Drive) Historic District*, River Side Dr. from property E of Frankfort St. W to include property W of Ferry St. (9-24-75)

Bullitt County

Shepherdsville vicinity, *Ashworth Rock Shelters Site*, N of Shepherdsville off U.S. 65 (9-11-75)

Hickman County

Clinton, *Hickman County Courthouse*, Court Square (9-11-75)

Jessamine County

Nicholasville vicinity, *Chaumiere des Prairies*, N of Nicholasville off U.S. 68 (9-25-75)

Nelson County

Bardstown, *Bruntwood*, 714 N. 3rd St. (9-9-75)

Shelby County

Finchville, *Shelby Academy (Sylvan Shades)*, KY 55 and KY 148 (9-18-75)
Shelbyville, *Science Hill School*, Washington St. (9-18-75)

Woodford County

Versailles vicinity, *Munday's Landing*, Munday's Landing Rd., S of Versailles on Kentucky River (9-5-75)

MAINE

Androscoggin County

Lewiston, *Kora Temple*, 11 Sabattus St. (9-11-75)

Aroostook County

Eagle Lake vicinity, *Big Black Site*, WSW of Eagle Lake (9-9-75)

Cumberland County

Bridgton, *Perry, William F., House*, 6 Main Hill (9-25-75)
Casco vicinity, *Friends Meetinghouse*, S of Casco off U.S. 302 (9-9-75)

Penobscot County

Bangor, *Bangor Children's Home*, 218 Ohio St. (9-9-75)
Hampden, *Hampden Academy*, Alt. U.S. 1 (9-11-75)
Old Town vicinity, *Hirundo Site*, W of Old Town off ME 43 (9-11-75)

Waldo County

Winterport, *Winterport Historic District*, irregular pattern along Main, Elm, Cushing, Lebanon, Commercial, Dean, and Water Sts. (10-3-75)

York County

Kennebunkport, *Kennebunk River Club*, Ocean Ave. (9-9-75) HABS.

MARYLAND

Baltimore (independent city)

Pennsylvania Station, 1525 N. Charles St. (9-12-75)

Dorchester County

Cambridge vicinity, *Stanley Institute (Rock School)*, S of Cambridge on MD 16 (9-11-75)

Frederick County

Emmitsburg vicinity, *Shoemaker III Village Site*, E of Emmitsburg (9-5-75)

Kent County

Pomona vicinity, *Clark's Conveniency*, 2 mi. S of Pomona on Quaker Neck Rd. (9-9-75)
Rock Hall vicinity, *Hinchingham*, N of Rock Hall off MD 445 (9-5-75)

Montgomery County

Bethesda, *Milton (Loughborough House)*, 5312 Allendale Rd. (9-25-75) HABS
Laytonsville, *Layton House*, SW corner MD 108 and MD 420 (9-25-75) HABS
Poolesville vicinity, *Old Chiswell Place*, E of Poolesville on Cattail Rd. (9-9-75)

Somerset County

Princess Anne vicinity, *Harrington*, NW of Princess Anne off MD 362 (9-11-75)

Talbot County

Easton vicinity, *Doncaster Town Site*, NW of Easton (9–5–75)

MASSACHUSETTS

Berkshire County

Hancock, *Hancock Town Hall*, MA 43 (9–26–75)

Norfolk County

Medfield, *Peak House*, 347 Main St. (9–5–75)

Plymouth County

Plymouth, *Hillside*, 230 Summer St. (9–18–75)

MICHIGAN

Genesee County

Flint, *Durant-Dort Carriage Company Office*, 315 W. Water St. (9–2–75)

Marquette County

Big Bay vicinity, *Huron Islands Lighthouse*, NW of Big Bay in Lake Superior (9–2–75)

Wayne County

Detroit, *Boston-Edison Historic District*, roughly bounded by Edison St., Woodward and Linwood Aves., and Glynn Court (9–5–75)

MINNESOTA

Hennepin County

Minneapolis, *Masonic Temple/Merchandise Building*, 528 Hennepin Ave. (9–5–75)

LeSueur County

LeSueur, *Taylor, George W.*, House, 103 S. 2nd St. (9–5–75)

Ramsey County

St. Paul, *St. Paul Public/Hill Reference Library*, 4th and Market Sts. (9–11–75)

MISSISSIPPI

Yazoo County

Yazoo City, *Ricks Memorial Library*, 310 N. Main St. (9–18–75)

MISSOURI

Jackson County

Independence, *Overfelt-Campbell-Johnston House*, 305 S. Pleasant St. (9–5–75)

Kansas City, *Bunker Building*, 820 Baltimore Ave. (9–5–75)

St. Louis (independent city)

Second Presbyterian Church, 4501 Westminster Pl. (9–11–75)

NEVADA

Carson City County

Carson City, *U.S. Mint*, 600 N. Carson St. (9–5–75) HABS.

NEW JERSEY

Essex County

Fairfield, *Fairfield Dutch Reformed Church*, Fairfield Rd. (10–7–75)

Hudson County

Jersey City, *Jersey City Central Railroad Terminal*, U.S. 78 N of Ellis Island (9–9–75)

Monmouth County

Navesink, *Navesink Historic District*, both sides of Monmouth Ave. from Mulberry La. to 600' E of Browns Dock Rd., N to jct. of Hillside and Grand Aves. (9–5–75)

NEW MEXICO

Bernalillo County

Isleta, *Isleta Pueblo (Tuei)*, U.S. 85 (9–5–75)

Santa Fe County

Santa Fe, *Bergere, Alfred M., House*, 135 Grant Ave. (10–1–75)

Santa Fe, *Shonnard, Eugenie, House*, 226 Hickox St. (9–5–75)

NEW YORK

Oswego County

Oswego, *Richardson-Bates House*, 135 E. 3rd St. (9–5–75)

Rensselaer County

Nassau vicinity, *Smith, Henry Tunis, Farm*, S of Nassau on NY 203 (9–18–75)

Schoharie County

Sharon Springs, *American Hotel*, Main St. (9–9–75)

Warren County

Warrensburg, *Warrensburg Mills Historic District*, roughly bounded by the Osborne and Woolen Mill Bridges Schroon River, and the RR right-of-way (9–18–75)

NORTH CAROLINA

Cumberland County

Fayetteville, *Sedberry-Holmes House*, 232 Person St. (9–2–75)

Durham County

Chapel Hill vicinity, *Leigh Farm*, E of Chapel Hill off NC 54 (9–5–75)

Robeson County

Philadelphus, *Philadelphus Presbyterian Church*, S.R. 1318 SW of jct. with NC 72 (10–3–75)

Wake County

Raleigh, *Merrimon House*, 526 N. Wilmington St. (9–5–75)

OHIO

Ashtabula County

Ashtabula, *Astabula Harbour Commercial District*, both sides of W. 5th St. from 1200 block to Ashtabula River (9–5–75)

Windsor, *Windsor Corners District*, U.S. 322 and OH 534 (9–5–75)

Butler County

Hamilton, *Rossville Historic District*, roughly bounded by B, E, Main, and Amberly Dr. (10–6–75)

Erie County

Sandusky vicinity, *Erie County Infirmary*, S of Sandusky on Columbus Rd. (9–5–75)

Franklin County

Westerville vicinity, *Everal, John W., Farm Buildings*, 7610 Cleveland Ave. (9–18–75)

Guernsey County

North Salem vicinity, *Kennedy Stone House*, SE of North Salem off OH 271 (10–3–75)

Jefferson County

Tiltonsville, *Hodgen's Cemetery Mound*, off OH 7 (9–25–75)

Warrenton, *Speedway Mound*, off OH 7 (9–5–75)

Knox County

Gambier vicinity, *Christ Church At The Quarry*, E of Gambier at jct. of CR 235 and 233 (9–25–75)

Lake County

Mentor, *Mason, James, House*, 8125 Mentor Ave. (9–18–75)

Licking County

Reynoldsburg vicinity, *Etna Township Mounds I and II*, E of Reynoldsburg off I–70 (9–5–75)

Lorain County

Vermilion vicinity, *Morris-Franks Site*, SE of Vermilion (9–5–75)

Madison County

Lafayette, *Red Brick Tavern*, 1700 Cumberland Rd. (9–5–75) HABS.

Medina County

Valley City vicinity, *Frank, Charles, House and Store*, W of Valley City at jct. of OH 303 and CR 23 (9–5–75)

Montgomery County

Germantown, *Shuey's Mill*, Main St. (9–5–75)

Muskingum County

Zanesville, *St. Nicholas' Catholic Church*, 925 Main St. (9–25–75)

Perry County

Somerset, *Somerset Historic District*, roughly both sides of Main St. from High St. to properties facing Market Sq.; both sides of Columbus St. from intersections with Sheridan and Gay Sts. (9–5–75) HABS.

OKLAHOMA

Canadian County

El Reno, *Red Cross Canteen*, Rock Island Depot (9–5–75)

OREGON

Josephine County

Wolf Creek vicinity, *Whisky Creek Cabin*, about 10 mi. W of Wolf Creek at Rogue River (9–5–75)

PENNSYLVANIA

Allegheny County

Pittsburgh, *Manchester Historic District*, irregular pattern contained with Faulsey, Chateau, Franklin, and Bidwell Sts. (9–18–75)

Franklin County

Waynesboro vicinity, *Springdale Mills (Shank's Mill)*, SE of Waynesboro off PA 16 on Amsterdam Rd. (9–18–75)

Indiana County

Indiana, *John Sutton Hall*, Indiana University of PA campus (9–17–75)

Philadelphia County

Philadelphia, *Old Drexel Building*, 34 S. 3rd St. (9–5–75)

Wyoming County

Meshoppen, *Old White Mill*, off Welles St. (9–11–75)

SOUTH CAROLINA

Beaufort County

Frogmore vicinity, *Tombee Plantation*, S of Frogmore on St. Helena's Island (9–18–75)

Charleston County

McClellanville vicinity, *Harrietta Plantation*, 5 mi. E of McClellanville off U.S. 17/701 (9–18–75)

Lancaster County

Lancaster vicinity, *Waxhaw Presbyterian Church Cemetery*, 8 mi. N of Lancaster off U.S. 521 (9–11–75)

SOUTH DAKOTA

Lake County

Madison, *Madison Historic District*, bounded roughly by Egan Ave. (both sides), Washington, 4th and 7th Sts. (10–1–75)

TENNESSEE

Bradley County

Cleveland vicinity, *Rattlesnake Springs*, NE of Cleveland off Dry Valley Rd. (9-5-75)

Roane County

Olive Springs, *Colonial Hall*, Spring and Main Sts. (9-11-75)

TEXAS

Bexar County

San Antonio, *International & Great Northern Railroad Passenger Station*, Medina and Houston Sts. (9-9-75)

San Antonio, *Majestic Theatre*, 214 E. Houston St. (10-1-75)

San Antonio, *Mission Parkway*, along the San Antonio River (10-6-75) HABS

Galveston County

Galveston, *Powhatan House*, 3427 Avenue O (10-6-75) HABS

Trinity County

Trinity, *McDonald, Ranald, House*, Maple and San Jacinto (10-6-75)

UTAH

Juab County

Nephi vicinity, *Nephi Mounds*, N of Nephi (9-9-75)

Salt Lake County

Sale Lake City, *Denver and Rio Grande Railroad Station*, 3rd S. and Rio Grande (9-25-75)

Uintah County

Vernal vicinity, *McConkie Ranch Petroglyphs*, about 8 mi. NW of Vernal (9-25-75)

Utah County

Provo, *Provo Tabernacle*, 50 S. University Ave. (9-9-75)

VIRGINIA

Chesterfield County

Richmond vicinity, *Kingsland (Richmond View)*, 1608 Willis Rd. (9-18-75)

WASHINGTON

Douglas County

Waterville, *Douglas County Courthouse*, off U.S. 2 (9-5-75)

Grant County

Ephrata, *Grant County Courthouse*, C St. NW (9-5-75)

Wilson Creek, *Wilson Creek State Bank*, off WA 7 (9-25-75)

Spokane County

Spokane, *Davenport Hotel*, 807 W. Sprague (9-5-75)

WISCONSIN

Dodge County

Waupun, *Dahl, Martin K., House*, 314 Beaver Dam St. (9-11-75)

Fond du Lac County

Ripon, *Ceresco Site*, bounded by North, Church, Union, and both sides of Warren Sts. (9-5-75)

Racine County

Racine, *Racine Harbor Lighthouse and Life Saving Station*, Racine Harbor North Pier (9-9-75)

WYOMING

Teton County

Moran vicinity, *Leek's Lodge*, 10 mi. NW of Moran in Grand Teton National Park, off U.S. 89/287 (9-5-75)

* * * * *

The following properties were omitted from the February 4, 1975, Federal Register listing:

MISSISSIPPI

Jackson County

Pascagoula, *Old Spanish Fort (Old French Fort)*, 200 Fort St. (9-3-71)

TENNESSEE

Hawkins County

Rogersville, *Rogersville Historic District*, bounded by N. Boyd, Kyle, Clinch, N. Bend Sts., McKinney Ave., and S. Rogen Rd. (2-23-73)

Sullivan County

Blountville, *Blountville Historic District*, center of Blountville along both sides of TN 126 (2-23-73)

* * * * *

The following are corrections for properties previously listed in the Federal Register:

IOWA

Cerro Gordo County

Mason City, *City National Bank Building* 4 S. Federal Ave. (9-14-72) (listed originally as Adams Bldg.)

NORTH CAROLINA

Chowan County

Edenton, *St. Paul's Episcopal Church and Churchyard*, W Church and Broad Sts. (5-29-75) HABS (address correction)

PENNSYLVANIA

Allegheny County

Pittsburgh, *Allegheny County Courthouse and Jail*, 436 Grant St. (3-7-73) previously listed as Allegheny County Buildings)

Philadelphia County

Philadelphia, *Clinton Street Historic District*, bounded by 9th, 11th, Pine, and Cypress Sts. (4-26-72) (address correction)

* * * * *

The following property has been demolished and therefore removed from the National Register of Historic Places:

MISSOURI

Buchanan County

St. Joseph, *Market Square Historic District*

* * * * *

The following properties have been removed from the National Register of Historic Places:

FLORIDA

Escambia County

Pensacola, **Fort San Carlos de Barrancas*, U.S. Naval Air Station (incorporated in Gulf Islands National Seashore)

INDIANA

Porter County

Porter vicinity, **Bailly, Joseph, Homestead*, 0.5 mi. W of Porter on U.S. 20 (incorporated in Indiana Dunes National Recreation Area)

MASSACHUSETTS

Berkshire County

Hancock, *Hancock Town Hall*, Main St. (moved, renominated)

Middlesex County

Wayland vicinity, *Old Town Bridge*, N of Wayland on MA 27 (improperly nominated)

OKLAHOMA

Caddo County

Anadarko, *Black Beaver's Grave*, N edge of Anadarko (removed to Ft. Sill NHL)

* * * * *

The following properties have been determined to be eligible for inclusion in the National Register. All determinations of eligibility are made at the request of the concerned Federal Agency under the authorities in section 2(b) and 1(3) of Executive Order 11593 as implemented by the Advisory Council on Historic Preservation, 36 CFR Part 800. This listing is not complete. Pursuant to the authorities discussed herein, an Agency Official shall refer any questionable actions to the Director, Office of Archeology and Historic Preservation, National Park Service, Department of the Interior, for an opinion respecting a property's eligibility for inclusion in the National Register.

Historical properties which are determined to be eligible for inclusion in the National Register of Historic Places are entitled to protection pursuant to the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800. Agencies are advised that in accord with the procedures of the Advisory Council on Historic Preservation, before an agency of the Federal Government may undertake any project which may have an effect on such a property, the Advisory Council on Historic Preservation shall be given an opportunity to comment on the proposal.

ALABAMA

Huntsville, *Lee House*, Red Stone Arsenal.

ALASKA

Northwestern District

Little Diomede Island, *Iyapana, John, House.*

ARIZONA

Apache County

Flattop Site, Petrified Forest National Park.
Newspaper Rock Petroglyphs Archeological District, Petrified Forest National Park.
Puerco Ruin and Petroglyph, Petrified Forest National Park.
Twin Buttes Archeological District, Petrified Forest National Park.

Cochise County

Garden Canyon Archeological Site, Sierra Vista.

Coconino County

Grand Canyon National Park, *Old Post Office.*
Grand Canyon National Park, *O'Neill, Buckley, Cabin.*

Graham County

Foote Wash—No Name Wash Archeological District.

Mohave County

Colorado City vicinity, *Short Creek Reservoir No. 1, Site NA 13,257.*
Colorado City vicinity, *Short Creek Reservoir No. 1, Site 13,258.*

Maricopa County

Cave Creek Archeological District.
New River Dams Archeological District.
Site T:4:6.
Skunk Creek Archeological District.

Navajo County

Painted Desert Petroglyphs and Ruins Archeological District, Petrified Forest National Park.
Polacca vicinity, *Walpi Hopi Village,* adjacent to Polacca.

Pima County

Tucson, *Armory Park Historic District.*
Tucson, *Convento Site.*
Tucson vicinity, *Old Santan,* NW of Tucson.

Yuma County

Yuma, *southern Pacific Depot.*

ARKANSAS

Ouchita County

Camden, *Old Post Office,* Washington St.

CALIFORNIA

Calaveras County

New Melones Historical District, New Melones Lake Project area, Stanislaus River (also in Tuolumne County).

Colusa County

Stoneyford vicinity, *Upper and Lower Letts Valley Historical District,* 12 mi. SW of Stoneyford.

Del Norte County

Chimney Rock, Six Rivers National Forest.
Doctor Rock, Six Rivers National Forest.
Peak No. 8, Six Rivers National Forest.

Imperial County

Glamis vinicity, *Chocolate Mountain Archeological District.*

Inyo County

Scotty's Castle, Death Valley National Monument.
Scotty's Ranch, Death Valley National Monument.

Lassen County

Archeological Site HJ-1.

Los Angeles County

Van Norman Reservoir, Site CA-LAN 646, CA-LAN 643, Site CA-LAN 490, and a cluster made up of Sites CA-LAN 475, 491, 492, and 493.

Madera County

CA-MAD 176-185, Lower China Crossing, and New Site, in Hidden Dam-Hensley Lake Project Area, Fresno River.

Marin County

Point Reyes, *Point Reyes Light Station.*

Modoc County

Alturas vicinity, *Rail Spring,* about 30 mi. N of Alturas in Modoc National Forest.

Monterey County

Big Sur, *Point Sur Light Station.*
Pacific Grove, *Point Pinos Light Station.*

Riverside County

Twentynine Palms, *Barker Dam,* Joshua Tree National Monument.
Twentynine Palms, *Cottonwood Oasis (Cottonwood Springs),* Joshua Tree National Monument.
Twentynine Palms, *Desert Queen Mine,* Joshua Tree National Monument.
Twentynine Palms, *Lost Horse Mine,* Joshua Tree National Monument.

Sacramento County

Sacramento River Bank Protection Project, Site 1, Sacramento River.

San Bernardino County

Twentynine Palms, *Keys, Bill, Ranch,* Joshua Tree National Monument.
Twentynine Palms, *Cow Camp,* Johsua Tree National Monument.
Twentynine Palms, *Twentynine Palms Oasis,* Joshua Tree National Monument.
Twentynine Palms, *Wallstreet Mill,* Joshua Tree National Monument.

San Diego County

San Diego, *Marine Corps Recruit Depot,* Barnett Ave.

San Luis Obispo County

San Luis Obispo, *San Luis Obispo Light Station.*

San Mateo County

Ano Nuevo vicinity, *Pigeon Point Light Station.*
Hillsborough, *Point Montara Light Station.*

Santa Barbara County

Santa Barbara, *Site SBa-1330,* Santa Monica Creek.

Shasta County

Redding vicinity, *Squaw Creek Archeological Site,* NE of Redding.
Whiskeytown, *Irrigation System (165 and 166),* Whiskeytown National Recreation Area.

Sierra County

Archeological Site IIJ-5 (Border Site 26WA-1676)

Siskiyou County

Thomas-Wright Battle Site, Lava Beds National Monument.

Sonoma County

Dry Creek-Warm Springs Valley Archeological District.
Santa Rosa, *Santa Rosa Post Office.*

COLORADO

Denver County

Denver, *Eisenhower Memorial Chapel,* Building No. 27, Reeves St., on Lowry AFB.

Douglas County

Keystone Railroad Bridge, Pike National Forest.

El Paso County

Colorado Springs, *Alamo Hotel,* corner of Tejon and Cucharras Sts.
Colorado Springs, *Old El Paso County Jail,* corner of Vermijo and Cascade Ave.

Larimer County

Site 5-LR-257, Boxelder Watershed Project.

Rio Blanco County

Rangely vicinity, *Canon Pintado,* S of Rangley on Hwy. 139.

CONNECTICUT

Hartford County

Hartford, *Church of the Good Shepherd and Parish House,* Wyllys St. and Van Block Ave.
Hartford, *Colt Factory Housing,* Huyshope Ave., between Sequassen and Weehasset Sts.
Hartford, *Colt Factory Housing (Potsdam Village),* Curcombe St. between Hendriexsen Ave. and Locust St.
Hartford, *Colt Park,* bounded by Wethersfield Ave., Stonington, Wawarme, Curcombe, and Marseek Sts., and by Huyshope and Van Block Aves.
Hatrford, *Colt, Col. Samuel, Armory, and related factory buildings,* Van Dyke Ave.
Hartford, *Flat-Iron Building (Motto Building),* Congress St. and Maple Ave.
Hartford, *Houses on both sides of Congress Street.*
Hartford, *Houses on Charter Oak Place.*
Hartford, *Houses on Wethersfield Avenue,* between Morris and Wyllys Sts., particularly Nos. 97-81, 65.

Middlesex County

Middletown, *Mather - Douglas - Santangelo House,* 11 S. Main St.

New Haven County

New Haven, *Post Office-Courthouse,* Church and Court Sts.

New London County

New London, *Williams Memorial Institute Building,* 110 Broad St.

DELAWARE

Sussex County

Lewes, *Delaware Breakwater.*
Lewes, *Harbor of Refuge Breakwater.*

DISTRICT OF COLUMBIA

Auditors' Building, 201 14th St. SW.
Brick Sentry Tower and Wall, along M St., SW. between 4th and 6th Sts., SW.
Central Heating Plant, 13th and C Sts. SW.
1700 Block Q Street NW, 1700-1744, 1746, 1748 Que St. NW.; 1536, 1538, 1540, 1602, 1604, 1606, 1608, 17th St. NW.

FLORIDA

Collier County

Marco Island, *Archeological Sites on Marco Island.*

Hillsborough County

Tampa, *Firehouse No. 10,* Ybor City.

Monroe County

Knights Key Moser Channel—Packet Channel Bridge (Seven Mile Bridge)
Long Key Bridge
Old Bahia Honda Bridge

Pinellas County

Bay Pines, *VA Center,* Sections 2, 3, and 11 TWP 31-S, R-15E.

GEORGIA

Chatham County

Archeological Site, N end of Skidway Island.

Chatooga County

Archeological Sites in area of Structure 1-M, and Trion Dikes 1 and 2, headwaters of Chatooga Watershed (also in Walker County).

Clarke County

Athens, *Carnegie Library Building,* 1401 Prince Ave.

Clay County

Archeological Site WGC-73, downstream from Walter F. George Dam.

De Kalb County

Decatur, *Sycamore Street Area.*

Heard County

Philpott Homesite and Cemetery, on bluff above Chattahoochee River where Grayson Trail leads into river.

Stewart County

Rood Mounds.

Sumter County

Americus, *Aboriginal Chet Quarry*, Souther Field.

HAWAII

Hawaii County

Hawaii Volcanoes National Park, *Mauna Loa Trail.*

Maui County

Hana vicinity, *Kipahulu Historic District*, SW of Hana on Rts. 31.

Oahu County

Moanalua Valley.

IDAHO

Ada County

Boise, *Alexanders*, 826 Main St.
Boise, *Falks Department Store*, 100 N. 8th St.
Boise, *Idaho Building*, 216 N. 8th St.
Boise, *Simplot Building (Boise City National Bank)*, 805 Idaho St.
Boise, *Union Building*, 712½ Idaho St.

Clearwater County

Orofino vicinity, *Canoe Camp—Suite 18*, W. of Orofino on U.S. 12 in Nez Perce National Historical Park.

Idaho County

Kamiah vicinity, *East Kamiah—Suite 15*, SE of Kamiah on U.S. 12 in Nez Perce National Historical Park.

Lemhi County

Tendoy, *Lewis and Clark Trail, Pattee Creek Camp.*

Lewis County

Jacques Spur vicinity, *St. Joseph's Mission (Slickpoo)*, S of Jacques Spur on Mission Creek off U.S. 95.

Nez Perce County

Lapwai, *Fort Lapwai Officer's Quarters*, Phinney Dr. and C St. in Nez Perce National Park.
Lapwai, *Spalding.*

ILLINOIS

Carroll County

Savanna vicinity, *Spring Lake Cross Dike Island Archeological Site*, 2 mi. SE of Savanna.

Cook County

Chicago, *McCarthy Building (Landfield Building)*, NE corner of Dearborn and Washington Sts.
Chicago, *Ogden Building*, 180 W. Lake St.
Chicago, *Oliver Building*, 159 N. Dearborn St.
Chicago, *Springer Block (Bay, State, and Krans Buildings)*, 126–146 N. State St.
Chicago, *Unity Building*, 127 N. Dearborn St.

De Kalb County

De Kalb, *Haish Barbed Wire Factory*, corner of 6th and Lincoln Sts.

Lake County

Fort Sheridan, *Museum, Bldg. 33*, Lyster Rd.
Fort Sheridan, *Water Tower*, Bldg 49, Leonard Wood Ave.

Williamson County

Wolf Creek Aboriginal Mound, Crab Orchard National Wildlife Refuge.

INDIANA

Monroe County

Bloomington, *Carnegie Library.*

St. Joseph County

Mishawaka, *130 NW Block*, properties fronting N. Main St. and W. Lincoln Way.

Vermillion County

Houses in SR 63/32 Project, jct. of SR 32 and SR 63 and 1st rd. S. of Jct.

IOWA

Boone County

Saylorville Archeological District (also in Polk and Dallas counties).

Muscatine County

Muscatine, *Clark, Alexander, Property*, 125-123 W. 3rd and 307, 309 Chestnut.

KANSAS

Douglas County

Lawrence, *Curtis Hall (Kiva Hall)*, Haskell Institute.

Pottawatomie County

Coffey Archeological Site, 14 PO 1.

KENTUCKY

Trigg County

Golden Pond, *Center Furnace*, N of Golden Pond on Bugg Spring Rd.

MAINE

Washington County

Machiasport, *Libby Island Light Station.*

MARYLAND

Anne Arundel County

Claiborne, *Bloody Point Bar Light*, on Chesapeake Bay.
Skidmore, *Sandy Point Shoal Light*, on Chesapeake Bay.

Baltimore County

Fort Howard, *Craghill Channel Upper Range Front Light*, on Chesapeake Bay.
Sparrows Point, *Craighill Channel Range Front Light*, on Chesapeake Bay.

Cecil County

Sassafras Elk Neck, *Turkey Point Light*, at Elk River and Chesapeake Bay.

Dorchester County

Hoppersville, *Hooper Island Light*, Chesapeake Bay-Middle Hooper Island.

Harford County

Havre De Grace, *Havre De Grace Light.*

St. Marys County

Piney Point, *Piney Point Light Station.*
St. Inigoes, *St. Inigoes Manor House*, Naval Electronic System Test and Evaluation Detachment.
St. Marys City, *Point No Point Light*, on Chesapeake Bay.

Talbot County

Tilghman Island, *Sharps Island Light*, on Chesapeake Bay.

MASSACHUSETTS

Barnstable County

North Eastham, *French Cable Hut*, jct. of Cable Rd. and Ocean View Dr.
Truro, *Highland House*, Cape Cod Light (Highland Light) area.

Bristol County

New Bedford, *Fire Station No. 4*, 79 S. 6th St.

Middlesex County

Watertown, *Commanding Officer's Quarters Bldg. 111, Watertown Arsenal*, 443 Arsenal St.
Wayland, *Old Town Bridge (Four Arch Bridge)*, Rte. 27, 1.5 mi. NW of Rte. 126 Jct.

Worcester County

North Brookfield, *Meadow Site No. 11*, Upper Quaboag River Watershed.
Worcester, *Oxford-Crown Streets District*, Chatham, Congress, Crown, Pleasant, Oxford Sts., and Oxford Pl.

MICHIGAN

Little Forks Archeological District.

MINNESOTA

Beltrami County

Blackduct, *Rabideau CCC Camp Site*, S. of Blackduct in Chippewa National Forest.

Winona County

Winona, *Second Street Commercial Block.*

MISSOURI

Buchanan County

St. Joseph, *Hall Street Historic District*, bounded by 4th St. on W. Robidoux on S. 10th on E, and Michel, Corby, and Ridenbaugh on N.

Dent County

Lake Spring, *Hyer, John, House.*

Franklin County

Leslie, *Noser's Mill and adjacent Miller's House*, Rural Rte. 1.

Henry County

La Due, *Batschelett House*, near Harry S. Truman Dam and Reservoir.

MONTANA

Carbon County

Barry's Landing, *Bad Pass Trail (Sioux Trail)*, Big Horn Canyon National Recreation Area.
Hardin, *Pretty Creek Site (Hough Creek Site)*, Big Horn Canyon National Recreation Area.

Fergus County

Lewis & Clark Campsite, May 23, 1805.
Lewis & Clark, Campsite, May 24, 1805.

Lewis and Clark County

Marysville, *Marysville Historic District.*

Ravalli County

Conner vicinity, *Alta Ranger Station*, S. of Conner in Bitterroot National Forest.

NEVADA

Clark County

Indian Springs vicinity, *Tim Springs Petroglyphs*, N of Indian Springs.
Las Vegas vicinity, *Blacksmith Shop*, Desert National Wildlife Range.
Las Vegas vicinity, *Mesquite House*, Desert National Wildlife Range.
Las Vegas vicinity, *Mormon Well Corral*, NE of Las Vegas.

Elko County

Carlin vicinity, *Archeological Sites 26EK1669—26EK1672.*

Nye County

Las Vegas vicinity, *Emigrant's Trail*, about 75 mi. NW of Las Vegas on U.S. 95.

Storey County

Sparks vicinity, *Derby Diversion Dam*, on the Truckee River 19 mi. E of Sparks, along I 80 (also in Washoe County).

NEW HAMPSHIRE

Rockingham County

Portsmouth, *Pulpit Rock Observation Station*, Portsmouth Harbor.

NEW JERSEY

Mercer County

Hamilton and West Windsor Townships, *Assunpink Historic District*.

Middlesex County

New Brunswick, *Delaware and Raritan Canal*, between Albany St. Bridge and Landing Lane Bridge.

Monmouth County

Long Branch, *The Reservation*, 1-9 New Ocean Ave.

Sussex County

------ *Road Historic District* (also in Warren County).

NEW MEXICO

Chaves County

Sites LA11809—LA11822, Cottonwood-Walnut Creek Watershed (also in Eddy County).

Dona Ana County

Placitas Arroyo, *Sites SCSPA 1—8*.

McKinley County

Zuni Pueblo Watershed, *Oak Wash Sites N.M.G:13:19—N.M.G:13.37*.

NEW YORK

Albany County

Guilderland, *Nott Prechistoric Site*.

Bronx County

New York, *North Brothers Island Light Station*, in center of East River.

Greene County

New York, *Hudson City Light Station*, in center of Hudson River.

New York County

New York, *Harlem Courthouse*, 170 E. 121st St.

Orange County

Port Jarvis, *Church Street School*, 55 Church St.
Port Jarvis, *Farnum, Samuel, House*, 21 Ulster Pl.

Richmond County

New York, *Romer Shoal Light Station*, located in lower bay area of New York Harbor.

Schoharie County

Breakabeen, *Breakabeen Historic District*, between village of North Blenheim and Breakabeen.

Suffolk County

New York, *Fire Island Light Station*, U.S. Coast Guard Station.
New York, *Little Gull Island Light Station*, off North Point of Orient Point, Long Island.
New York, *Plum Island Light Station*, off Orient Point, Long Island.
New York, *Race Rock Light Station*, S. of Fishers Island, 10 mi. N. of Orient Point.

Ulster County

Kingston vicinity, *Esopus Meadows Light Station*, middle of Hudson River.
New York, *Rondout North Dike Light*, center of Hudson River at Jct. at Rondout Creek and Hudson River.
New York, *Saugerties Light Station*, Hudson River.

Westchester County

Port Washington vicinity, *Execution Rocks Light Station*, lower SW portion of Long Island Sound.

NORTH CAROLINA

Alamance County

Burlington, *Southern Railway Passenger Depot*, NE corner Main and Webb Sts.

Brunswick County

Southport, *Fort Johnston*, Moore St.

Caswell County

Archeological Sites CS-12, County Line Creek Watershed Project (also in Rockingham County).
Womack's Mill, in County Creek Watershed Project (also in Rockingham County).

Cleveland County

Archeological Resources in Second Brood River Watershed Project (also in Rutherford County).

Cumberland County

Fayetteville, *Veterans Administration Hospital Confederate Breastworks*, 23 Ramsey St.

Dare County

Buxton, *Cape Hatteras Light*, Cape Hatteras National Seashore.

Durham County

Durham, *St. Joseph's A.M.F. Church*, Fayetteville St. at the Durham Expwy.

Hyde County

Ocracoke, *Ocracoke Lighthouse*.

New Hanover County

Wilmington, *Market Street Mansions District*, both sides of Market St. between 17th and 18th Sts.

OHIO

Clermont County

Neville vicinity, *Maynard House*, 2 mi. E of Neville off U.S. 52.

Pickaway County

Williamsport vicinity, *The Shack (Daugherty, Harry, House)*, 5.5 mi. NW of Williamsport.

Seneca County

Tiffin, *Old U.S. Post Office*, 215 S. Washington St.

OKLAHOMA

Comanche County

Fort Sill, *Blockhouse on Signal Mountain* off Mackenzie Hill Rd.
Fort Sill, *Camp Comanche Site*, E range on Cache Creek.
Fort Sill, *Chiefs Knoll, Post Cemetery*, N of Macomb Rd.
Fort Sill, *Geronimo's Grave*, N of Jct. of Dodge Hill and Elgin Rds.
Fort Sill, *Henry Post Air Field*, Post Rd.
Fort Sill vicinity, *Medicine Bluffs*, NW of Fort Sill.

Haskell County

Keota vicinity, *Otter Creek Archeological Site*, SW of Keota.

Kay County

Newkirk vicinity, *Bryson Archeological Site*, NE of Newkirk.

OREGON

Coos County

Charleston, *Cape Arago Light Station*.

Curry County

Port Orford, *Cape Blanco Light Station*.
Wolf Creek, *Rogue River Ranch*, Star Rte. Box 78.

Douglas County

Winchester Bay, *Umpqua River Lighthouse*.

Klamath County

Crater Lake National Park, *Crater Lake Lodge*.

Lane County

Roosevelt Beach, *Heceta Head Lighthouse*.
Roosevelt Beach, *Heceta Head Light Station*.

Lincoln County

Agate Beach, *Yakuina Head Lighthouse*.

Tillamook County

Tillamook, *Cape Meares Lighthouse*.

Wasco County

Memaloose Island, River Mile 177.5 in Columbia River.

PENNSYLVANIA

Adams County

Gettysburg, *Barlow's Knoll*, adjacent to Gettysburg National Military Park.

Allegheny County

Bruceton, *Experimental Mine*, U.S. Bureau of Mines, off Cochran Mill Rd.

Berks County

Mt. Pleasant, *Berger-Stout Log House*, near jct. of Church Rd. and Tulephocken Creek.
Mt. Pleasant, *Conrad's Warehouse*, near jct. of Rte. 183 and Powder Mill Rd.
Mt. Pleasant, *Heck-Stamm-Unger Farmstead*, Gruber Rd.
Mt. Pleasant, *Miller's House*, jct. of Rte. 183 and Powder Mill Rd.
Mt. Pleasant, *O'Bolds-Billman Hotel and Store*, Gruber Rd. and Rt. 183.
Mt. Pleasant, *Pleasant Valley Roller*, Gruber Rd.
Mt. Pleasant, *Reber's Residence and Barn*, on Tulephocken Creek.
Mt. Pleasant, *Union Canal*, Blue Marsh Lake Project area.

Clinton County

Lockhaven, *Apsley House*, 302 E. Church St.
Lockhaven, *Harvey, Judge, House*, 29 N. Jay St.
Lockhaven, *McCormick, Robert, House*, 234 E. Church St.
Lockhaven, *Mussina, Lyons, House*, 23 N. Jay St.

Dauphin County

Middletown, *Swatara Ferry House (Old Fort)*, 400 Swatara St.

Huntingdon County

Brumbaugh Homestead, Raystown Lake Project.

Lehigh County

Dorneyville, *King George Inn and two other stone houses*, Hamilton and Cedar Crest Blvds.

Lycoming County

Williamsport, *Faxon Co., Inc.*, Williamsport Beltway.

Northampton County

Lehigh Canal.

Philadelphia County

U.S. Naval Base, *Quarters "A" Commandant's Quarters*

Washington County

Charlerol, *Ninth Street School.*
Somerset Township, *Wright No. 22 Covered Bridge*

SOUTH CAROLINA

Charleston County

Charleston, *139 Ashley St.*
Charleston, *69 Barre St.*
Charleston, *69r Barre St.*
Charleston, *316 Calhoun St.*
Charleston, *316r Calhoun St.*
Charleston, *268 Calhoun St.*
Charleston, *274 Calhoun St.*
Charleston, *Old Rice Mill*, off Lockwood Dr.

SOUTH DAKOTA

Pennington County

Rapid City, *Rapid City Historic Commercial District*, portions of 612–632 Main St.

TENNESSEE

Hamilton County

Chattanooga, *Civil War Fort*, N of Tyler RR. Crossing on Southern RR.

Henry County

Mt. Zion Church and Cemetery (United Baptist Church).

Stewart County

Dover vicinity, *Fort Henry Site*, NW of Dover.
Great Western Furnace.

Trousdale County

Dixon Springs, *McGee House.*

TEXAS

Bexar County

Fort Sam Houston, *Eisenhower House*, Artillery Post Rd.

Concho County

Middle Colorado River Watershed, *Prehistoric Archeology in the Southwest Laterals Subwatershed* (also in McCulloch County)

Denton County

Hammons, George, House, between Sangers and Pilot Point.

El Paso County

Castner Range Archeological Sites.

Galveston County

Galveston, *U.S. Customhouse*, bounded by Avenue B, 17th, Water, and 18th Sts.

Uvalde County

Leon River Watershed Archeological Sites.

Webb County

Laredo, *Bertani, Paul Prevost House*, 604 Iturbide St.
Laredo, *De Leal, Viscaya, House*, 620 Zaragoza St.
Laredo, *Garza, Zoila De La, House*, 500 Iturbide St.
Laredo, *Leyendecker/Salinas House*, 702 Iturbide St.

UTAH

Salt Lake County

Salt Lake City, *Karrick Building (Leyson-Pearsoil Building)*, 236 S. Main St.
Salt Lake City, *Lollin Block*, 238–240 S. Main St.

VERMONT

Franklin County

Highgate Falls, *Lenticular or Parabolic Truss Bridge*, over Missiquoi River.

Windsor County

Windsor, *Post Office Building.*

WASHINGTON

Benton County

Richland vicinity, *Hanford Island Archeological Site*, 18 mi. N of Richland.
Richland vicinity, *Hanford North Archeological District*, 22 mi. N. of Richland.
Richland vicinity, *Paris Archeological Site*, Hanford Works Reservation.
Richland vicinity, *Snively Canyon Archeological District*, 25 mi. NW of Richland.
Richland vicinity, *Wooded Island Archeological District*, N of Richland.

Clallam County

Olympic National Park Archeological District, Olympic National Park (also in Jefferson County).
Segium, *New Dungeness Light Station.*

Franklin County

Richland vicinity, *Savage Island Archeological District*, 15 mi. N of Richland.

Grays Harbor County

West port, *Grays Harbor Light Station.*

King County

Burton, *Point Robinson Light Station.*
Seattle, *Alki Point Light Station.*
Seattle, *West Point Light Station.*

Kitsap County

Hansville, *Point No Point Light Station.*

Pacific County

Ilwaco, *North Head Light Station.*

Pierce County

Fort Lewis Military Reservation, *Captain Wilkes, July 4, 1841, Celebration Site.*
Longmire, *Longmire Cabin*, Mount Rainier National Park.

San Juan County

San Juan Islands, *Patos Island Light Station.*

Snohomish County

Mukilteo, *Mukilteo Light Station.*

WEST VIRGINIA

Cabell County

Huntington, *Old Bank Building*, 1208 3rd Ave.

Kanawha County

Charleston, *Kanawha County Courthouse.*
St. Albans, *Chilton House*, 439 B St.

Ohio County

Wheeling, *B & O Railroad Freight Station and Train Shed.*

Wood County

Parkersburg, *Wood County Courthouse.*
Parkersburg, *Wood County Jail.*

WISCONSIN

Ashland County

Ashland vicinity, *Madeline Island Site 7302.*

Milwaukee County

Milwaukee, *Plankinton, Elizabeth, House*, 1492 W. Wisconsin Ave.

WYOMING

Goshen County

Torrington, *Union Pacific Depot.*

Lincoln County

Emigrant Springs, 18 mi. W of Fontenelle Dam Site

Natrona County

Casper, *Cantonment Reno.*
Casper, *Castle Rock Archeological Site.*
Casper, *Dull Knife Battlefield.*
Casper, *Middle Fork Pictograph-Petroglyph Panels.*
Casper, *Portuguese Houses.*

Park County

Mammouth, *Chapel at Fort Yellowstone*, Yellowstone National Park.

Sweetwater County

Farson vicinity, *Parting-of-the-Ways* Oregon *Trail Site*, 15 mi. NE of Farson.

PUERTO RICO

Mona Island, *Sardinero Site and Ball Courts.*

REX L. WILSON,
Acting Director, Office of Archeology and Historic Preservation.

[FR Doc.75-29224 Filed 11-3-75;8:45 am]

Office of Hearings and Appeals

[Docket No. M 74-103]

REPUBLIC STEEL CORP.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Republic Steel Corporation has filed a petition to modify the application of 30 CFR 75.1600-1 to its Newfield Mine, Verona, Pennsylvania.

30 CFR 75.1600-1 provides:

A telephone or equivalent two-way communication facility shall be located on the surface within 500 feet of all main portals, and shall be installed either in a building or in a box-like structure designed to protect the facilities from damage by inclement weather. At least one of these communication facilities shall be at a location where a responsible person who is always on duty when men are underground can hear the facility and respond immediately in the event of an emergency.

In support of its petition, Petitioner states:

(1) At Petitioner's Newfield Mine a responsible person is on duty at all times when men are underground on a coal producing shift. On non-producting shifts the mine is patrolled by two (2) responsible persons, who contact each other every thirty (30) minutes by trolley phones or page phones when patrolling the mine. The men use personnel carriers equipped with MSA Battery Trolley Phones.

(2) When the miners leave the personnel carriers to patrol work areas of the mine, they are within 500 feet of a Femco Pager Phone. Both of these com-

munication devices will continue to operate in case of a power failure. With this system these men are in constant communication. Petitioner feels that its present system offers adequate protection so as to comply with section 1600–1.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 4, 1975. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

OCTOBER 24, 1975.

[FR Doc.75-29559 Filed 11-3-75;8:45 am]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[FSP No. 1975-1.2, Rev. 1, Amdt. 71]

FOOD STAMP PROGRAM

Maximum Monthly Allowable Income Standards and Basis of Coupon Issuance: 48 States and District of Columbia; Extension of Comment Period

In the FEDERAL REGISTER of September 19, 1975 (40 FR 43404), the Department of Agriculture announced its intention to examine alternatives to the Maximum Monthly Allowable Income Standards and the Basis of Coupon Issuance set forth in FSP Notice 1975–1.2, effective July 1, 1975 (40 FR 19856). The period for public comment expired October 6, 1975.

The short comment period originally provided was necessary to meet the deadline imposed by the United States Appeals Court for the District of Columbia Circuit, in its opinion in the case of "Rodway v. United States Department of Agriculture," No. 74–1303 (D.C. Cir.), for the Department of Agriculture to complete new rulemaking procedures of the allotment regulations. The Court has now extended the deadline. Accordingly, in view of the importance of the allotment provisions to the Food Stamp Program and the need for providing the public with a more reasonable opportunity to comment on the proposed amendment, the comment period is extended to and including November 13, 1975. The final rule will be issued on or before December 13, 1975. However, recognizing the workload imposed upon State agencies when the basis of issuance schedules are justified, the Department will exert its best efforts to publish the final amendment in the FEDERAL REGISTER before December 13.

(78 Stat. 703, as amended; 7 U.S.C. 2011–2026)

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

Dated: October 30, 1975.

RICHARD L. FELTNER,
Assistant Secretary.

[FR Doc.75-29684 Filed 11-3-75;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ADVISORY COMMITTEES

Meetings

Correction

In FR Doc. 75–28227 appearing at page 49115 in the FEDERAL REGISTER of Tuesday, October 21, 1975, the following changes should be made on page 49116:

1. The contact person for the Panel on Review of Ophthalmic Devices should be corrected to read "Richard A. Hawkins."

2. The address of the contact person for the Ad Hoc Committee on Reserpine and Breast Cancer should be corrected to read "(HFM–1), 5600 Fishers Lane, Rockville, Md. 20852, 301–443–4124."

IMAGE RECEPTOR CONFERENCE ON FILM-SCREEN COMBINATIONS

Meeting

This notice announces an Image Receptor Conference on Film-Screen Combinations for diagnostic radiology to be held November 13 through 15, 1975 at the Crystal City Marriott Hotel, Arlington, Va. This forum for discussion of problems associated with selection of films and intensifying screens used in medical diagnostic radiology is provided through a contract awarded by the Food and Drug Administration to the American College of Radiology. All preparations and arrangements, including selection of participants, are the resposibility of the American College of Radiology which will furnish the Food and Drug Administration a final report of the conference under the terms of the contract. Participants at the meeting will be specialists in radiology and radiation physics invited from the medical profession, industry, and the Federal Government.

The conference is sponsored to aid the American College of Radiology in developing information for the Food and Drug Administration on the data needed by users or radiographic film and screens to ensure their effective use, with minimal exposure, for the diagnosis of disease processes. Of particular interest at the conference will be information related to problems associated with selection of appropriate film-screen combinations for diagnostic radiology. The conference will include a review of the desired characteristics of acceptable film-screen combinations for the various diagnostic situations encountered in radiology.

The Food and Drug Administration, in an advance notice of proposed rule making published in the FEDERAL REGISTER on June 19, 1975 (40 FR 25830), announced the consideration of an amendment to the performance standard for diagnostic x-ray systems which would require manufacturers to provide information on the characteristics of films and screens which could be used to choose appropriate combinations of these devices. The Commissioner of Food and Drugs is currently reevaluating his authority to regulate films and screens under the Radiation Control for Health and Safety Act. It is his intention to provide information in this area either in the form of recommendations and guidelines or through regulations in keeping with the purposes and authority of the act.

The conference will be held from 9 a.m. to 5 p.m. on November 13 and 14, and from 9 a.m. to noon on November 15, at the Crystal City Marriott Hotel, Arlington, Va. Public observers will be limited to the space available. A summary of the meeting will be prepared by the contractor following the meeting and will be available upon request from the Bureau of Radiological Health, Food and Drug Administration.

For additional information contact Mr. Richard Hardy, American College of Radiology, 20 North Wacker Drive, Chicago, IL 60606, (312) 238–4963 or Mr. Robert F. Noethe, ACR Washington Office, 6900 Wisconsin Avenue, Chevy Chase, MD 20015, (301) 654–6900. The Food and Drug Administration contract officer for this contract is Mr. Richard E. Gross, Bureau of Radiological Health, Division of Training and Medical Applications (HFX–70), 5600 Fishers Lane, Rockville, MD 20852, (301) 443–2436.

Dated: October 30, 1975.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.75-29662 Filed 11-3-75;8:45 am]

Office of the Secretary

BOARD OF ADVISORS TO THE FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

Public Meeting

Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), that the next meeting of the Board of Advisors to the Fund for the Improvement of Postsecondary Education will be held on November 17, from 5 p.m. to 8 p.m., and on November 18, from 9:30 a.m. to 3:30 p.m. The meeting will be held at the Sheraton Plaza Hotel, 160 Huron Street, Chicago, Illinois.

The purpose of the meeting is to review program plans and to consider approaches to the evaluation and dissemination of Fund activities.

The meeting shall be open to the public. Records shall be kept of all proceedings and shall be available for public inspection at the Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue SW., Room 3141, Washington, D.C. 20202, telephone number 202-245-8091.

Signed at Washington, D.C., on October 24, 1975.

VIRGINIA B. SMITH,
Director, Fund for the Improvement of Postsecondary Education.

[FR Doc.75-29530 Filed 11-3-75;8:45 am]

ACTION

PRIVACY ACT OF 1974

Additional Routine Use for System of Records

Notice is hereby given that ACTION proposes to amend its notice of systems of records published in 40 F.R. 176, September 10, 1975, by adding to the Preliminary Statement under the heading Statement of General Routine Uses therein an additional routine use as set forth below:

9. Information in any system of records may be disclosed to a Congressional office, in response to an inquiry from any such office, made at the request of the individual to whom the record pertains.

Any person interested in this notice may submit written views, comments, or other data to ACTION/GC, Room 607, 806 Connecticut Avenue, NW., Washington, D.C. 20525, on or before December 3, 1975. All written comments received from the public through said date will be considered before publication of final notice. Comments received will be available for public inspection at the above address between the hours of 9 a.m. and 5 p.m., Monday through Friday (except holidays).

This notice is issued in Washington, D.C. on October 30, 1975.

JOHN L. GANLEY,
Deputy Director, ACTION.

[FR Doc.75-29655 Filed 11-3-75;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 28198]

AIR PACIFIC LTD.

Prehearing Conference and Hearing Regarding Foreign Permit Renewal (FIJI)

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on November 19, 1975, at 10 a.m. (local time) in Room 1003B, North Universal Building, 1875 Connecticut Avenue NW., Washington, D.C., before Administrative Law Judge Janet D. Saxon.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless a person objects or shows reason for postponement on or before November 11, 1975.

Ordinary transcript will be adequate for the proper conduct of this proceeding.

Dated at Washington, D.C., October 29, 1975.

[SEAL] ROBERT L. PARK,
Chief Administrative Law Judge.

[FR Doc.75-29570 Filed 11-3-75;8:45 am]

[Docket No. 27829 et al.; Order 75-10-118]

ALLEGHENY AIRLINES, INC.

Service to Hazleton Case

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 29th day of October 1975.

Application of Allegheny Airlines, Inc., under section 401 of the Federal Aviation Act of 1958, as amended, for an amendment of its certificate of public convenience and necessity for route 97 so as to delete Hazleton, Pa., therefrom—Docket 27829.

Service to Hazleton Case—Docket 28443.

ORDER

On May 28, 1975, Allegheny Airlines filed a petition for an order to show cause why Hazleton, Pa., should not be deleted from its certificate for route 97. The carrier is presently suspended at the point pursuant to order 68-7-5, July 1, 1968, which approved Agreement CAB 20271 between Allegheny and Pocono Airlines providing for a replacement service by Pocono at Hazleton.

In support of its petition, Allegheny states that Hazleton has had nearly 7 years of effective Allegheny Commuter service; that despite this service, Hazleton's traffic since 1969 has declined steadily from 11 passengers per day and 3.4 passengers per departure to 4.3 per day and 1.3 per departure; that with the institution of jet service by Allegheny at Scranton to Boston, Pittsburgh, and Chicago in 1969, only 10 percent of the Hazleton passengers use their own airport, with 80 percent using the Scranton airport only 35 miles distant; that Pocono, operating as Allegheny Commuter at Hazleton, is experiencing a net loss of $61,000 per year at the point; and that the replacement service at Hazleton has caused a financial drain on Allegheny, as evidenced by the facts that it has given financial assistance in the amount of $164,000 between 1969 and 1972, and Allegheny Commuter has been unable to reimburse Allegheny in the amount of $80,000 for ground handling and reservation costs.

The City of Hazelton, Pa., the Greater Hazleton Chamber of Commerce, the Greater Hazleton Community Area New Development Organization ("CAN DO") and the Greater Hazleton Municipal Airport Commission (the Hazleton parties) filed an answer in opposition to Allegheny's petition. Hazleton urges that the petition for an order to show cause be denied and that the deletion application be dismissed. The community contends that Pocono developed considerable traffic at Hazleton, but that since 1972, the commuter carrier has cut service far below acceptable standards, thus accounting for the recent decline in traffic. Furthermore, Hazleton claims that Allegheny "has been in open and flagrant violation" of the service requirements established in order 68-7-5, which in the community's view required Allegheny's replacement carrier to provide "at least three well-timed nonstop round trips" between Hazleton and Newark. To remedy these alleged violations, Hazleton requests that the Board order Allegheny to reinstitute service and to conform to order 68-7-5, and that these alleged violations be referred to the Bureau of Enforcement and the Department of Justice for appropriate action. Finally, Hazleton requests that Allegheny's petition and application be denied for gross violation of the Board's standards of conduct, claiming that Allegheny representatives attempted to intimidate Hazleton and procure the firing of the community's newly retained counsel by making various allegations concerning Hazleton's counsel to the community's congressional representative.

Allegheny subsequently filed a motion for expedited hearing on its application, and a reply to Hazleton's answer to the carrier's petition.[1] In its reply, Allegheny claims that Hazleton has misconstrued the minimum service requirements imposed by the Board in order 68-7-5; and that Pocono has at all times since 1968 provided service fully complying with those requirements and sufficient to give the community a fair test of its traffic-generating ability. In light of the declining traffic response at Hazleton, the carrier contends that neither Allegheny nor its replacement carrier should be compelled to continue uneconomic certificated air service in the absence of some compensating public benefits. Finally, Allegheny disputes the claim that its representatives attempted to intimidate the community or besmirch the reputation of is counsel.[2]

Hazleton has filed an answer to Allegheny's motion for expedited hearing and a response to the carrier's reply on its petition for a show-cause order.[3] The community contends that the motion for expedited hearing fails to satisfy the requirements of Rule 18 of the Board's rules of practice and that the carrier has not shown that its application is entitled to a priority hearing under § 399.60(b) of the Board's regulations. In addition to other matters, Hazleton's response in-

[1] The reply was accompanied by a motion for leave to file an otherwise unauthorized document. We will grant the motion.

[2] Appended to the reply were affidavits of certain Allegheny officials concerning the alleged efforts to improperly influence the community.

[3] The response was accompanied by a motion for leave to file an otherwise unauthorized document. We will grant the motion.

cluded a counteraffidavit to the affidavits filed by Allegheny.

Allegheny filed a reply to the answer to its motion for expedited hearing,[4] contending that its motion, incorporating the statistical data set forth in its petition for an order to show cause, satisfies the requirements of Rule 18 and § 399.60 (b), and constitutes a prima facie showing that operations at Hazleton are and will continue to be uneconomic.

Upon consideration of the pleadings and all the relevant facts, we have decided to deny Allegheny's petition for an order to show cause, to institute a proceeding to be called the *Service to Hazleton Case*, and to consolidate for consideration therein the carrier's application for deletion of Hazleton.

In light of the objections raised by the civic parties, the use of showcase procedures would be inappropriate in this instance, although we believe that the statistical information and other facts alleged by Allegheny are sufficient to warrant a priority hearing on the carrier's application.[5] The disputed facts and issues in this matter can best be resolved on the basis of an evidentiary record after hearing.

The pleadings filed thus far in this proceeding raise certain arguments concerning matters not normally dealt with in deletion proceedings. Because of the unusual or novel nature of these arguments, we believe that additional comment is warranted in order to provide guidance for the parties and to clarify the scope of this proceeding and the issues which we expect to be developed in the record. The first concerns the argument raised by Hazleton that Allegheny is suffering no losses under its suspension/replacement arrangement with Pocono, and that losses suffered by the commuter carrier should not be considered in determining whether or not Allegheny should be deleted. The central issue in this proceeding is whether the community warrants continued certificated air service—whether by Allegheny itself or by a contract carrier operating pursuant to a replacement agreement—and thus the economics of Pocono's replacement services is clearly relevant to the issues in this proceeding.[6] Accordingly, we expect the parties to develop the record on the question of the economic impact on both Allegheny and Pocono of continued replacement carrier service, as well as the economic impact on Allegheny of reinstituting its own independent operations at Hazleton.

The second matter concerns Hazleton's argument that the level of service provided by Pocono has been in violation of the minimum service requirements imposed by order 68–7–5. Hazleton contends that order 68–7–5 required Pocono to provide at least three daily "nonstop" round trips between Hazleton and Newark. This interpretation of the plain language of order 68–7–5 is erroneous. As we stated in that order:

> Pocono will provide four daily nonstop round trips between Hazleton and Newark during the first six months of operation. This pattern will continue if traffic responds as anticipated, and in any event Pocono will be required to provide at least three daily round trips during the remaining life of the agreement. [Order 68–7–5 at page 3] [7]

Thus, it is clear that the Board did not intend to limit Pocono to nonstop service in meeting its three-daily-round-trip requirement. We have carefully reviewed the schedules offered by Pocono for the period from 1968 to the present, and we have found that the carrier has, at all times, scheduled at least three daily round trips—both nonstop and one-stop via Scranton / Wilkes - Barre — between Hazleton and Newark. Moreover, these schedules appear to have generally offered morning, midday, and evening service between Hazleton and Newark, and thus we cannot find on the basis of the facts alleged by Hazleton in its pleadings that the quantity of quality of Pocono's service has been in violation of the service requirements imposed by order 68–7–5.[8] The parties will be free, however, to explore the question of the quantity and quality of Pocono's service in more detail at the hearing.

Finally, we have considered the arguments raised concerning alleged misconduct by Allegheny officials, and we do not find that these allegations form a sufficient basis for dismissal of Allegheny's petition and application pursuant to Rule 20 of the Board's rules of conduct (§ 300.20 of the Board's procedural regulations). In this instance, unlike past cases where the Board has been requested to disqualify applicants for violations of the Board's rules of conduct, the alleged misconduct does not involve efforts to improperly influence the Board in its decisionmaking process.[9] This is not to say, however, that we by any means condone such conduct if proven, but rather that the sanction requested by Hazleton, i.e., denial of Allegheny's application pursuant to Rule 20(b) of the Board's rules of conduct, is not appropriate in the public interest in this instance.[10]

Accordingly, it is ordered, That:

1. The petition of Allegheny Airlines, Inc., in docket 27829 for an order to show cause be and it hereby is denied;

2. A proceeding will be instituted in docket 28443 to be called the Service to Hazleton Case and shall be set for hearing before an Administrative Law Judge of the Board at a time and place to be hereafter designated, as the orderly administration of the Board's docket permits;

3. The proceeding instituted by paragraph 2, above, shall include consideration of the following issues:

a. Whether the public convenience and necessity require, pursuant to section 401(g) of the Act, that Allegheny's certificate be altered, amended, or modified so as to suspend or delete Hazleton, Pa.; and

b. Whether the public interest requires, pursuant to section 401(j) of the Act, the temporary suspension of service by Allegheny at Hazleton, Pa., with or without conditions;

4. The application of Allegheny Airlines, Inc., in docket 27829 be and it hereby is consolidated into the proceeding instituted by paragraph 2, above;

5. The motion of Allegheny Airlines, Inc., for expedited hearing be and it hereby is granted;

6. The motions of Allegheny Airlines, Inc., for leave to file otherwise unauthorized documents be and they hereby are granted;

7. The motion of the Hazleton parties for leave to file an otherwise unauthorized document be and it hereby is granted;

8. Except to the extent granted herein, all other motions and requests be and they hereby are denied; and

9. A copy of this order shall be served upon Allegheny Airlines, Inc.; Pocono Airlines, Inc.; Mayor, City of Hazleton; Manager, Hazleton Municipal Airport; the Greater Hazleton Chamber of Commerce; the Greater Hazleton Community Area New Development Organization ("CAN DO"); the Greater Hazleton Municipal Airport Commission; Governor, State of Pennsylvania; Pennsylvania Public Utility Commission; and the Postmaster General.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.75-29569 Filed 11-3-75;8:45 am]

[4] The reply was accompanied by a motion for leave to file an otherwise unauthorized document. We will grant the motion.

[5] We do not interpret the motion of Allegheny for expedited hearing to request the use of extraordinary procedures or timing in the conduct of the case, and accordingly, the normal procedures utilized in formal Board proceedings will be followed in this case.

[6] *State of Maine, et al.* v. *C.A.B.*, Slip Op. 74-1413 (1st Cir., Aug. 13, 1975).

[7] Likewise, ordering par. 4 of order 68–7–5 makes no reference to any *nonstop* service requirement.

[8] In describing the alleged deficiencies in Pocono's service, Hazleton's answer refers only to the level and timing of Pocono's nonstop Hazleton-Newark service, thereby ignoring the numerous one-stop flights offered.

[9] See, *e.g.*, *New York-San Francisco Nonstop Service Case*, 30 C.A.B. 309 (1959); and *Complaint by Continental Air Lines, Inc., et al.*, order 75-6-21, June 4, 1975.

[10] In these circumstances, the more appropriate means of redress for these alleged violations is through the Board's normal enforcement procedures. We are referring this matter to the Board's Bureau of Enforcement for whatever action may be deemed appropriate. Consequently, the question of a possible violation of sec. 300 of the Board's Procedural Regulations will not be at issue in the hearing in this docket.

COMMISSION ON THE REVIEW OF THE NATIONAL POLICY TOWARD GAMBLING

GAMBLING AND RELATED ACTIVITIES, MIAMI

Hearings

Pursuant to the Provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat., 770), notice is hereby given that the Commission on the Review of the National Policy Toward Gambling, established under authority of section Pub. L. 91-452, Part D, section 804-808 of the Organized Crime Control Act of 1970, will hold hearings on November 24 and 25, 1975, in Central Court Room, United States Post Office and Courthouse, 300 NE. 1st Avenue, 2nd Floor, Miami, Florida.

The purpose of the above-described hearings is to elecit testimony from Federal, State, and local Government officials, law enforcement representatives and such others who might have knowledge as to the existence and character of gambling and gambling-related activities in Miami and other areas, both legal and illegal, and as to the effectiveness of gambling enforcement toward the element of organized crime in the United States.

The hearings of the Commission will be open to the public, and interested persons are invited to attend. The rules of procedure for person or persons presenting matters to the Commission are the same as those rules of procedure published by the Commission in the September 5, 1975 FEDERAL REGISTER.

JAMES E. RITCHIE,
Executive Director.

OCTOBER 30, 1975.

[FR Doc.75-29554 Filed 11-3-75;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

ALUMINUM WIRE CONNECTIONS

Proceeding for Development of Consumer Product Safety Standard

The Consumer Product Safety Commission has preliminarily determined (1) that hazards associated with household wiring systems involving solid aluminum wire in number 10 American Wire Gage (AWG) size and smaller diameters, including all types of termination devices and connections, fabricated and installed using standard trade practices, present an unreasonable risk of death or injury and (2) that one or more consumer product safety standards are necessary to eliminate or reduce those unreasonable risks.

Accordingly, pursuant to section 7 of the Consumer Product Safety Act (Public Law 92-573, 86 Stat. 1212; 15 U.S.C. 2056), this notice commences a proceeding for the development of a consumer product safety standard applicable to household wiring systems involving such aluminum wire and various connections, as defined in section C(1) of this notice.

INVITATION TO OFFERORS

Pursuant to section 7 of the Act and the regulations issued thereunder (16 CFR Part 1105), an invitation is hereby extended to all standards writing organizations, trade associations, consumer organizations, professional or technical societies, testing organizations and laboratories, university or college departments, wholesale or retail organizations, Federal, State, or local government agencies, engineering or research and development establishments, ad hoc associations, companies, and persons (all hereinafter called persons) to submit to the Commission on or before December 4, 1975, either of the following:

1. One or more existing standards as a proposed consumer product safety standard in this proceeding.

2. An offer to develop one or more proposed consumer product safety standards applicable to aluminum wire systems to reduce or eliminate any or all of the unreasonable risks of injury associated therewith.

Persons who are not members of an established organization may form a group for the express purpose of submitting offers and developing standards. Such groups are referred to in the regulations as ad hoc associations (16 CFR 1105.5). An offer by an ad hoc association may be submitted by an individual member if the offer states that it is submitted on behalf of the members of the association. The individual member submitting the offer shall submit to the Commission a notarized copy of a power of attorney from each member of the group authorizing that individual member to submit an offer on behalf of each other member.

Persons interested in submitting existing standards or offering to develop a standard must follow the regulations concerning the submission of existing standards and the development of standards (16 CFR Part 1105, issued under section 7 of the Act). Potential offerors should direct particular attention to 16 CFR 1105.8 (Recommended consumer product safety standards developed by offerors), which enumerates the criteria to be used by the Commission in evaluating developed standards.

Part 1105 was promulgated in the FEDERAL REGISTER of May 7, 1974 (39 FR 16206). Copies may be obtained from the Office of the Secretary, Consumer Product Safety Commission, 1750 K Street NW., Washington, D.C. 20207 (phone 202-634-7700).

Further information concerning the requirements of Part 1105 is set forth in Sections F, G, and H of this notice.

The time for developing this standard shall end on or before April 4, 1976. However, the Commission may extend the development time if it finds, for good cause, that a longer period of time is appropriate. Any such extension will be announced by a notice in the FEDERAL REGISTER. An offeror who believes that the development period is inadequate may submit an estimate of the time required to develop the requirements of the standard, including a detailed schedule for each phase of the development period and an explanation of why the offeror cannot develop the requirements by the date specified.

A. PRELIMINARY DETERMINATION OF UNREASONABLE RISK OF INJURY

On March 27 and 28, 1974, in Washington, D.C. and on April 17 and 18, 1974, in Los Angeles, California, the Consumer Product Safety Commission conducted public hearings to determine whether cause existed to warrant further investigation and possible future regulatory action of aluminum wire. Testimony at these hearings was given by individuals from research and testing laboratories, aluminum wire manufacturers, electrical device manufacturers, trade associations, electrical contracting firms, electrical inspection and fire departments, consumer organizations and other interested individuals.

Prior to August 1974, the Commission had received 165 reports of electrical failures involving aluminum wire. 103 incidents were from single family homes, 38 from mobile homes and 24 from multi-family dwellings. 32 of the 165 failures occurred in circuits having number 6 and 8 AWG aluminum wire. The remainder were number 10 and 12 AWG aluminum wire.

On August 29, 1974, an article discussing the hazards of aluminum wire was published in NEWSDAY, a Long Island, N.Y., newspaper. The article suggested that consumers report electrical problems to the Consumer Product Safety Commission's "hotline." Between August 29 and September 17, the Commission received 404 phone calls from the New York area relating to aluminum wire. 179 calls were from homeowners who had observed danger signals or had electrical malfunctions involving aluminum wire. The remaining 225 calls were from homeowners wanting more information about the problem.

Hazardous conditions such as burned wire insulation, burned receptacles, fires in receptacles or wall switches, odor of burning wires and smoldering in walls, and electric arcing of switches and receptacles were reported by 96 homeowners. Another 30 homeowners reported symptoms of hazardous conditions such as overheated receptacles and switches, scorched walls, and melted receptacles and wire insulation. 53 callers reported flickering lights or inoperative switches and outlets. The Commission's staff made follow-up investigations of HOTLINE calls from Medford, N.Y., and confirmed the validity of several reported incidents.

It is strongly suspected that electrical connections made to aluminum wire were the precipitating cause of three fires which resulted in four deaths. Numerous other fires involving property damage have been reported where electrical connections to aluminum wire were the reported cause.

The National Bureau of Standards (NBS) has performed laboratory studies for the Commission to determine what

potential mechanisms of failure exist with aluminum wire and various connections. NBS reported that electrical failures and overheating can be reproduced with certain types of connections to aluminum wire.

The Commission, on the basis of the public hearing record, hazard analysis reports, hotline data and the NBS and other studies preliminarily determines that aluminum wire systems as defined in section C(1) of this notice present an unreasonable risk of injury.

Copies of the public hearing record, hazard analysis reports, hotline data and the NBS studies are available for inspection at the Office of the Secretary.

B. Petition to Adopt Safety Standard

On August 27, 1974, the Commission received a petition from Southwire Company to adopt a standard submitted by Southwire for electrical conductors and associated devices.

In order to propose and promulgate an existing standard as a consumer product safety standard, the Commission must commence a proceeding under section 7 of the Consumer Product Safety Act (15 U.S.C. 2056) and the regulations promulgated thereunder (16 CFR Part 1105) in order to allow interested persons to submit an offer to develop a standard and to allow others to submit previously issued or adopted standards as a proposed consumer product safety standard. Therefore, Southwire's request that the Commission adopt as a mandatory standard the standard submitted by Southwire is being treated as a request to commence a standard development proceeding. To this extent, the petition is granted by the Commission's decision to initiate such a proceeding.

Copies of Southwire's petition, proposed standard and the Commission's letter to Southwire in regard to Southwire's petition are available for public inspection in the Office of the Secretary.

C. Product Identification

1. *Definition.* The products to be regulated under this proceeding are:

a. Solid electrical conductors intended or suitable for use in 15 and 20 ampere electrical circuits where aluminum or an alloy of aluminum is the principal conducting element. Currently, aluminum wire electrical conductors in number 10 AWG and 12 AWG are used for this purpose. Included in this definition is aluminum wire which is clad with any conductive coating, except that this definition does not include copper clad aluminum conductors when the copper coating is 10 percent or greater of the conducting cross sectional area.

b. All products, devices and assemblies which are used for the purpose of connecting, terminating, bonding, splicing, joining or otherwise maintaining electrical continuity with the conductors defined in the paragraph above. Such products include convenience outlets, wall switches, circuit breakers, fuse holders, lamp holders, wire connectors, relay switches, etc. intended or suitable for use in residential wiring systems using aluminum wire as defined in this paragraph.

This definition shall be referred to in this notice as "aluminum wire systems."

2. *Scope.* The scope of this regulation shall include aluminum wire systems sold to or for the personal use or enjoyment of consumers in or around permanent or temporary households or residences, schools, recreational facilities, or buildings and other places of assembly used by the public.

D. Nature of the Risk of Injury

In many cases, connections within "aluminum wire systems" become defective over a period of time, resulting in overheating or arcing at the point where the wire is connected to other elements of the system. These defects are caused by the presence in the joint of aluminum oxide and by the effects of vibration, creep, expansion and contraction, and transient electrical surges. Aluminum oxide is a substance which immediately forms on the surface of aluminum when it is exposed to air and which is highly resistant to the flow of electrical current. In connecting aluminum wire to other elements of the system, it is necessary that the film of aluminum oxide be removed or penetrated in a sufficient area so that electricity can flow from metal to metal at the connection with relatively little resistance, and so that these areas are not exposed to air, thereby allowing oxide to re-form. The amount of heat generated by the flow of electrical current across the connection is a function of the resistance of the connection.

During installation, aluminum wire is commonly wrapped and secured under the head of the binding screw of a wall switch, receptacle outlet, or other device. The thin outer aluminum oxide film is penetrated or removed, to some degree, by the scraping action and pressure of the screw head when the connection is properly assembled and secured with sufficient pressure. However, the resistance may subsequently increase if the connection allows movement which exposes to air aluminum wire surfaces that had been part of the contact area, thereby resulting in the formation of additional oxide and in the compacting of existing oxide at the connection interface. Several types of disturbances and movements have been identified from experiments and from technical literature.

These include:

1. Mechanical disturbance from vibration, impacts, and handling.

2. Creep or flow of metal under stress.

3. Expansion and contraction from heating and cooling that (a) occurs when electric appliances and equipment are turned on and off or (b) is part of the environment to which the system is subjected.

4. Transient electrical surges leading to arc erosion and microscopic interfacial movements.

The overheating and arcing discussed above can lead to the following results:

1. Fire caused by heat from the connection igniting flammable materials in close proximity to the device, such as insulation, bedding, draperies, wall materials, etc.

2. Arcing can provide an ignition source for flammable material or gas in close proximity, thereby resulting in fire.

3. Symptoms of the defect such as flickering lights, heat, smoke, deterioration of insulation caused by exposure to heat, or inoperative devices can expose homeowners to electric shock hazards when they proceed to investigate or repair the cause of the symptom.

4. Failure of safety devices such as high temperature relays on hot water heaters or furnaces exposes the occupants to the hazards the safety devices are intended to prevent.

5. Failure of fire or other alarm systems due to a poor electrical connection.

The Commission calls particular attention to the fact that failure of the electrical connection can occur even at an outlet that is not supplying power directly to an appliance. This happens when power is being used at another outlet in the electrical circuit. The "unused" outlet may still be active in the sense that its terminals may be in the path of electrical current in the circuit. The consumer is generally unaware of this condition and may not suspect or detect a faulty connection when the wiring device is behind furniture or otherwise inaccessible. In any event, the process of deterioration may proceed even while an outlet or device is not in use.

The Commission notes further that poor workmanship in assembling aluminum wire connections appears to increase the likelihood of defective connections and component failure. When the consumer replaces failed electrical components, the quality of workmanship is likely to be lower than the initial installation by a licensed electrician. This increases the probability of another failure instead of improved safety. Also, the consumer may easily and unwittingly replace a failed device with one that is not well suited for use with aluminum wire.

Hence, the Commission believes that the most serious risk associated with defective electrical connections is death or injury caused by burning or asphyxiation due to fire. In considering the nature of the risk of injury and death associated with aluminum wire systems, the Commission recognizes that the type of failure which will first manifest itself in any particular installation is not predictable, and may range from a warm faceplate or flickering lights to a fatal fire. Furthermore, a defective connection which is discovered after the appearance of minor symptoms might have caused a fire if the chain of failure was allowed to proceed without repair. Each occurrence of a defective connection must be regarded as a potential fire in evaluating the risk of injury associated therewith.

E. EXISTING STANDARDS

1. *Wires and cables.* The Commission has received information about the existence and provisions of eight (8) voluntary standards promulgated by Underwriters' Laboratories, Inc. (UL) which may be relevant to this proceeding. Each standard covers a different aspect of wire or cable generally used in residential electrical branch and feeder circuits. In addition, the Commission has knowledge of a supplementary standard which consists of three UL bulletins which specifically cover solid aluminum wire in sizes 12–8 American Wire Gage (AWG). This type of wire may be involved in products within the scope of the eight standards mentioned above, but the supplementary standard is the only standard which specifically covers aluminum wire conductor requirements. The term "solid aluminum wire" is noted to distinguish the material from "stranded aluminum wire" (i.e. wire consisting of more than one strand). Stranded aluminum wire is not covered by the supplementary UL standard.

Underwriters' Laboratories standard no.	*Title of standard*
1. UL 4	Armed cable, 1974 edition, latest revision January 1974.
2. UL 719	Nonmetallic—sheathed cables, 1974 edition, latest revision June, 1974.
3. UL 854	Service—entrance cables, 1971 edition, latest revision April 1974.
4. UL 493	Thermoplastic—insulated underground feeder and branch —circuit cables, 1970 edition, latest revision April 1973.
5. UL 44	Rubber—insulated wires and cables, 1975 edition, latest revision June 1975.
6. UL 133	Varnished—cloth wires and cables 1971 edition, latest revision January 1974.
7. UL 115	Asbestos—and asbestos—varnished cloth—insulated wires, 1970 edition, latest revision April 1973.
8. UL 83	Thermoplastic—insulated wires, 1971 edition, latest revision April 1974.

9. *Supplementary Standard.* Revision of Requirements For Solid Aluminum Wire, Sizes No. 12–8 AWG, as contained within three UL bulletins:

(a) Bulletin dated September 14, 1972, under reference UL Subject Nos. 44, 83, 468, 493, 719, 854.

(b) Bulletin dated July 12, 1972, under reference UL Subject Nos. 44, 83, and 719.

(c) Bulletin dated July 23, 1973, under reference UL Subject Nos. 4, 44, 83, 468, 493, 719, 854.

The Commission makes the following observations about the UL Supplementary Standard for aluminum conductors identified in number 9 (a), (b) and (c) above:

(1) The standard contains arbitrary test method conditions for the High-Current Heat Cycling Test. These conditions include the amount of test current which is set at 2.67 times the 15 ampere capacity of the test wire or 40 amperes. These conditions also include the number of cycles of operation, set at 500; and the cycle time, set at 3½ hours "on" and ½ hours "off". The Commission notes that conditions in actual service could readily exceed 500 cycles of on-off operation.

(2) The high-current heat cycling test for the aluminum wire does not represent an actual field situation test because the test allows for significant failures to occur, yet the results are considered acceptable.

(3) The physical property specifications for tensile strength, yield strength, and elongation have not been related to how wire will creep or otherwise relax and deform under a compressive loading and, therefore, are not a measure to discriminate between acceptable and unacceptable wire material.

The Commission has received information about four standards promulgated by the Canadian Standards Association (CSA). Each standard covers a different type of wire or cable that has general application in residential electrical branch and feeder circuits.

Canadian standards association standard No.	*Title of standard*
1. C22.2 No. 51–1968	Armoured cables.
2. C22.2 No. 38–1972	Rubber—insulated wires and cables.
3. C22.2 No. 78–1973	Varnished—cloth insulated wires and cables.
4. C22.2 No. 75–1966	Thermoplastic—insulated wires and cables.

The Commission notes that the above standards are essentially the same as the corresponding UL standards of similar titles with the following differences regarding aluminum conductor material. The tensile strength for semi-annealed (three-quarter hard) aluminum conductor in the CSA standards is specified at not less than 17,000 or greater than 22,000 pounds per square inch (psi). The tensile strength in the UL standards is specified at not less than 15,000 or greater than 22,000 psi. The 1973 edition of CSA Standard C22.2 No. 78–1973 includes specifications for electrical resistance, tensile strength, and elongation of conductors, and a bending test for conductors. The comments for the corresponding UL standards apply to these CSA standards.

2. *Devices.* The Commission has received information about the existence and provisions of three standards of UL relating to electrical connecting devices generally used in residential electrical branch circuits. In addition, there is a supplementary standard consisting of two UL bulletins containing specifications for wiring devices (such as receptacle and switch outlet devices) specifically for aluminum circuitry and intended to be marked "CO/ALR." Further, there is a supplementary standard which consists of two UL bulletins containing specifications for a marking requirement for wiring devices *not* marked "CO/ALR."

Underwriters laboratories standard No.	*Title of standard*
1. UL 498	Electrical attachment plugs and receptacles, 1974 edition, latest revision November 1974.
2. UL 496	Edison—base lampholders, 1975 edition.
3. UL 20	Snap switches, 1974 edition.
4. UL 486	Electric wire connectors and and soldering lugs, 1969 edition, latest revision September 1974.

5. *Supplementary Standards.* (A) UL Test Program For Wiring Devices Intended to be Marked "CO/ALR," as contained within two UL bulletins:

(a) Bulletin dated September 29, 1972, under reference UL Subject Nos. 20, 44, 83, 496, 498, 719, as revised by the Bulletin of November 24, 1972.

(b) Bulletin dated November 24, 1972, under reference UL Subject Nos. 44, 83, 468, 496, 498, 719.

(B) UL Instructional Notice Marking Requirement For Wiring Devices Not Marked "CO/ALR," as contained within two UL bulletins:

(a) Bulletin dated July 27, 1973, under reference UL Subject Nos. 20, 468, 496, 498, 514.

(b) Bulletin dated September 4, 1973, under reference UL Subject Nos. 20, 468, 496, 498, 514.

The Commission makes the following observations of the UL Supplemental Standard for Electrical devices identified in number 5(A) and (B) above:

(1) It addresses only "wire-binding-screw-type terminals" and not other terminating or connecting devices included in "aluminum wire systems," such as manually tightened connectors (wire nuts) and circuit breaker terminals.

(2) Accelerated test conditions require proper control of temperature, including the room ambient temperature, in order to achieve reproducible results. Laboratory experiments have shown a relationship between contact resistance in electrical connections and temperature. Accurately controlled and measured temperature rises over relatively short periods of time have been shown to make long-term performance more predictable. The approximate conditions specified in these UL standards listed under "Test Location" do not meet the above criteria.

(3) The UL standard does not specify the test voltage to be used in conducting the heat cycling tests. It is known that voltages in the range of 4–6 volts have been used to run this test. Such low voltage power sources are commonly used to simulate the effects of aging electrical circuits by passing electric current through them. Testing at these low voltages is reported to affect oxide growth differently than testing at 120 volts. Low voltage conditions do not represent actual field use conditions where surges

and inrushes on 120 volt circuits may affect oxide development. Testing on 120 volt circuits could lead to significant voltage drops across connection interfaces which could possibly result in tunneling conduction or dielectric breakdown through oxide films, thereby causing overheating and arcing.

(4) The supporting test brackets and framework and the open method of mounting the outlet devices for the high current heat cycling tests do not represent sufficiently controlled conditions with regard to such variables as vibration and test temperature. In actual service, receptacles and connections are subject to vibration, and it may be a critical factor leading to arcing and possibly fires. Vibration while under test should be with controlled amplitude and frequency. Heating effects during test should simulate the conduction, convection and radiant heating of actual field conditions in boxes.

(5) It should be clarified that the maximum temperature limit of 125°C is applicable during the complete test program beginning with the first cycle and ending with the last, and not just at the recorded "data points." Without such clarification, it could be interpreted that excessive temperature could occur on samples before the 25th cycle and not constitute a test failure.

(6) The vibration phase of the "Heat Cycle with Vibration Test" is done without the device passing electric current. This is not completely representative of actual field conditions, and arcing from vibration while current is flowing could be the triggering mechanism for failures.

(7) In order to represent actual field conditions, the "Environmental Test" should, in addition, include a test during which electric current is being passed through the device while the device is exposed to a heating phase, a cooling phase and a humidity phase. The Test in the standard does not require the device to be operated while it is being conditioned.

(8) The detailed physical properties and composition of the wire used to test the devices for the "CO/ALR" rating is not specified in sufficient technical terms to represent a standard test wire.

(9) The test conditions for the heat cycling test are arbitrary. Key test values such as the amount of test current and number of cycles can only be loosely traced to related standards and documents such as:

a. Edison Electric Institute—National Electrical Manufacturers Association (EEI–NEMA) Standards for Overhead Distribution Connectors for Aluminum Conductors (EEI No. TDJ–162 and NEMA No. CC–3–1973).

b. Underwriters Laboratories Bulletin of Research No. 48 dated September 1954.

(10) The standard does not take into account how variations in the skills of assemblers (consumers and electricians) in forming proper loops in the wire at screw connections affect connection performance. A special test jig is specified in the standard for test purposes to form the loops. Assemblers on the other hand have to be especially skilled to make connections in accordance with recommended installation procedures. This appears to be too much to expect from assemblers.

The Commission has received information about five standards of CSA relating to electrical connecting devices generally used in residential electrical branch circuits:

Canadian Standards Association standard no.	*Title of standard*
1. C22.2 No. 42–1959	Receptacles, plugs, and similar wiring devices.
2. C22.2 No. 42P–1975	Preliminary standard — requirements for receptacles intended for use with aluminum wire.
3. C22.2 No. 43–1965	Lampholders having socket screw-shells.
4. C22.2 No. 55–1967	Snap switches.
5. C22.2 No. 65–1965	Wire connectors.

The Commission notes that the above standards are essentially the same as the corresponding UL standards with one notable exception. Unlike the UL standards, the CSA standards specify that the terminal wire binding screws shall not be of iron or steel, plain or plated, with certain exceptions such as plated steel screws for grounding terminals.

Except for minor editorial changes, CSA Standard C22.2 No. 42P–1975 is identical to the UL Supplemental Standard contained in UL Bulletin dated September 29, 1975, under reference UL Subject Nos. 20, 44, 83, 496, 498, 719, as revised by the Bulletin of November 24, 1972. The comments given for the corresponding UL standards apply to the CSA standards.

3. *Installation of wiring.* The Commission has received information about the existence and provisions of a standard of the National Fire Protection Association (PFPA) covering the installation of electrical branch and feeder circuitry including residences entitled "National Electrical Code 1975," NFPA No. 70–1975. This standard is also known as a standard of the American National Standards Institute (ANSI), No. C1–1975.

The Commission makes the following observation on the "National Electrical Code 1975:"

Except for various paragraphs and tables denoting wire and cable types which permit aluminum conductors and the allowable current carrying capacity of various types of aluminum wires and cables, this standard only superficially addresses safety requirements for aluminum conductors in Article 110–14(a) as follows: "* * * terminals used to connect aluminum shall be of a type approved for the purpose."

4. *Safety standards involving aluminum electrical wiring for other than building installations.* a. Military Specification Mil–W–7072, Wire, Electrical, 600-Volt Aluminum Aircraft. This specification does not cover wire sizes smaller than No. 8 and arbitrarily specifies that the wire is intended to be connected only with the special crimp style aluminum lug and splice terminals covered in Military Specification Mil–T–7099.

b. Military Specification Mil–T–7099 Terminals: Lug and Splice, Crimp Style Aluminum, for Aluminum Aircraft Wire. This standard does not cover terminals for wire sizes smaller than No. 8.

c. Edison Electric Institute—National Electrical Manufacturers Association (EEI–NEMA) Standards for Connectors for Use Between Aluminum or Aluminum-Copper Overhead Conductors (EEI No. TDJ–162, NEMA No. CC–3–1973). This utility industrial standard does not cover conditions applicable to electrical connections within residences.

5. *Standard proposed by Southwire Company.* Southwire Company has submitted a recommended standard to the Commission, as explained in Section B of this notice. The comments relating to the UL supplementary standards set forth in Section E(1) above (number 9) apply generally to the standard recommended by Southwire Company, as do comments two through nine relating to the supplementary standards identified in Section E(2) of this notice.

F. *Submission of existing standards.* Persons may submit a standard previously issued or adopted by any private or public organization or agency, domestic or foreign, or any international standards organization, that contains safety-related requirements which the person believes would be adequate to prevent or reduce the unreasonable risks of injury associated with aluminum wire systems.

To be considered for publication as a proposed consumer product safety rule, standards previously issued or adopted must consist of (1) requirements as to performance, composition, contents, design, construction, finish, or packaging, or (2) requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions or requirements respecting the form of warnings or instructions, or (3) any combination of (1) and (2).

The submission should:

1. Identify the specific portions of the existing standard that are appropriate for inclusion in the proposed rule.

2. Be accompanied, to the extent such information is available, by a description of the procedures used to develop the standard and a listing of the persons and organizations that participated in the development and approval of the standard.

3. Be supported by test data and other relevant documents or materials to the extent they are available.

4. Contain suitable test methods reasonably capable of being performed by the Commission and by persons subject to the act or by private testing facilities.

5. Include data and information to demonstrate that compliance with the standard would be technically practical.

6. Include data and information to the extent that it can reasonably be obtained, on the potential economic effect of the standard, including the potential

effect on small business and international trade. The economic information should include data indicating (a) the types and classes as well as the aproximate number of consumer products that would be subject to the standard; (b) the probable effects of the standard on the utility, cost, and availability of the products; (c) any potential adverse effects of the standard on competition; and (d) the standard's potential disruption or dislocation, if any, of manufacturing and other commercial practices.

7. Include information, to the extent that it can reasonably be otbained, concerning the potential environmental impact of the standard.

G. OFFERS TO DEVELOP STANDARDS

1. Any person may submit an offer to develop recommended consumer product safety standards for aluminum wire systems. Each offer shall include a detailed description of the procedure the offeror will utilize in developing the standard. Each offer shall include:

a. A description of the plan the offeror will use to give adequate and reasonable notice to interested persons (including individual consumers, manufacturers, distributors, retailers, importers, trade associations, professional and technical societies, testing laboratories, Federal and State agencies, educational institutions, and consumer organizations) of their right and opportunity to participate in the development of the standard. It is the Commission's desire that all consumers be afforded an opportunity to participate fully in the development of standards. The Commission believes it is essential that offerors include use-oriented and technically-oriented consumers on the committee which actually drafts a recommended standard. (In this notice, a consumer is an individual who has no economic bias in favor of the offeror or in the product for which a safety standard is being develop. A use-oriented consumer is an individual without a technical background in the area of consideration.)

b. A description of the method by which interested persons who have responded to the notice may participate, either in person or through correspondence, in the development of the standard; and

c. A realistic estimate of the time required to develop the standard, including a detailed schedule for each phase of the standard development period.

2. Each offeror shall submit with the offer the following information to supplement the description of the standard development procedure:

a. A statement listing the number and experience of all of the personnel, including voluntary participants, who will be directly and personally involved in developing the standard. This list should distinguish between (i) persons directly employed by the offeror, (ii) persons who have made a commitment to participate, (iii) organizations that have made commitments to provide a specific number of personnel, and (iv) other persons to be utilized, although unidentified and uncommitted at the time of the submission of the offer. The educational and experience qualifications of these personnel relevant to the development of the standard should also be included in the statement.

b. A statement describing the type of facilities or equipment the offeror plans to utilize in developing the standard and how the offeror plans to gain access to such facilities or equipment.

3. Prior to accepting an offer to develop a standard, the Commission may require minor modifications of the offer as a condition of acceptance.

4. Recommended standards developed under an accepted offer must be suitable for promulgation under the Consumer Product Safety Act, must be supported by a technical rationale, and must contain test methods for the measurement of compliance with the developed standard. The technical rationale shall include test results, technical data, and an explanatory justification showing how each requirement of the standard serves to reduce the risk of injury and how the performance tests detect the factors which affect the risk to be reduced.

5. All test equipment necessary to satisfy the compliance test method prescribed in the recommended standard must be fully developed and tested prior to the submission of the recommended standard. At the conclusion of the development period, the offeror must be prepared to demonstrate to the Commission that the recommended compliance tests can be performed by the Commission staff, by persons subject to the requirements of the standard, and by private testing organizations. The offeror must also furnish data showing that the recommended test methods yield results that are reproducible and repeatable.

6. The standard to be developed should:

a. Include data and information to demonstrate that compliance with the standard would be technically practicable.

b. Include data and information to the extent that it can reasonably be obtained, on the potential economic effect of the standard, including the potential effect on small business and international trade. The economic information should include data indicating (a) the types and classes as well as the approximate number of consumer products that would be subject to the standard; (b) the probable effects of the standard on the utility, cost, and availability of the products; (c) any potential adverse effects of the standard on competition; and (d) the standard's potential disruption or dislocation, if any, of manufacturing and other commercial practices.

c. Include information, to the extent that it can reasonably be obtained, concerning the potential environmental impact of the standard.

H. *Contribution to the Offeror's Cost.* 1. The Commission may, in accepting an offer, agree to contribute to the offeror's cost in developing a proposed consumer product safety standard. It is the Commission's intent that contribution to the offeror's cost will be the exception rather than the rule. The Commission expects that the bulk of the offeror's work will be done by volunteers or funded by non-Commission sources. Where contributions are provided, the Commission must determine:

a. That a contribution is likely to result in a more satisfactory standard than would be developed without a contribution; and

b. That the offeror is financially responsible.

2. If an offeror desires to be eligible to receive a financial contribution from the Commission toward the offeror's cost of developing a proposed consumer product safety standard, the offeror shall submit with its offer to develop a standard:

a. A request for a specific contribution with an explanation of why such a contribution is likely to result in a more satisfactory standard than would be developed without a contribution;

b. A statement that the offeror will employ an adequate accounting system in accordance with generally accepted accounting principles to record standards development costs and expenditures; and

c. A request for an advance payment of funds, if necessary to enable the offeror to meet operating expenses during the development period.

J. *Submission information.* All submissions, offers, inquiries, or other communications concerning this notice should be addressed to the Office of the Secretary, Consumer Product Safety Commission, 1750 K Street NW., Washington, D.C. 20207 (phone 202-634-7700). Submissions in response to this notice should be in five copies, if possible, and must be received by the Office of the Secretary not later than December 4, 1975, to be considered in this proceeding.

Dated: October 29, 1975.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.75-29519 Filed 11-3-75;8:45 am]

TELEVISION RECEIVERS

Extension of Standard Development Period

The purpose of this notice is to announce that the Consumer Product Safety Commission has (1) granted a request by the Underwriters' Laboratories, Inc. (UL) for an extension of time from October 16, 1975 until June 22, 1976 for the development of a recommended consumer product safety standard for television receivers, and (2) extended the time period in which the Commission must publish a proposed consumer prod-

uct safety standard or publish a notice withdrawing the Notice of Proceeding for the standard.

By notice in the FEDERAL REGISTER of February 28, 1975 (40 FR 8592) the Commission commenced a proceeding under section 7 of the Consumer Product Safety Act (15 U.S.C. 2056) for the development of a recommended consumer product safety standard applicable to the four hazards associated with television receivers, namely, fire, shock, implosion and external mechanical failure. By notice in the FEDERAL REGISTER of June 4, 1975 (40 FR 24043) the Commission announced its acceptance of an offer from UL to develop a recommended safety standard and also published a summary of the terms of its acceptance of UL's offer. Copies of the UL offer and the Acceptance Agreement between UL and the Commission are available for review at the Office of the Secretary of the Commission, 1750 K Street, NW., Washington, D.C.

Section 7(b) of the Consumer Product Safety Act (15 U.S.C. 2056(b)) specifies that the period in which a recommended standard is to be developed shall end 150 days after publication in the FEDERAL REGISTER of the notice of proceeding which, in this case, would have been July 28, 1975 (150 days after February 28, 1975), unless the Commission finds for good cause that a different period is appropriate. In publishing its acceptance of the UL offer, the Commission announced its finding that because of the complex nature of the television receiver problem, it would be appropriate to have the 150-day development period begin on May 19, 1975 and end on October 16, 1975.

Section 7(e)(3) of the Act provides that the Commission may extend the development period for a recommended standard if good cause is shown and the reasons for such extension are published in the FEDERAL REGISTER. On October 16, 1975, UL requested an extension of time for the following reasons:

(1) UL states that the 150-day development time period on which their original offer was predicated did not take into account the fact that extensive testing might be required to verify and confirm certain requirements in the television receiver standard. In the course of developing the standard, UL found that such tests are necessary to confirm the contents of the second draft of the standard. The Commission agrees that the extent of and necessity for these tests could not have been predicted when UL submitted its offer.

(2) UL points out that data obtained from television receiver manufacturers by Commission subpoena were not available until July 21, 1975, 63 days after the start of the development period, because a temporary restraining order of the U.S. District Court for the District of Delaware provided that the data could not be released by the Commission. On that date, the U.S. District Court permitted limited use of such data by specifically named employees of the Commission's offeror, UL. The Commission realizes that its request to the Court for limited use of some of the data was uncertain as to time as well as to whether such permission would be granted. In addition to uncertainty as to the Court's disposition, the Commission realized that considerable time would be needed to analyze the vast volume of the subpoenaed data and that UL was unable to realistically apportion time to this task at the time its offer was made.

(3) UL indicates that the developing complexity of the standard has necessitated greater amounts of time for every phase of the standards development process, such as drafting, reviewing, testing, and balloting by mail. In its original Notice of Proceeding on February 28, 1975, the Commission anticipated that more time would be needed for this complicated standard and agrees that the phases of development highlighted by UL warrant extension.

(4) UL also believes that the addition of several use-oriented consumers to its standards development committees, beyond the number of such consumers originally contemplated, resulted in expenditure of additional time for discussion and orientation. The Commission does not agree that the additional time spent by UL on orientation and discussion with these consumers constitutes a rationale for a substantial extension of time.

(5) UL states that the approach used in the first draft was suggested by Commission staff, but that the draft was then deemed unacceptable by the Commission. The Commission does not agree with this contention. In addition, the transcript of a public meeting held on July 30, 1975 between UL and the Commission shows that the Commission understanding of the recommended standard was that it should be a self-contained performance standard which does not rely on voluntary compliance with prevailing industry practices or voluntary standards.

In sum, the Commission believes that the increasing need for extensive testing and evaluation, the late availability of large amounts of subpoenaed data, the time necessary to analyze these data, and the increasing complexity of the standard, indicate the need for a longer standard development period, and constitute good cause for extending the development period 250 days from October 16, 1975 to June 22, 1976.

Section 7(f) of the Act (15 U.S.C. 2056(f)) provides that: "not more than 210 days after publication of a notice of proceeding * * * (which may be extended by the Commission by a notice published in the FEDERAL REGISTER stating good cause therefor) the Commission shall publish in the FEDERAL REGISTER a notice withdrawing such notice of proceeding or publish a proposed rule which * * * proposes a product safety standard * * *". In accordance with the provisions of section 7(f) of the Act, the publication of a proposed safety standard or the withdrawal of the Notice of Proceeding would be due on or before December 15, 1975.

The Commission for good cause shown has extended the development period for the recommended standard and it is to be submitted to the Commission by June 22, 1976. Therefore, it is not possible for the Commission to publish a proposed standard or withdraw the Notice of Proceeding on or before December 15, 1975.

Accordingly, the Commission hereby extends the period in which it must publish a proposed standard or withdraw its notice of proceeding by 250 days, the same period for which the extension of the development period was granted. This period will end on August 21, 1976, but may be further extended by a notice published in the FEDERAL REGISTER stating good cause therefor.

Dated: October 30, 1975.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.75-29529 Filed 11-3-75;8:45 am]

DEFENSE MANPOWER COMMISSION

COMMISSIONERS MEETING

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the Commissioners of the Defense Manpower Commission will meet on November 21, 1975, at 9 a.m. in the New Executive Office Building, Room 2008, 726 Jackson Place, NW., Washington, D.C. 20036. The purpose of the meeting will be to conduct a review of Selected Reserve Issues, Support Forces, and the Impact of the Socio-Economic change upon the military services. The above issues are subject to change dependent upon staff progress, and other subjects may be substituted.

The meeting will be open to the public. Because of limited space interested persons wishing to attend should telephone (202) 254-7803 prior to each meeting.

Dated: October 30, 1975.

BRUCE PALMER, Jr.,
General, USA (Ret.),
Executive Director.

[FR Doc.75-29532 Filed 11-3-75;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[ERL 451-7; OPP—33000/332]

RECEIPT OF APPLICATIONS FOR PESTICIDE REGISTRATION

Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (38 FR 31862) its interim policy with respect to the administration of section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This policy provides that EPA will, upon receipt of every application for registration, publish in the FEDERAL REGISTER a notice containing the information shown below. The labeling furnished by the applicant will be available

for examination at the Environmental Protection Agency, Room EB-31, East Tower, 401 M Street, SW., Washington, D.C. 20460.

On or before January 5, 1976, any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or after October 21, 1972, is being used to support an application described in this notice, (c) desires to assert a claim for compensation under section 3(c)(1)(D) for such use of his data, and (d) wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data, must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by certified mail. Notification to the Administrator should be addressed to the Information Coordination Section, Technical Services Division (WH-569), Office of Pesticide Programs, 401 M Street, SW., Washington, D.C. 20460. Every such claimant must include, at a minimum, the information listed in the interim policy of November 19, 1973.

Applications submitted under 2(a) or 2(b) of the interim policy will be processed to completion in accordance with existing procedures. Applications submitted under 2(c) of the interim policy cannot be made final until the 60 day period has expired. If no claims are received within the 60 day period, the 2(c) application will be processed according to normal procedure. However, if claims are received within the 60 day period, the applicants against whom the claims are asserted will be advised of the alternatives available under the Act. No claims will be accepted for possible EPA adjudication which are received after January 5, 1976.

Dated: October 29, 1975.

JOHN B. RITCH, Jr.,
Director,
Registration Division.

APPLICATIONS RECEIVED [OPP-33000/332]

EPA Reg. No. 31521-14. Biotech Prod. Corp., Capp Rd., Waterford, NY 12188. ANSWER CARPET SANITIZER SHAMPOO. Active Ingredients: o-Benzyl-p-chlorophenol 0.68%; o-Phenylphenol 0.65%; Tetrasodium Ethylenediamine Tetraacetate 0.38%. Method of Support: Application proceeds under 2(a) of interim policy. PM32

EPA Reg. No. 1022-477. Chapman Chem. Co., PO Box 9158, Memphis, TN 38109. AMBRITE T. Active Ingredients: Benzene Hexachloride, gamma isomer 6.63% Benzene Hexachloride, other isomers 8.27%; Pentachlorophenol 17.20%; Other Chlorinated phenols 2.00%; Xylene 31.10%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added uses. PM15

EPA File Symbol 8730-0. Herculite Protective Fabrics Corp., 1107 Broadway, New York, NY 10010. HERCON INSECTAPE. Active Ingredients: Chlorpyrifos (0,0-diethyl 0-3,5,6-trichloro-2 pyridyl) (phosphorothioate) 10.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM12

EPA File Symbol 6020-RT. MOM Chemical Co., Inc., 7775 NW 66th St., Miami, FL 33166. WHISP SUPER DISINFECTANT-DEODORIZER-MILDEWCIDE. Active Ingredients: Alkyl (C14 90%, C12 5%, C16 5%) dimethyl 3,4-dichlorobenzyl ammonium chloride 2.50%; Alkyl (C14 58%, C16 28%, C12 14%) dimethyl benzyl ammonium chloride 1.25%; Alkyl (C14 90%, C12 5%, C16 5%) dimethyl ethyl ammonium bromide 1.25%; Sodium carbonate 1.00%; Ethylenediaminetetraacetic acid, tetrasodium salt 0.38%; Essential oils 0.50%. Method of Support: Application proceeds under 2(c) of interim policy. Republished: Added uses. PM31

EPA File Symbol 359-AIN. Rhodia Inc., Ag. Div., 23 Belmont Dr., Somerset, NJ 08873. RHODIA ASULAM TECHNICAL. Active Ingredients: Asulam (methyl sulfanilylcarbamate) 96.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM23

EPA File Symbol 538-RUE. O. M. Scott & Sons, Marysville, OH 43040. STOP SLUGS & SNAILS. Active Ingredients: Methiocarb 4-(methylthio)-3,5-xylxyl methylcarbamate 2.00%. Method of Support: Application proceeds under 2(b) of interim policy. PM12

EPA Reg. No. 400-100. Uniroyal Chem., Div. of Uniroyal, Inc., Amity Rd., Bethany CT 06525. DYANAP (H.W.). Active Ingredients: Sodium N-1-naphthylphthalamate 22.3% Sodium Salt of dinoseb (2-sec-butyl-4,6-dinitrophenol) 11.5%. Method of Support: Application proceeds under 2(c) of interim policy. PM25

EPA File Symbol 14819-1. Universal Chem. & Supplies, Inc., 3043 Walnut St., Denver CO 80205. SWIMMING POOL ALGAECIDE UNIVERSAL ALGI-FECT 2000. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 5%; n-Alkyl (68% C12, 32% C14) dimethyl ethyl-benzyl ammonium chlorides 5%. Method of Support: Application proceeds under 2(b) of interim policy. PM24

EPA File Symbol 37756-R. Water Safe Prods., Inc., 8337 Nieman Rd., Lenexa KS 66214. WATER CLEAN, THE CLEAN WATER MAKER. Active Ingredients: Metallic Silver 1.05%. Method of Support: Application proceeds under 2(b) of interim policy. PM33

[FR Doc.75-29637 Filed 11-3-75;8:45 am]

[FRL 451-8; OPP 00019]

STATE-FEDERAL FIFRA IMPLEMENTATION ADVISORY COMMITTEE; WORKING GROUP ON RESOURCES AND FUNDING

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the State-Federal FIFRA Implementation Advisory Committee's Working Group on Resources and Funding will be held on Tuesday, November 18, 1975, at 2 p.m. in Room 544, East Tower, Waterside Mall, 401 M St. SW., Washington, D.C.

This is the first meeting of the Working Group on Resources and Funding. The meeting will be concerned primarily with the phasing of EPA funding in support of pesticide applicator training and certification in fiscal years 1976 and 1977.

The meeting will be open to the public. Any member of the public wishing to attend should contact P. H. Gray, Jr., Acting Chief, Program Support and Special Projects Branch, Operations Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460. (202) 755-8053.

Dated: October 30, 1975.

EDWIN L. JOHNSON,
Deputy Assistant Administrator
for Pesticide Programs.

[FR Doc.75-29687 Filed 10-31-75;1:14 pm]

FEDERAL MARITIME COMMISSION

[No. 75-44]

E.S.B. INC. AND MOORE McCORMACK LINES, INC.

Filing of Complaint

OCTOBER 29, 1975.

Notice is hereby given that a complaint filed by E.S.B. Incorporated against Moore McCormack Lines, Inc. was served October 29, 1975. The complaint alleges that complainant has been subjected to payment of excessive ocean freight charges which are in violation of section 18(b)(3) of the Shipping Act, 1916.

Hearing in this matter shall commence on or before April 28, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 75-29624 Filed 11-3-75; 8:45 am]

[No. 75-45]

MADEPLAC S.A. INDUSTRIA DE MADEIRAS ET AL.

Filing of Complaint

OCTOBER 29, 1975.

Notice is hereby given that a complaint filed by Madeplac S.A. Industria De Madeiras against L. Figueiredo Navegacao, S.A. A/K/A Frota Amazonica, S.A. was served October 29, 1975. The complaint alleges that complainant has been subjected to payment of excessive ocean freight charges which are in violation of section 18(b)(3) of the Shipping Act, 1916.

Hearing in this matter shall commence on or before April 28, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-29623 Filed 11-3-75;8:45 am]

TRANSPORTATION MARITIMA MEXICANA, S.A. AND DELTA STEAMSHIP LINES, INC.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the

Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10126, or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., San Juan, Puerto Rico and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, or before November 14, 1975. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Thomas E. Staken, Esquire, Macleay, Lynch, Bernhard & Gregg, Commonwealth Building, 1625 K Street, NW., Washington, D.C. 20006.

Agreement Number 10188, between Transportation Maritima Mexicana, S.A. (TMM) and Delta Steamship Lines, Inc. (Delta), is an agency agreement whereby TMM appoints Delta as its husbanding agent for its vessels at all United States Gulf of Mexico ports where TMM vessels call.

Dated: October 30, 1975.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-29622 Filed 11-3-75;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. RP76-15]

ALGONQUIN GAS TRANSMISSION CO.

Order Accepting for Filing and Suspending Proposed Tariff Sheets, Granting Waiver, and Granting Intervention

OCTOBER 24, 1975.

On September 24, 1975 Algonquin Gas Transmission Company (Algonquin) filed four proposed tariff sheet[1] to its FPC Gas Tariff, First Revised Volume No. 1. The purpose of these tariff sheets is to institute a Purchased Feedstock Adjustment Clause (PFAC) applicable to Algonquin's Rate Schedule SNG-1. The proposed PFAC would establish deferred cost accounting for the difference between the actual costs of Naphtha feedstock and the feedstock costs included with the rate actually charged. This proposed PFAC would be effective only for the next operating cycle of Algonquin's SNG plant, October 23, 1975 to either March 31 or April 15, 1976. The amounts collected in the deferred account would then be reflected as an amortizing surcharge which would be added or subtracted to Algonquin's rate during the following heating season, October, 1976 to April 1977.

On October 3, 1975 Algonquin filed a substitute Ninth Revised Sheet No. 10 to replace the Ninth Revised Sheet No. 10 of its FPC Gas Tariff, First Revised Volume No. 1. This substitute sheet includes a correction to the base tariff rates and a change in Algonquin's cost of purchased gas.

Notice of Algonquin's PFAC filing was issued on October 6, 1975 with comments, protests or petition to intervene due on or before October 10, 1975. Notice of the filing of the Substitute Sheet was issued on October 20, 1975 with comments due on or before October 29, 1975. A petition to intervene was filed on October 10, 1975 by nineteen customers[2] (Customers) of Algonquin.

Our review of Algonquin's PFAC clause indicates that it has not been shown to be just and reasonable. We shall, however, accept Algonquin's tariff sheets for filing and suspend the use thereof for one day, when they will be permitted to become effective subject to refund. We shall also provide for a hearing at the close of the heating season, April, 1976, to determine whether the charges collected under Algonquin's PFAC were reasonably and prudently incurred and the reasonableness of Algonquin's proposed method of cost recoupment as well as all other matters bearing on the justness and reasonableness of Algonquin's proposal including but not limited to the availability of feedstock from sources other than Exxon, the reasonableness of the pricing provisions in the Exxon contract, and the extent to which Algonquin sought to secure the most favorable contract terms through the negotiation process with Exxon.

We have rejected Algonquin's prior filings which have proposed deferred accounting treatment for purchased feedstock costs.[3] In the instant filing, however Algonquin has alleged that the cost of naptha feedstock this coming winter season may be so volatile as a result of administration policy, pending legislation and possible OPEC nation actions that its "literal viability" is at stake. We are concerned, therefore, that a potential may exist for fluctuations of cost so severe as to endanger Algonquin's financial integrity and thus its ability to serve its wholesale natural gas customers purchasing under other than the SNG rate schedule at the lowest reasonable rate.

We have indicated that the PFAC will operate only during the next heating season with the surcharge effective during the following heating season. In addition, the charges collected under the PFAC have been made subject to refund pending the outcome of an evidentiary hearing concerning their reasonableness at the close of this heating season. We believe this offers Algonquin the temporary protection it desires and allows the Commission ample opportunity to review the operation and effect of the PFAC on Algonquin and its customers. By permiting Algonquin to collect this charge subject to refund, we stress that we have not passed judgment on the reasonableness of Algonquin's proposal, nor should this indicate that we have passed judgment that normal Section 4 procedures are insufficient to allow Algonquin to recover its expenses for naptha reasonably incurred.

The Commission finds. (1) Algonquin's filing should be accepted for filing and suspended for one day, as hereinafter ordered.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the Natural Gas Act that the Commission enter upon a hearing to determine the reasonableness of the charges collected thereunder, as hereinafter ordered.

(3) The participation of the Customers in these proceedings is in the public interest.

The Commission orders. (A) Algonquin's filing is hereby accepted for filing and suspended for one day until October 24, 1975, when the proposed charges will become effective, subject to refund.

(B) The proposed PFAC is accepted for filing subject to refund upon the express condition that it shall be effective through April 15, 1976, at which time it shall be deemed to have terminated and withdrawn.

(C) Pursuant to the authority of the Natural Gas Act, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act, a public hearing shall be held on June 15, 1976 in a hearing room of the Federal Power Commission, Washington, D.C. 20426, concerning the lawfulness of the rate, charges, and services contained in Algonquin's proposed PFAC.

(D) On or before April 30, 1976 the company shall serve prepared direct testimony and any exhibits it intends to rely upon. On or before May 21, 1976

[1] Original Sheet No. 20-A; Original Sheet No. 20-B; Original Sheet No. 20-C; Ninth Revised Sheet No. 10.

[2] Bay State Gas Company, Boston Gas Company, Bristol and Warren Gas Company, Cape Cod Gas Company, Commonwealth Gas Company, The Connecticut Gas Company, Connecticut Natural Gas Corp., Fall River Gas Company, The Hartford Electric Light Company, Town of Middleborough, New Bedford Gas and Edison Light Company, North Attleboro Gas Company, City of Norwich, Orange and Rockland Utilities, Inc., Pequot Gas Company, Providence Gas Company, South County Gas Company, Southern Connecticut Gas Company, Tiverton Gas Company.

[3] Opinion 637, 45 FPC 1216 (1972); Opinion 637-A, 49 FPC 345 (1973); Algonquin Gas Transmission Corporation, Docket No. RP73-98, order issued November 23, 1973.

the Commission Staff and any intervenor shall serve its prepared testimony and exhibits. Any company rebuttal evidence will be served on or before June 1, 1976.

(E) The Customers are hereby permitted to intervene in these proceedings, subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenor shall be limited to matters affecting rights and interests specifically set forth in its petition to intervene; *And provided further,* That the admission of such intervenor shall not be considered as recognition by the Commission that it might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(F) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-29602 Filed 11-3-75;8:45 am]

[Docket No. CI76-201]

CALIFORNIA CO.

Application

OCTOBER 24, 1975.

Take notice that on October 3, 1975, The California Company, a Division of Chevron Oil Company (Applicant), 1111 Tulane, Avenue, New Orleans, Louisiana 70112, filed in Docket No. CI76-201 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce from Blocks 532 and 533, West Cameron Area, offshore Louisiana, to Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to sell 75 percent of the gas attributable to 75 percent of its interest in the 3200 foot and 3500 foot sands from wells produced from Applicant's West Cameron 533-A platform. Applicant indicates that it will sell 25 percent of the gas attributable to 75 percent of its interest pursuant to a separate contract with Trunkline Gas Company, and authorization for such sale is not requested herein. Applicant further indicates that it is reserving for itself or affiliates 25 percent of the gas produced. Estimated sales are 330,000 Mcf of natural gas per month at 15.625 psia. The contract between Applicant and Natural provides for an initial base rate of $1.63 per Mcf, but Applicant states that it is willing to accept a certificate conditioned to the rate set forth in § 2.56a of the Commission's general policy and interpretations (18 CFR 2.56a).

Any person desiring to be heard or to make any protest with reference to said application should on or before November 12, 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-29603 Filed 11-3-75;8:45 am]

[Docket No. ES76-18]

CENTRAL ILLINOIS PUBLIC SERVICE CO.

Application

OCTOBER 24, 1975.

Take notice that on October 14, 1975, the Central Illinois Public Service Company (Applicant), filed an Application with the Commission, pursuant to section 204 of the Federal Power Act, seeking Authorization to issue from time to time its unsecured promissory notes to evidence borrowings of money to be made by it from banks and its unsecured promissory notes in the form of Commercial Paper in the aggregate principal amount not exceeding $80,000,000.

Applicant is incorporated under the laws of the State of Illinois, with its principal business office at Springfield, Illinois and is engaged in the generation, transmission, distribution and sale of electrical energy within the State of Illinois.

Notes issued to commercial banks will mature not more than 12 months from the date of issue and will bear interest at a rate which will be either the prime rate of interest prevailing at such bank on the date each such borrowing is made or the applicable prime rate or rates of interest prevailing at such bank during the term of the note, determined each three-month period of the note. All notes will bear final maturities of on or before December 31, 1977.

Notes issued to Commercial paper dealers will have varying maturities of not more than nine months from the date of issue and will be issued and sold at a discount which will not exceed the discount rate per annum prevailing at the date of issue for commercial paper of comparable quality and maturity sold by issuers thereof to Commercial paper dealers. All notes will bear final maturities of on or before December 31, 1977.

The proceeds from the issuance of the notes and/or commercial paper will be added to the general funds and used principally to finance, temporarily, a part of the Company's construction expenditures for the remainder of 1975 and the years 1976 and 1977.

Any person desiring to be heard or to make any protest with reference to the Application should on or before November 16, 1975, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to participate as a party in a hearing must file petitions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-29604 Filed 11-3-75;8:45 am]

[Docket No. E-9040]

CENTRAL VERMONT PUBLIC SERVICE CORP.

Postponement of Hearing Date

OCTOBER 24, 1975.

On October 22, 1975, Staff Counsel filed a motion to extend the hearing date fixed by order issued December 5, 1974, as most recently modified by notice issued September 23, 1975, in the above-designated proceeding.

Upon consideration, notice is hereby given that the hearing date in the above proceeding is postponed from October 28, 1975 to November 24, 1975.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-29605 Filed 11-3-75;8:45 am]

[Docket Nos. CP73-329; CP73-336; CP76-99; CP76-109]

CHATTANOOGA GAS CO., ET AL.

Extension of Time

OCTOBER 28, 1975.

In the matter of Chattanooga Gas Company, a Division of Jupiter Industries, Inc., East Tennessee Natural Gas Company, East Tennessee Natural Gas Company, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., and

Columbia Gas Transmission Corporation.

On October 22, 1975, Chattanooga Gas Company, a Division of Jupiter Industries, Inc., filed a motion to extend the date for filing evidence for all applicants and parties supporting the application set by order issued October 14, 1975, in the above-designated proceeding.

Notice is hereby given that the date for filing evidence for all applicants and parties supporting the application in the above proceeding is extended from October 31, 1975 to and including November 10, 1975.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29596 Filed 11-3-75;8:45 am]

[Rate Schedule Nos. 3, etc.]

CLARKE CORP., ET AL.

Rate Change Filings

OCTOBER 28, 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. Pursuant to Opinion No. 699-H the rates, if accepted, will become effective as of the date of filing.

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 filings should on or before November 7, 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). A protest will not serve to make the protestant a party to the proceeding. Any party wishing to become a party to a proceeding 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
Sept. 29, 1975	Clarke Corp., P.O. Box 187, Medicine Lodge, Kans. 67104.	3	Cities Service Gas Co.	Hugoton-Anadarko.
Oct. 7, 1975	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79109.	52	El Paso Natural Gas Co.	Rocky-Mountain.
Oct. 10, 1975	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	142	Southern Union Gathering Co.	Do.

[FR Doc. 75-29620 Filed 11-3-75; 8:45 am]

[Docket No. RP-74-77]

COLORADO INTERSTATE GAS CO.

Proposed Changes in FPC Gas Tariff

OCTOBER 28, 1975.

Take notice that Colorado Interstate Gas Company, a division of Colorado Interstate Corporation (CIG), on October 20, 1975, tendered for filing certain changes to its FPC Gas Tariff, Second Revised Volume No. 1. These changes, which result from the Commission's Order issued September 5, 1975, approving the settlement agreement in Docket No. RP74-77, adjust the base tariff rates on Sheet Nos. 5 and 6 to reflect that agreement. These revised tariff sheets run from Third Substitute Sixth Revised Sheet Nos. 5 and 6 Superseding Second Substitute Sixth Revised Sheet Nos 5 and 6 through Second Substitute Twelfth Revised Sheet Nos. 5 and 6 Superseding Substitute Twelfth Revised Sheet Nos. 5 and 6, to include all applicable PGA adjustments.

Copies of the filing were served upon the Company's jurisdictional customers and certain public bodies.

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 November 11, 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.75-29597 Filed 11-3-75;8:45 am]

[Project No. 2100]

DEPARTMENT OF WATER RESOURCES, OF THE STATE OF CALIFORNIA

Order Approving Exhibits L and M but Deferring Action on Revised Exhibits J and K and Requiring Licensee To Show Cause Why It Should Not Reacquire Land Sold Without Prior Commission Approval and Why Applicant Has Not Violated the Federal Power Act and Its License

OCTOBER 9, 1975.

On August 30, 1971, The Department of Water Resources of the State of California, (Applicant), Licensee for the Feather River Project No. 2100, filed under Article 5 of its license [1] an application for Commission approval of revised as-built Exhibits J. K. L and M. Subsequently, in acordance with a negotiated agreement [2] with the U.S. Forest Service (Forest Service), the Applicant on April 1, 1974, filed a new set of Exhibit K maps to replace all of the Exhibit K maps filed August 30, 1971. Additionally, by way of a response to a letter from Kenneth F. Plumb, (Secretary) of September 27, 1974,[3] the Applicant clarified [4] an apparent misunderstanding regarding the amount of land that would be available for disposal upon approval of the Exhibit K now before us.[5]

The project is located partly within the Plumas and Lassen National Forests and on the Feather River in Butte County, California. We have jurisdiction because the project affects navigable waters and lands of the United States.

The principal structures described in the revised exhibits include Oroville Dam and Reservoir, two auxilliary dams known as Bidwell Bar Canyon Saddle Dam and Parish Camp Saddle Dam on the periphery of Oroville Reservoir; Edward Hyatt Powerhouse (underground); Thermalito Diversion Dam, Power Canal, and Forebay Dam; Thermalito Powerhouse and Afterbay Dam; and transmission facilities.

The exhibits filed for Commission approval differ from exhibits previously approved and made a part of the license for this project, as follows:

(1) Revised Exhibits J-1-c (FPC No. 2100-102) and J-3-c (FPC No. 2100-103) depicting the general location of the propect area differ from the presently approved exhibits to the extent that they show changes in names of some of the physical features.

(2) The revised Exhibit K (FPC Nos. 2100-130 through 136) reflects the final location of the project facilities and delineates by metes and bounds survey the revised project boundary. Where United

[1] 17 FPC 262, 16 FPC 1121 at 1122.

[2] It appears that on April 6, 1972, eleven parcels of land, a total of approximately 520 acres either wholly or partly within the approved project boundary but outside the proposed boundary, were sold by the Licensee without prior Commission approval. The Forest Service is "very concerned" about the Licensee's selling of this land and future sales that would be made possible by our approving the proposed Exhibit K now before us. Letter from Russell P. McRorey to Kenneth F. Plumb, September 22, 1972.

[3] Letter from Kenneth F. Plumb to Mr. John R. Terrink, September 27, 1974.

[4] Letter from John R. Terrink to Mr. Kenneth Plumb, October 10, 1974.

[5] The licensee states that the original take line of the project included 41,598 acres of patented land in the project boundary. Approximately 7,000 acres were never purchased and are excluded from the proposed boundary in the August 30, 1971, application. Additionally, the August 30, 1971, application, if approved, would place 926.18 acres of fee owned lands outside the project boundary and thus available for disposal. As noted, about 520 acres of these lands have already been sold. Letter from John R. Teerink to Kenneth F. Plumb, October 10, 1974.

States lands are involved, the project boundary has been reduced to a margin located from 300 to 500 feet measured horizontally from elevation 900 feet, the normal high water of Oroville Reservoir. Where land was acquired from private ownership, the boundaries were re-established in accordance with State policy to provide adequate area for operation and maintenance of the project structures and reservoir, and for recreation.

(3)(a) The revised Exhibit L drawings (FPC Nos. 2100–111 through 129) reflect minor changes due to refinement in design of project structures and field construction requirements. The principal changes in the Exhibit L drawings were confined to the Thermalito canal levee and afterbay dams.

(b) The upstream and downstream slopes of the levee which is located to the east of the Thermalito Forebay dam, were changed from 1.5:1 to 2.5:1 and the upstream slope of the afterbay dam was changed from 2.5:1 to 3:1 and the downstream slope from 2:1 to 2.5: to 1.

(4) The major change in the revised Exhibit M relates to the Thermalito powerplant. The rated output of the pump-turbines has been increased from 38,000 to 40,000 horsepower. The revised rating does not affect the authorized installed capacity of annual charge purposes.

Public notice of the filing has been given. No protests, notices of intervention, or petitions to intervene have been received.

The Office of the Chief of Engineers, Department of the Army reported by letter dated July 24, 1972, that the plans of the structures affecting navigation are satisfactory.

The United States Department of the Interior reported, by letter dated July 31, 1972, that the "as built" exhibits for the Oroville Project No. 2100 are satisfactory and the Department has no objection to their approval.

By letter dated September 22, 1972, the Forest Service indicated that it has no objection to approval of Exhibits J, L, and M. However, they "are very concerned about Exhibit K" and recommend disapproval.[6] Their concern was "stimulated" by the Licensee's offering and subsequent sale as "Excess Lands" eleven parcels (520 acres) of land which were either wholly or partially within the previously approved project boundary. The basis of the Forest Service recommendation rests upon possible development of the lands sold, the impact construction will have inter alia on the "water influence zone of the reservoir"[7] and probable concomitant demands upon National Forests.

By letter dated February 21, 1973, the Forest Service reiterated the concerns expressed in their letter of September 22, 1972 and urges as the most significant point, the need that the subject lands be assured "resource value protection."[8] However, because of limited responsibility in areas of the project not contiguous to the National Forest boundary, the Forest Service has withdrawn its general objection to the proposed project boundary modification "provided no lands are deleted from the project which:

(1) The Forest Service indicates an interest in acquiring when canvassed by the Department of Water Resources;

(2) Adjoin the National Forest boundary;

(3) Will have no land access except across National Forest land."[9]

Out of concern for the future of lands falling outside the proposed boundary; the Forest Service requests their being given notice of the availability of any lands declared "excess" to project needs before they are offered for sale to the general public.[10] This, they urge, will allow them to either take action to acquire the land or "evaluate the possible effects of private development upon the watershed and other resource management responsibilities of the affected National Forest."[11] This request was made in light of the Applicant's sale of 520 acres of project land without prior Commission approval.[12] Since that sale, however, it appears, that the Forest Service and the Applicant have worked out a mutually acceptable arrangement whereby approval of the revised Exhibit K "would implement [the] agreement * * * that an additional 478.71 acres of land, which under our [Applicant's] 1971 application would have been excess and available for disposal, is now included within the project boundary and will be retained."[13]

It also appears that, in the future, the Applicant will first offer to sell the remaining parcels of excess land (406.18 acres) to state and local agencies. If the land is not required by these agencies or the Forest Service, the land would be sold at public sale.[14]

This accommodation, however agreeable to the parties, does not change the circumstances surrounding the Applicant's unacceptable departure from prescribed procedure in the sale of project lands on April 6, 1972. Indeed the sale of project lands without prior Commission approval is aggravated by the surrounding circumstances.[15] It is to this sale we now turn.

It appears that some time prior to March 16, 1972, the Regional Engineer (San Francisco Regional Office) learned that the Applicant was contemplating the sale of project lands without prior Commission approval. By letter dated March 16, 1972[16] the Regional Engineer reminded the Licensee that Article 26 of the license required Commission approval prior to the disposal of project lands. Again, by letter dated March 17, 1972,[17] the Regional Engineer stated that "the State [Applicant] could not dispose of lands within the latter project boundary without prior approval of the Commission." The Licensee acknowledged these letters and gave "unqualified assurance" as to the points raised in the Regional Engineer's letters of March 16, and 17, 1972.[18] The Regional Engineer's reminders and the Licensee's assurances notwithstanding, eleven parcels of land lying either wholly or partially within the existing project boundary were sold at a public sale on April 6, 1972. This unilateral action prevented our performing our duties as required by law[19] and is unacceptable. The Applicant admits these sales without prior Commission approval were in "error" and has assured the Commission that this will not happen again.[20]

Inspection of the deeds shows that the lands conveyed were not burdened with any land use restrictions such as the Commission might impose as a condition of approval.[21] Consequently, no land use controls exist other than those imposed by the local zoning ordinances, which we have been advised are undergoing change.[22] Therefore, Licensee's departure from the required procedure of submitting an application for Commission approval prior to the disposition of any interest in project lands not only precluded Commission analysis of the impact of such conveyance but released project lands in a manner this Commission has determined to be inconsistent with the public interest and in direct conflict with our policy controlling the disposition of project lands.[23] We therefore conclude that the sale of eleven parcels of project land on April 6, 1972, is not compatible

[6] Letter from Russell P. McRorey to Kenneth F. Plumb, September 22, 1972.

[7] Id. at 2.

[8] Letter from Russell P. McRorey to Kenneth F. Plumb, February 21, 1973.

[9] Id.

[10] The Applicant advises us that the remaining 406.18 acres that would be available for disposal would first be offered for sale to state and local agencies. But if not required by these agencies or the U.S. Forest Service, the land would be sold at public sale for private use in conformance with local zoning regulations. Letter from John R. Teerink to Kenneth F. Plumb, October 10, 1974.

[11] The April 6, 1972, sale included one parcel of land containing 3.76 acres in which the Forest Service had expressed an interest. Letter from W. R. Gianelli to Kenneth F. Plumb, November 17, 1972.

[12] Id.

[13] Letter from John R. Teerink to Kenneth F. Plumb, October 10, 1974.

[14] Id.

[15] The surrounding circumstances include the apparent sale of at least 82.2 acres of project lands on September 28, 1966 which have a direct bearing on, but not mentioned in the pending application. We will, of course, require additional information from the Applicant regarding this and other sales and leasing of project lands.

[16] Letter from M. Frank Thomas to W. R. Gianelli, March 16, 1972.

[17] Letter from M. Frank Thomas to W. R. Gianelli, March 17, 1972.

[18] Letter from Thomas H. T. Morrow to M. Frank Thomas, March 22, 1972.

[19] Federal Power Act, section 10(a).

[20] Letter from W. R. Gianelli to Kenneth F. Plumb, November 17, 1972.

[21] See e.g., ordering paragraph (C) of Order No. 313, 34 FPC, 1546, 1549–50.

[22] Letter from John R. Teerink to Kenneth F. Plumb, Jan. 10, 1975.

[23] Ordering Paragraph (C) of Order No. 313, 34 FPC 1546, 1549–50.

with our general policy regarding the disposition of project lands and the Applicant's actions should not be approved either directly by ratification or indirectly by approving the proposed Exhibit K.

That the approval of the proposed Exhibit K would be an indirect ratification of this sale of 520 acres of land cannot be disputed. Our approval of a project boundary in an Exhibit K is a decision which proceeds directly from our duties under the Act. By approving Exhibit K drawings, we authorize a licensee to acquire, by condemnation, if necessary, sufficient interest in land necessary or appropriate to ensure that the purposes of section 10(a) of the Act are achieved.

Applicant's admission of "error" does not remove the issues created by its actions. In selling the 520 acres of land, Applicant made a determination in each instrument of conveyance that "the said real property was acquired for State water development uses or purposes and is no longer necessary, and is not now being used for water development uses or purposes." The opposite determination was made by this Commission in deciding to approve the Exhibit K's for this project and in granting Applicant authorization to condemn land within the project boundary. By proceeding under this unilateral determination, Applicant has ventured beyond its license. By selling this land, Applicant may have violated section 6 and section 10(a) of the Act.

Furthermore, from the filing of an application for approval of a revised Exhibit K which deletes lands previously acquired for "State water development uses or purposes" and which Applicant had previously indicated would be part of the 41,598 acres[34] of patented land within the project boundary to be taken in fee[35] and then selling some of these lands without Commission approval, the Applicant is in direct conflict with Article 2 of its license, and sections 6 and 9(a) of the Act. Therefore, Applicant by its acts may also have violated Article 2 of its license and sections 6 and 9(a) of the Act.

Additionally we note as a significant deficiency in the pending application the complete absence of any statement regarding the recreational value of the land already sold or lands that would become available for disposal (406 acres) upon our approval. We recognize that Applicant has not filed an Exhibit R and thus is not under a duty to demonstrate that disposal is not inconsistent with any approved recreation plan, the applicant is nevertheless required to demonstrate that the lands to be disposed do not have recreational value.[36] Absent this showing, the application is inadequate and defective and cannot be approved. Finally, yet equally important, we feel that the continuing obligations imposed by section 10(a) of the Act require the Applicant to demonstrate to our satisfaction, that the new project boundary will result in a project which will be best adapted to a comprehensive plan. We are not yet satisfied that this showing has been made.

The Commission finds.—(1) The sale by Licensee of 11 parcels of land, lying wholly or partly within the project boundary, on April 6, 1972, was without Commission approval and may be a violation of the license and the Federal Power Ast.

(2) Licensee has failed to show that the lands to be deleted from the project boundary through revision or proposed Exhibit K do not have recreational value and would result in a project which would be best adapted to a comprehensive plan within the meaning of section 10(a) of the Act.

(3) The public interest will not be served by approving the proposed Exhibit K without an adequate showing that the lands to be deleted from the project boundary do not have recreational value.

(4) Applicant's failure to apply for and obtain Commission approval prior to the sale of project lands may constitute a violation of the Federal Power Act and the license.

(5) It is appropriate and in the public interest that the exhibits except Exhibits J and K should be approved and made a part of the subject license superseding the appropriate previously approved exhibits.

(6) It appears that the Applicant has on at least one other occasion sold project lands without Commission approval.

The Commission orders. (A) The following exhibits are hereby approved as part of the license for the project:

Exhibit	FPC No. 2100-	Showing	Superseded exhibit FPC No. 2100-
L-1-e	111	Oroville Dam	88
L-2-e	112	Oroville Dam core block	70
L-3-e	113	Oroville Dam diversion tunnels	71
L-4-e	114	Edward Hyatt powerplant penstocks and intake	89
L-5-e	115	Edward Hyatt powerhouse	73
L-6-e	116	Edward Hyatt powerhouse typical transverse sections	74
L-7-e	117	Edward Hyatt powerhouse longitudinal sections	75
L-8-e	118	Edward Hyatt powerhouse plan and sections	76
L-9-e	119	Edward Hyatt and thermalito powerplants, electrical	77
L-10-e	120	Oroville spillway	90
L-12-e	121	Thermalito power canal, Forebay Dam and sections Feather River fish hatchery.	80
L-13-e	122	Feather River fish hatchery plan	
L-14-e	123	Thermalito afterbay trail channel and sections	82
L-15-e	124	Thermalito afterbay outlet structures	
L-16-e	125	....do	
L-17-e	126	Auxiliary dams and sections	92
L-19-e	127	Lake Oroville vegetation retention areas	93
L-20-e	128	....do	94
L-22-e	129	Thermalito powerhouse general plan	96

NOTE.—Exhibit M-d—comprising 19 typewritten pages filed Aug. 30, 1971, superseding exhibit M-e filed Aug. 2, 1966, and approved Aug. 6, 1968.

(B) The superseded exhibits noted in paragraph (A) above are eliminated from the license.

(C) Disposition of the proposed exhibits J and K is deferred until the show cause orders provided for hereinbelow are determined, and the Applicant demonstrates that the lands to be deleted have no recreational value and that the resulting project will be best adapted to a comprehensive plan as provided in section 10(a) of the Act.

(D) The Applicant shall demonstrate its reasons why the project lands to be deleted have no recreational value to the project.

(E) The Applicant shall demonstrate its reasons why the resulting project would be best adopted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit or interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes.

(F) The Licensee shall show cause, if any there be, within 60 days, why it should not reacquire the 11 parcels of land sold on or subsequent to April 6, 1972, and any other project lands previously, sold, including but not limited to the sale of project lands to Chico Molding Company in 1966.

(G) The Licensee shall show cause, if any there be, within 60 days, why the sales of the 11 parcels of project land sold in 1972, and the parcel sold in 1966 to Chico Molding Co., were not a violation of the Federal Power Act, and the license for Project No. 2100.

(H) Licensee shall within Fifteen days provide the Secretary with a complete listing of all transactions involving the conveyance or leasing of any interest in lands lying either partly or wholly within the project boundary approved by this Commission in 1962, and Licensee shall also provide the Secretary with copies of all the instruments used in the conveyance or leasing of said interests except to the extent copies have already been submitted to the Commission.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-29601 Filed 11-3-75;8:45 am]

[34] Applicant has advised by letter dated October 10, 1974 that approximately 7,000 acres of lands within the "proposed take line," were never acquired. Letter from John R. Teerink to Kenneth F. Plumb, October 10, 1974.

[35] Exhibit F-b, March 1, 1962.

[36] Ordering paragraph (C) of Order No. 313 34 FPC 1546, 1549-50.

[Docket No. E-8913]

DETROIT EDISON CO.

Application

OCTOBER 24, 1975.

Take notice that on October 1, 1975, the Detroit Edison Company (Applicant) filed a supplemental Application with the Federal Power Commission seeking Authority to issue short-term unsecured promissory notes in the aggregate principal amount not exceeding $300 million outstanding at any one time to commercial banks to commercial paper dealers and or similar institutions. All notes are to be issued on or before December 31, 1976 and bear final maturities of on or before December 31, 1977.

The Commission on September 23, 1974, Authorized the Applicant to issue on or before December 31, 1975, a maximum of $300,000,000 of its short-term notes.

The interest rate on the short-term notes payable to commercial banks, insurance Companies or similar institutions, is expected to be the rate agreed upon by the Company and such institutions in effect at the time of issuance and may change during the period of the notes to conform with changes in the rate in effect at those insitutions. The interest rate on trust demand notes is expected to be the simple interest yield equivalent to the highest rate adopted from time to time by General Motors Acceptance Corporation on its commercial paper borrowings for any term of thirty or more days up to and including 180 days.

Applicant is incorporated under the laws of the States of New York and Michigan, with its principal business office at Detroit, Michigan. And is engaged in the generation, transmission, distribution and sale of electrical energy in the state of Michigan.

The proceeds from the promissory notes will be used to finance the construction, completion, extension and improvement of facilities, pending permanent financing.

Any person desiring to be heard or to make any protest with reference to said Application should on or before November 20, 1975, file with the Federal Power Commission, Washington, D.C. 20426, petitions 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 the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The Application is on file and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29606 Filed 11-3-75;8:45 am]

[Docket No. ER76-179]

DUKE POWER CO.

Supplement to Contract

OCTOBER 24, 1975.

Take notice that on October 16, 1975 Duke Power Company (Duke) tendered for filing a Supplement to Duke's Electric Power Contract with Little River Electric Cooperative, designated as Duke's Rate Schedule FPC No. 145. This Supplement provides for service to a new point of delivery.

Duke requests an effective date of November 19, 1975 for this Supplement.

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 November 11, 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.75-29609 Filed 11-3-75;8:45 am]

[Docket No. ES76-16]

EL PASO ELECTRIC CO.

Application

OCTOBER 24, 1975.

Take notice that on October 6, 1975, El Paso Electric Company (Applicant), filed an application with the Federal Power Commission (the "Commission") seeking authority pursuant to section 204 of the Federal Power Act to issue $15,000,000 principal amount of First Mortgage Bonds.

The Applicant is incorporated under the laws of the State of Texas with its principal business office at El Paso, Texas, and is engaged in the electric utility business in the States of Texas and New Mexico in an area in the Rio Grande Valley extending approximately 110 miles northwesterly from El Paso to the Caballo Dam in New Mexico and 120 southeasterly from El Paso to Van Horn, Texas, with a population of approximately 480,000 of whom 365,000 reside in metropolitan El Paso.

The Applicant proposes to issue $15,000,000 principal amount of First Mortgage Bonds, — Percent Series due 2005, which will be secured by the Applicant's Indenture of Mortgage dated as of October 1, 1946, with State Street Trust Company (now known as State Street Bank and Trust Company) of Boston, Massachusetts, as Trustee, as supplemented and modified and to be further supplemented by a Twelfth Supplemental Indenture.

The Applicant proposes to sell the Bonds at competitive bidding in accordance with the Commission's regulations. The Applicant expects to invite bids on or about November 11, 1975. The Bonds which will mature on November 1, 2005, will not be refundable at a lower interest cost prior to November 1, 1980. The Bonds will be dated November 1, 1975, and will bear interest at the rate determined by the competitive bidding.

The proceeds from the sale of the Bonds will be used to reduce outstanding short-term debt incurred for construction purposes. The short-term debt is expected to aggregate $41 million at the time of such sale and before the application of the proceeds. The Applicant's construction program during the period from 1975 through 1978 will require approximately $169,161,000.

Any persons desiring to be heard or to make any protest with reference to said application should, on or before November 10, 1975, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The Application is on file and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29610 Filed 11-3-75;8:45 am]

[Docket No. ES-76-16]

EL PASO ELECTRIC CO.

Application

OCTOBER 24, 1975.

Take notice that on October 14, 1975, the El Paso Electric Company (Applicant), filed an application with the Federal Power Commission seeking authority pursuant to section 204 of the Federal Power Act to issue and sell at competitive bidding, $15 million aggregate principal amount of a new series of First Mortgage Bonds, due 2005.

Applicant is incorporated under the laws of the State of Texas with its principal business office at El Paso, Texas, and is engaged in the electric utility businesss in the States of Texas and New Mexico.

Any person desiring to be heard or to make any protest with reference to the application, should on or before November 17, 1975, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with 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.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29611 Filed 11-3-75;8:45 am]

[Docket No. ES76-17]

EL PASO ELECTRIC CO.

Application

OCTOBER 24, 1975.

Take notice that on October 9, 1975, El Paso Electric Company (Applicant), filed an application with the Federal Power Commission (the "Commission") seeking authority pursuant to section 204 of the Federal Power Act to issue 475,000 shares of Common Stock, no par value (the "New Common Stock").

The Applicant is incorporated under the laws of the State of Texas with its principal business office at El Paso, Texas, and is engaged in the electric utility business in the States of Texas and New Mexico in an area in the Rio Grande Valley extending approximately 110 miles northwesterly from El Paso to the Caballo Dam in New Mexico and 120 southeasterly from El Paso to Van Horn, Texas, with a population of approximately 480,000 of whom 365,000 reside in metropolitan El Paso.

The Applicant proposes to issue and sell 475,000 shares of Common Stock at competitive bidding in accordance with the Commission's regulations. The Applicant expects to invite bids on or about November 11, 1975, and receive bids on or about November 17, 1975.

The proceeds from the sale of the Common Stock will be used to reduce outstanding short-term debt incurred for construction purposes. The short-term debt is expected to aggregate $41 million at the time of such sale and before the application of the proceeds. The Applicant's construction program during the period from 1975 through 1978 will require approximately $169,161,000.

Any person desiring to be heard or to make any protest with reference to such application should, on or before November 10, 1975, file with the Federal Power Commission, 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 the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29612 Filed 11-3-75;8:45 am]

[Docket No. CP76-117]

EL PASO NATURAL GAS CO.

Application

OCTOBER 24, 1975.

Take notice that on October 6, 1975, El Paso Natural Gas Company (Applicant), P.O. Box 1642, El Paso, Texas 79978, filed in Docket No. CP76-117 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange, transportation and delivery of natural gas for the Jicarilla Apache Tribe (the Tribe), and authorization to construct and operate a delivery point to the Tribe in Rio Arriba County, New Mexico, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that the Tribe, with the approval of the Secretary of the Interior, has executed certain gas and oil mining leases granting Applicant the exclusive right to drill for, produce, own and market oil and gas from lands identified in said leases. It is stated that the Tribe has executed similar leases with an affiliate of Applicant, Northwest Production Corporation (Northwest Production), and with Northwest Pipeline Corporation (Northwest Pipeline). Applicant states that pursuant to the executed leases, the Tribe is to be paid a royalty (said to be typically 12½ percent) of all oil, gas, etc., produced under the leases, and the Tribe has the right to elect to take and receive its lessor's interest upon 30 days written notice.

It is stated that the Tribe has elected to take in kind its royalty interest in natural gas being produced from wells connected to the gathering systems of Applicant and Northwest Pipeline by the resolution of the Tribal Council of July 22, 1975. Applicant alleges that Northwest Pipeline and itself are willing to render transportation service from the wellhead to future points of consumption for the Tribe. It is claimed that the Tribe intends to utilize the gas in tribal enterprises.

The proposed arrangements for the Tribe to take its royalty in kind are said to be as follows:

(1) The Tribe would take its gas at the wellhead and would direct the operator to deliver such gas into the gathering system of Applicant or Northwest Pipeline.

(2) Northwest Pipeline would deliver to Applicant at existing points of interconnection in their San Juan Basin gathering systems in Rio Arriba and Sandoval Counties, New Mexico, gas equivalent in Btu content to the royalty gas delivered to Northwest Pipeline for the Tribe to Applicant.

(3) Applicant would deliver to the Tribe each day at the proposed delivery point royalty gas equivalent in Btu content to the gas received by Applicant and Northwest Pipeline.

(4) The quantity of royalty gas in excess of the quantity which the Tribe has scheduled for delivery would be available to Applicant and Northwest Pipeline for sale on a pro rata basis, and such sales would be deemed to have occurred at the wellhead.

(5) Northwest and Applicant would charge the Tribe a gathering charge of 6.61 cents per Mcf gathered, respectively.

(6) Excess royalty gas that is sold by the Tribe to Applicant and Northwest Pipeline would be priced at an initial rate of 51.0 cents per Mcf at 14.73 psia plus various adjustments.

Applicant states that the volume of gas attributable to the Tribe's royalty interest on an average day in 1974 was 4,100 Mcf, and during the calendar year 1974 such gas totalled 1,509,198 Mcf.

Applicant further requests authorization to construct and operate tap and measurement facilities to deliver such quantities of gas to the Tribe. The proposed facilities would consist of a dual 6⅝-inch o.d. turbine meter station and a 6⅝-inch o.d. tap and valve assembly, with appurtenances, and would be located on Applicant's existing 30-inch o.d. Chaco-Lindrith pipeline in Rio Arriba County, New Mexico. Applicant states that the estimated cost of the proposed facilities is approximately $33,615, and that such costs would be financed through the use of working funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 12, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.29607 Filed 11-3-75;8:45 am]

[Docket No. C74-126]

EL PASO NATURAL GAS CO.

Petition To Amend

OCTOBER 24, 1975.

Take notice that on October 8, 1975, El Paso Natural Gas Comany (Petitioner), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP74-126 a petition to amend the order of the Commission issued April 2, 1975 (53 FPC —), pursuant to section 7(c) of the Natural Gas Act to include in the certificate of public convenience and necessity authorization to exchange natural gas with Natural Gas Pipeline Company of America (Natural) at additional points, and authorization to construct and operate additional pipeline, metering and tap facilities, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Petitioner states that it was authorized to exchange up to 40,000 Mcf of natural gas per day by the order of the Commission of April 2, 1975, but presently delivers only approximately 14,000 Mcf of natural gas per day. Petitioner alleges that Natural and itself have each acquired additional supplies of natural gas in the vicinity of the other's pipeline systems. Petitioner therefore requests authorization by the Commission to deliver to Natural gas produced from the Spradlin No. 1 and Willie Pearce A-No. 1 wells in Washita County, Oklahoma. These wells are said to produce recoverable reserves of 7,800 Mcf on an average day. Petitioner would be required under the proposed arrangement to construct and operate all gathering, measurement and delivery facilities, and would deliver gas to Natural at a point on Natural's 26-inch o.d. pipeline in Washita County, Oklahoma, where Natural would construct and operate a side tap and valve.

Natural would deliver natural gas from the Belco Petroleum Corporation-Bass Federal Nos. 1 and 2 wells located in Lea County, New Mexico, and from the Perry Bass Poker Lake No. 42 well in Eddy County, New Mexico, to Petitioner at two additional points of delivery. The deliveries from the Bass Federal Nos. 1 and 2 wells would take place at Petitioner's wellhead facilities and would be commingled with gas being purchased by Petitioner from others. The deliveries from the Poker Lake No. 42 well would be made by Natural to Petitioner at a proposed point of connection on Petitioner's 26-inch o.d. pipeline in Eddy County, New Mexico, and Petitioner would be required to construct and operate a side tap and valve assembly. Natural would construct and operate all measurement and delivery facilities at the proposed exchange point, it is stated.

The proposed Washita delivery point is said to require the construction of a 4½-inch standard meter orifice station adjacent to Natural's 26-inch o.d. pipeline in Washita County, Oklahoma, and 5.85 miles of 4½-inch o.d. supply lateral pipeline from the Spradlin No. 1 well to the proposed Washita Exchange point. The Eddy exchange point would consist of Petitioner constructing and operating a 4½-inch tap and valve assembly on Petitioner's 26-inch o.d. pipeline in Eddy County, New Mexico.

The estimated cost of the proposed facilities is said to be approximately $518,463.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 14, 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29608 Filed 11-3-75;8:45 am.]

[Docket No. ER76-185]

IOWA POWER AND LIGHT CO.

Proposed Rate Changes

(OCTOBER 24, 1975).

Take notice that Iowa Power and Light Company (Iowa Power) on October 20, 1975, tendered for filing the following rate schedules:

Service Schedule B to the Electric Interchange Agreement between Iowa Power and Light Company and the City of Pella, Iowa, filed to supersede Supplement No. 2 to Iowa Power Rate Schedule FPC No. 33;

Service Schedule D to the Electric Interchange Agreement between Iowa Power and Light Company and the City of Pella, Iowa, filed to supersede the original Service Schedule D in effect under Iowa Power Rate Schedule FPC No. 33; and

Third Amendment to the Electric Interchange Agreement between Iowa Power and Light Company and the City of Pella, Iowa filed to supersede Supplement No. 3 to Iowa Power Rate Schedule FPC No. 33.

Iowa Power states that since no transactions under Service Schedules B and D have occurred within the last twelve months, and none are contemplated within the next twelve months, the proposed change will have no effect upon revenues from jurisdictional sales and service based on the twelve month period ending October 7, 1976.

Iowa Power further states that the proposed changes in rates charged under Service Schedules B and D were made for the purpose of bringing these rates into conformity with the rates being charged Iowa Power for similar services under the Mid Continent Area Power Pool (MAPP) Agreement to which Iowa Power is a party. The change in reserve requirements of the parties proposed by the Third Amendment was made for the purpose of bringing the City's reserve requirement up to the level which the MAPP Agreement requires Iowa Power to maintain.

Iowa Power requests the Commission waive the prior notice requirements of § 35.13(a) of the regulations and accept the filing with a retroactive effective date of October 7, 1975. Iowa Power states that copies of the filing have been served upon the City of Pella, Iowa, and the Iowa State Commerce Commission.

Any person desiring to be heard or 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 November 10, 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.75-29613. Filed 11-3-75;8:45 am]

[Docket No. ER76-180]

LOUISVILLE GAS AND ELECTRIC CO.

Tariff Change

OCTOBER 24, 1975.

Take notice that Louisville Gas and Electric Company (LG&E) on October 14, 1975, tendered for filing proposed changes in its Interconnection Agreement between LG&E and East Kentucky Power Cooperative (East Ky.), formerly East Kentucky Rural Electric Cooperative Corporation, designated FPC Rate Schedule No. 25.

The purpose of this filing is to make revisions in the method of computing charges under Article VI of the Interconnection Agreement. The demand charge set forth in this article is increased from $0.06 per kilowatt per weekday (Monday through Friday) to $0.075 per kilowatt per weekday (Monday through Saturday). Also, the provision for the determination of "out-of-pocket" costs is revised to provide for the use of replacement cost of fuel. These proposed revisions reflect a desire on the part of both parties to attain the optimum benefit from the interconnection of their systems. The parties agree that these changes should be increased in consideration of present and anticipated future costs.

Copies of the filing were served upon East Kentucky Power Cooperative.

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 November 7, 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.75-29614 Filed 11-3-75;8:45 am]

[Docket Nos. E-9136; E-9140]

NEW ENGLAND POWER CO.

Tendered Compliance Filing

OCTOBER 24, 1975.

Take notice that on October 14, 1975, New England Power Company (NEPCO), tendered for filing Sixth Revised Page Numbers 1 and 2 of Schedule II-A to NEPCO's FPC Electric Tariff, Original Volume No. 1. NEPCO states that the amendments are being filed in accordance with the direction of the Commission as set forth by letter dated October 3, 1975. Such revisions effect a modification of the present fuel clause, along with a related adjustment in the basic rate.

NEPCO requests that the prior notice provisions of the Federal Power Act and the Commission's Regulations be waived and that the revised tariff sheets be allowed to become effective on August 2, 1975, subject to refund.

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 November 6, 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.75-29615 Filed 11-3-75;8:45 am]

[Docket No. ER76-183]

NIAGARA MOHAWK POWER CORP.

Tariff Change

OCTOBER 24, 1975.

Take notice that Niagara Mohawk Power Corporation, on October 20, 1975, tendered for filing as a rate schedule, an agreement between Niagara Mohawk Power Corporation (Niagara) and the Hydro Electric Power Commission of Ontario (HEPC), dated December 18, 1974.

Niagara presently has on file an agreement with HEPCO dated July 1, 1954. This agreement is designated as Niagara Mohawk Power Corporation's Export Rate Schedule FPC No. 12 and has been supplemented three times, on January 18, 1965, May 29, 1967 and May 11, 1973 respectively. The new agreement is being submitted as the fourth supplement to the existing supplemented agreement, Niagara states.

This supplement changes the classifications, rates and charges contained in the present agreement, since they no longer reflect current costs, conditions and practices on HEPC's system, according to Niagara.

Copies of the filing were served upon the following:

Hydro Electric Power Commission of Ontario, 620 University Avenue, Toronto, Ontario, Canada M5G1X6.

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, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 10, 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.75-29586 Filed 11-3-75;8:45 am]

[Docket No. CP76-120]

NORTHWEST PIPELINE CORP.

Application

OCTOBER 24, 1975.

Take notice that on October 6, 1975, Northwest Pipeline Corporation (Applicant), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP76-120 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the receipt, transportation and delivery of natural gas for the Jicarilla Apache Indian Tribe (the Tribe) and exchange of such gas with El Paso Natural Gas Company (El Paso) for redelivery to the Tribe, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that the Tribe, with the aproval of the Secretary of the Interior, has executed certain oil and gas mining leases granting Applicant the right to drill for, produce from and market oil and gas from lands identified in said leases. It is stated that the Tribe has executed similar leases with El Paso. Applicant states that pursuant to the executed leases, the Tribe is to be paid a royalty (said to be typically 12½ percent) of all gas, oil, etc., produced under the leases, and the Tribe has the right to elect to take and receive its lessors interest upon 30 days written notice.

It is stated that the Tribe has elected to take in kind its royalty interested in natural gas being produced from wells connected to the gathering systems of Applicant and El Paso by the resolution of the Tribal Council of July 22, 1975. Applicant alleges that El Paso and itself are willing to render transportation service from the wellhead to future points of of consumption for the Tribe. It is claimed that the Tribe intends to utilize the gas in tribal enterprises.

The proposed arrangements for the Tribe to take its royalty in kind are said to be as follows:

(1) The Tribe would take its gas at the wellhead and would direct the operator to deliver such gas into the gathering system of Applicant or El Paso.

(2) Applicant would deliver to El Paso at existing points of interconnection in their San Juan Basin gathering systems, Rio Arriba and Sandoval Counties, New Mexico, gas equivalent in Btu content to the royalty gas delivered to Applicant for the Tribe to Applicant.

(3) El Paso would deliver to the Tribe each day at a proposed delivery point royalty gas equivalent in Btu content to the gas received by Applicant and Northwest Pipeline.

(4) The quantity of royalty gas in excess of the quantity which the Tribe has scheduled for delivery would be available to Applicant and El Paso for sale on a pro rata basis, and such sales would be deemed to have occurred at the wellhead.

(5) Applicant and El Paso would charge the Tribe a gathering charge of 6.61 cents per Mcf gathered, respectively.

(6) Excess royalty gas that is sold by the Tribe to Applicant and El Paso would be priced at an initial rate of 51.0 cents per Mcf at 14.73 psia plus various adjustments.

Applicant states that the volume of gas attributable to the Tribe's royalty interest on an average day in 1974 was 5.425 Mcf, and during the calendar year 1974 such gas totaled 1,980,192 Mcf.

Applicant states that it would utilize its existing field transmission and gathering facilities to implement the proposed arrangement under the terms and conditions of the royalty gas gathering and exchange agreement.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 11, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be

taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29587 Filed 11-3-75;8:45 am]

[Project No. 2570]

OHIO POWER CO.

Application for Amendment of License

OCTOBER 28, 1975.

Public notice is hereby given that an application was filed on August 27, 1975, under the Federal Power Act (16 U.S.C. 791a–825r) by the Ohio Power Company (Correspondence to: Mr. A. Joseph Dowd, Senior Vice President and General Counsel, American Electric Power Service Corporation, Two Broadway, New York, New York 10004; and Mr. Frank N. Bien, Executive Vice Pesident, Ohio Power Company, 301 Cleveland Avenue SW., Canton, Ohio 44702) for amendment of the license for unconstructed Project No. 2570, known as the Racine Project, located on the Ohio River, in Meigs County, Ohio, and Jackson County, West Virginia. The Ohio River is a navigable waterway of the United States.

Applicant seeks to have the Commission amend Article 52 of its license for Project No. 2570 by extending for two years the commencement and completion dates for construction of the project. Article 52 currently requires construction to commence by November 30, 1975, and be completed by November 30, 1977. According to the application, Applicant is requesting the proposed two-year extension because of difficulties encountered in obtaining funds necessary for final engineering and construction of the project.

Applicant also requests that Article 51, which specifies that, inter alia, a revised Exhibit S be filed prior to December 26, 1978, be amended by extending that date three years in order to provide adequate time to conduct at least a full year of operational studies and develop an Exhibit S.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 18, 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. The application is on file with the Commission and is available for public inspection.

Take further notice that, pursuant to the authority contained in and conferred upon the Federal Power Commission by Sections 308 and 309 of the Federal Power Act (16 U.S.C. § 825g, § 825h) and the Commission's rules of practice and procedure, specifically § 1.32(b) (18 CFR 1.32(b)), as amended by Order No. 518, a hearing may be held without further notice before the Commission on this application if no issue of substance is raised by any request to be heard, protest, or petition filed subsequent to this notice within the time required herein. The applicant or initial pleader has requested that the shortened procedure of § 1.32(b) be issued. If an issue of substance is raised, further notice of hearing will be given.

Under the shortened procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant or initial pleader to appear or be represented at the hearing before the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29598 Filed 11-3-75;8:45 am]

[Docket No. ES76-13]

PACIFIC POWER & LIGHT CO.

Application

OCTOBER 28, 1975.

Take notice that on October 2, 1975, Pacific Power & Light Company (Applicant), a corporation organized under the laws of the state of Maine and qualified to transact business in the states of Oregon, Wyoming, Washington, California, Montana and Idaho, with its principal business office at Portland, Oregon, filed an application with the Federal Power Commission, pursuant to section 204 of the Federal Power Act, seeking an order authorizing the issuance of not exceeding $135,000,000 in an aggregate principal amount at any one time outstanding of unsecured promissory notes (1) pursuant to Lines of Credit ($75,000,000), and (2) in the form of Commercial Paper ($60,000,000).

(1) Unsecured promissory notes in an aggregate principal amount not exceeding $75,000,000 at any one time outstanding would be issued by Applicant to evidence borrowings from commercial banks under Lines of Credit. Each note so issued would be dated the day of issuance and would have a maturity of not more than ninety days from the date thereof. All notes issued pursuant to the Lines of Credit would mature not later than June 30, 1977.

(2) Unsecured promissory notes in an aggregate principal amount not exceeding $60,000,000 at any one time outstanding would be issued and sold by Applicant to one or more Commercial Paper dealers. Each note issued as Commercial Paper would be dated the day of issuance, would have a maturity of not more than 270 days from the date thereof, and would be discounted at the rate prevailing at the time of issuance for Commercial Paper of comparable quality and maturity.

Proceeds from the borrowings to be made under the Lines of Credit and in the form of Commercial Paper would be used to temporarily finance current transactions, including Applicant's construction expenditures, which for 1976 are presently estimated at $334,743,000. The balance of funds required to meet estimated construction expenditures is expected to come, in part, from funds to be generated internally, from borrowings pursuant to a Letter Agreement dated September 18, 1975, not exceeding $50,000,000 at any one time outstanding, and from permanent financing of a type and magnitude not yet finally determined.

Any person desiring to be heard or to make any protest with reference to this application should, on or before November 7, 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. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29599 Filed 11-3-75;8:45 am]

[Docket No. ER76-176]

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Filing of Agreement

OCTOBER 28, 1975.

Take notice that Public Service Company of New Hampshire (PSNH) on

October 15, 1975, tendered for filing as an initial rate schedule a Transmission Contract with the City of Holyoke, Massachusetts, Gas & Electric Department (the Buyer).

Under the Contract, PSNH will transmit through its system an entitlement of power which the Buyer will be purchasing from Green Mountain Power Corporation.

PSNH requests that the Commission waive the normal 30-day notice requirement and permit the rate schedule to be effective as of November 1, 1975.

According to PSNH, a copy of the filing was served upon the City of Holyoke, Massachusetts, Gas & Electric Department.

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 November 4, 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.75-29617 Filed 11-3-75;8:45 am]

[Docket No. ER76-175]

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Filing of Agreement

OCTOBER 28, 1975.

Take notice that Public Service Company of New Hampshire (PSNH) on October 15, 1975, tendered for filing as an initial rate schedule a Transmission Contract with Central Maine Power Company (the Buyer).

Under the Contract, PSNH transmitted through its system entitlements of power which the Buyer has purchased from (1) Vermont Electric Power Company, Inc., and (2) The Hartford Electric Light Company and Western Massachusetts Electric Company.

PSNH requests waiver of § 35.11 of the Commission's regulations to permit the rate schedule to be effective as of April 1, 1975.

According to PSNH, a copy of the filing was served upon Central Maine Power Company.

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 November 4, 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.75-29616 Filed 11-3-75;8:45 am]

[Docket No. ER76-174]

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Filing of Agreement

OCTOBER 28, 1975.

Take notice that Public Service Company of New Hampshire (PSNH) on October 14, 1975, tendered for filing as an initial rate schedule a Transmission Contract with Vermont Electric Power Company, Inc. (the Buyer).

Under the Contract, PSNH will transmit through its system an entitlement of power which the Buyer will be purchasing from The Connecticut Light and Power Company and The Hartford Electric Light Company.

PSNH requests that the Commission waive the normal 30-day notice requirement and permit the rate schedule to be effective as of May 1, 1975.

According to PSNH, a copy of the filing was served upon Vermont Electric Power Company, Inc.

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 November 4, 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.75-29600 Filed 11-3-75;8:45 am]

[Docket Nos. RP72-91 (Phase II), etc. (AP 5/16/74)]

SOUTHERN NATURAL GAS CO.

Consolidation

OCTOBER 24, 1975.

On October 7, 1975, Southern Natural Gas Company (Southern) filed a motion to consolidate the hearing of the issues pertaining to certain advance payments, presently pending in Docket Nos. RP72-91 (Phase II) et al. (AP 5/16/74), into Southern's presently pending general rate increase filing in Docket No. RP75-84. Southern states that such consolidation will serve to avoid duplicate litigation of this matter.

On October 20, 1975, Staff Counsel filed a response supporting Southern's motion.

Upon consideration, notice is hereby given that the hearing and decision of issues pertaining to certain advance payments pending in Docket Nos. RP72-91 (Phase II) et al. (AP 5/16/74) are consolidated with Docket No. RP75-84.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29588 Filed 11-3-75;8:45 am]

[Docket No. ER76-177]

SOUTHWESTERN ELECTRIC POWER CO.

Tariff Change

OCTOBER 24, 1975.

Take notice that Southwestern Electric Power Company (SWEPCO), on October 16 1975, tendered for filing proposed changes in its FPC Electric Service Tariff, Rate Schedule FPC No. 67 (SWEPCO Rate Schedule SPA/Tex-La/SWEPCO). The proposed changes would increase revenues from Tex-La sales and service by $791,439, based on the twelve-month period ending April 30, 1975.

SWEPCO states that changes embodied in the revised rate schedule are: (1) revised rates for monthly demand charges for 12.5 KV and 69 KV service, (2) determination of Kilowatts of Billing Demand shall be as previously determined but never less than 75 percent of the maximum Kilowatts of Billing Demand during the eleven preceding months, (3) the power factor clause provides for adjustment to the billing demand when the average lagging power factor is less than 85 percent rather than 80 percent, (4) the fuel adjustment clause is revised to conform with the FPC Order No. 517.

SWEPCO states that its existing rates produce a return of only 6.41 percent on the net FPC rate base devoted to serving Tex-La during the twelve-month period ended April 30, 1975. The revised rate is designed to yield SWEPCO a return of 8.19 percent for the same period. Recently SWEPCO has experienced substantial increases in all elements of its costs including fuel, labor, interest, taxes, materials and supplies, and in construction to provide additional capacity to meet its growing requirements. This increased rate of return is needed to help meet the increased costs to serve Tex-La whose load has increased from 10 percent of SWEPCO's peak load in 1972 to 11 percent of the SWEPCO peak in 1974.

SWEPCO proposes to make the revised rate schedule effective January 1, 1976.

Copies of the filing have been mailed to the public utility's jurisdictional customer, Tex-La Electric Cooperative, Inc., Juan Nichols, President, Quitman, Texas.

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 November 6, 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.75-29589 Filed 11-3-75;8:45 am]

[Rate Schedule Nos. 15, etc.]

SUN OIL COMPANY, ET AL.

Rate Change Filings

OCTOBER 28, 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. Pursuant to Opinion No. 699-H the rates, if accepted, will become effective as of the date of filing.

The information relevant to each of these sales is listed in the Appendix.

Any person desiring to be heard or to make any protest with reference to said filings should on or before November 6, 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). A protest will not serve to make the protestant a party to the proceeding. Any party wishing to become a party to a proceeding 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
Oct. 9, 1975	Sun Oil Co., P.O. Box 2880, Dallas, Tex. 75221.	15	Tennessee Gas Pipeline Co.	Texas Gulf Coast.
Do	do	258	do	Do.
Oct. 14, 1975	Texas Pacific Oil Co., Inc., 17001 Main Pl., Dallas, Tex. 75250.	40	El Paso Natural Gas Co.	Permian Basin.
Do	do	42	do	Do.
Do	do	44	do	Do.
Do	do	56	do	Do.
Do	do	57	do	Do.
Do	do	58	do	Do.
Do	do	59	do	Do.

[FR Doc.75-29621 Filed 11-3-75;8:45 am]

[Project No. 2759]

SWANTON VILLAGE, VERMONT

Application for Preliminary Permit

OCTOBER 28, 1975.

Public notice is hereby given that application for preliminary permit was filed on August 22, 1975, and supplemented on September 16, 1975, under the Federal Power Act, 16 U.S.C. 791a et seq., by Swanton Village, Vermont (correspondence to: Mr. Orman Croft, Village Manager, Swanton Village Offices, 13 York Street, Swanton, Vermont 05488; and Mr. D. Gregory Pierce, P. E. (CE), Buck & Pierce Limited, 36 North Main Street, St. Albans, Vermont 05478) for the proposed Missisquoi River Project No. 2759, to be located on the Missisquoi River in the towns of Highgate and Sheldon, Franklin County, Vermont.

According to the application, the proposed Missisquoi River Project would consist of: (1) An intake above the existing dam on the Missisquoi River at Sheldon Springs; (2) an open channel and inverted siphon aqueduct extending about 5.75 miles from the Sheldon Springs intake to the proposed Missisquoi Storage Reservoir; (3) the Missisiquoi Storage Reservoir, about 1,750 acres in area, to be constructed in northern Highgate about six miles from Sheldon Springs and about one mile from Lake Champlain. The reservoir would be created by the construction of eight earthfill dams; (4) a pressure conduit about ¾ mile long to a powerhouse; and (5) a powerhouse with an installed capacity of approximately 80,000 kW to be constructed on Rock River near its confluence with Missisquoi Bay on Lake Champlain.

Additional or alternative plans of development would include raising the crest of the existing dam at Sheldon Springs four or six feet; constructing control dams on the Missisquoi River and its tributaries upstream of Sheldon Springs in the towns of Sheldon, Fairfield, Enosburg and Richford; and constructing the generating facility at Rock River with pumped storage capability.

The application states that the power generated by the project would be used by Swanton Village for distribution to its residents, with surplus power to be sold to or exchanged with other electric utilities in the area.

No construction is authorized under a preliminary permit. A permit, if issued, gives Permittee, during the term of the permit, the right of priority of application for license while Permittee undertakes the necessary studies and examinations to determine the engineering and economic feasibility of the proposd project, market for the power, and all other necessary information for inclusion in an application for license.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1976, file with the Federal Power Commission, 825 North Capitol Street, NE., 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 (1975). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29618 Filed 11-3-75;8:45 am]

[Docket No. CP76-123]

TEXAS EASTERN TRANSMISSION CORP.

Application

OCTOBER 28, 1975.

Take notice that on October 10, 1975, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP76-123 an application pursuant to section 7(c) of the Natural Gas Act, as implemented by § 157.7(b) of the regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1976, and operation of certain natural gas purchase facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that the purpose of this budget-type application is to augment its ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which it purchases and which may become available from various producing areas generally coextensive with Applicant's pipeline system or other pipelines authorized to transport for or exchange gas with Applicant.

The total cost of the proposed facilities, the application indicates, would not exceed $10,000,000, with the cost of any single onshore project not exceeding $1,500,000, and the cost of any single offshore project not exceeding $2,500,000. Applicant states that these costs would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 10, 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 regu-

lations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29619 Filed 11-3-75;8:45 am]

[Docket No. CP76-122].

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application

OCTOBER 24, 1975.

Take notice that on October 9, 1975, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP76-122 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for United Gas Pipe Line Company (United), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization in the instant application to transport up to 236,000 Mcf of natural gas per day for United from a point of receipt on Applicant's TG line immediately downstream from the Cameron Meadows Plant, Cameron Parish, Louisiana, to a point of intersection between Applicant's TG line and Tennessee Gas Pipeline Company, a Division of Tenneco Inc.'s (Tennessee) 30-inch pipeline in Calcasieu Parish, Louisiana, where delivery will be to Tennessee for the account of United. Applicant states that it would construct and operate side tap piping manifolds at the points of delivery and receipt on the TG line, and such construction is estimated by Applicant to cost approximately $455,000. Applicant states it will finance this cost from funds on hand.

The stated purpose of the proposed transportation is to allow United to receive gas from the proposed High Island Offshore System (HIOS) through Applicant's and Tennessee's existing pipeline systems.

Applicant proposes to charge United 1.0 cent per Mcf of gas transported, which charge is said to produce $516,840 in the first year of operation at 60 percent usage of the maximum transportation quantity.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 11, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29590 Filed 11-3-75;8:45 am]

[Docket No. CP76-124]

TRANSWESTERN PIPELINE CO.

Application

OCTOBER 24, 1975.

Take notice that on October 10, 1975, Transwestern Pipeline Company (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP76-124 an application pursuant to section 7(c) of the Natural Gas Act, as implemented by § 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction during the calendar year 1976, and operation of certain natural gas purchase facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that the purpose of this budget-type application is to augment its ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which it purchases which may become available from various producing areas generally coextensive with Applicant's pipeline system or the other pipeline systems authorized to transport for or exchange gas with Applicant.

The total cost of the proposed facilities would not exceed $7,000,000, and the cost of any single project would not exceed $1,500,000, which costs Applicant states would be financed from funds made available from company operations and might later be refinanced through the issuance of first mortgage bonds.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29591 Filed 11-3-75;8:45 am]

[Docket No. CP76-125]

TRANSWESTERN PIPELINE CO.

Application

OCTOBER 24, 1975.

Take notice that on October 10, 1975, Transwestern Pipeline Company (Appli-

cant), PO Box 2521, Houston, Texas 77001, filed in Docket No. CP76-125 an application pursuant to section 7(c) of the Natural Gas Act and § 157.7(g) of the Regulations thereunder (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the construction and for permission and approval for the abandonment during the calendar year of 1976, and the operation of field gas compression and related metering and appurtenant facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in the construction and abandonment of facilities which will not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application.

Applicant states that the total cost of the proposed construction and abandonment would not exceed $3,000,000, nor would the cost of any single project exceed $500,000, which costs Applicant states would be financed from funds made available through company operations and might at some later date be financed through the issuance of long-term debt or additional equity.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29592 Filed 11-3-75;8:45 am]

[Docket No. CP75-146]

TRANSWESTERN PIPELINE CO.

Petition To Amend

OCTOBER 24, 1975.

Take notice that on October 10, 1975, Transwestern Pipeline Company (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP75-146 a petition to amend the order of the Commission issued January 20, 1975 (54 FPC), pursuant to section 7(c) of the Natural Gas Act as implemented by § 157.7(b) of the Regulations thereunder (§ 157.7(b)) to increase the total annual cost and single project cost limitations and to expand the definition of budget-type gas purchase facilities authorized, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Petitioner states that it was authorized by the order of the Commission to expend on budget type gas purchase facilities up to a total of $5,000,000 annually, and up to $1,000,000 on a single project. Petitioner proposes in the instant petition to amend that it be authorized to expend up to $7,000,000 annually and up to $1,500,000 per any single project for budget-type gas purchase facilities. Petitioner further requests that the Commission expand the definition of gas purchase facilities authorized to be constructed and operated under the aforementioned order to include those facilities which would connect producers' facilities to the facilities of another pipeline company authorized to transport for or exchange with or for the account of Petitioner, natural gas purchased by Petitioner.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules or practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29593 Filed 11-3-75;8:45 am]

[Docket No. CP76-118]

U-T OFFSHORE SYSTEM

Application

OCTOBER 24, 1975.

Take notice that on October 6, 1975, U-T Offshore System (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP76-118 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 natural gas pipeline system from High Island Area, South and East Additions, South Extension, offshore Texas, to a point onshore Cameron Parish, Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it is a partnership of Unitex Offshore Transmission Company, a wholly owned subsidiary of United Gas Pipe Line Company (United) and Transco Hydrocarbons Company, a wholly-owned subsidiary of Transco Companies, Inc., and an affiliate of Transcontinental Gas Pipe Line Corporation (Transco). It is stated that Applicant was formed to construct and operate a pipeline system to transport gas to be purchased by United, Transco and others in the High Island Area, South Addition and East Addition, South Extension, offshore Texas from a point of interconnection with the proposed pipeline of High Island Offshore System (HIOS) in West Cameron Block 167, offshore Louisiana, to a point in Cameron Parish, Louisiana. The facilities proposed to be constructed are:

(1) Approximately 29.8 miles of 42-inch pipeline from a point of interconnection with existing pipeline facilities of Transco in Cameron Parish, Louisiana, extending southeast to a point of interconnection with the proposed facilities of HIOS in West Cameron Block 167, offshore Louisiana.

(2) Liquid condensate separation and storage facilities and dehydration facilities in Cameron Parish, Louisiana.

(3) Measuring and regulating facilities to deliver up to 471,900 Mcf of natural gas per day to Transco for the account of United and Transco at a point in Cameron Parish, Louisiana.

No precise estimates of gas reserves are said to be made presently in the areas or specific blocks where United or Transco have or expect to obtain commitments, but Ralph E. Davis Associates, Inc. and Ryder Scott Company Petroleum Engineers, estimate that the gas reserves in the High Island and Galveston areas would be approximately 8.5 and 8.6 million Mcf of natural gas, respectively. United and Transco are both said to expect to purchase substantial volumes of natural gas in the High Island Area, offshore Texas. It is stated that by the end of 1978, which is anticipated to be the second year of operation, United and Transco would have approximately 383,000 Mcf of gas per day deliverable from gas reserves attributable to the interests that United and Transco have acquired or expect to acquire. Applicant further alleges that it has entered into transportation agreements with Michigan Wisconsin Pipe Line Company (Mich Wis) and Texas Gas Transmission Corportation (Texas Gas) to provide gas transportation service for them if certificate authorization to construct facilities proposed in Docket No. CP75-125 [1] is not granted in a timely fashion by the Commission.

Applicant would transport up to 491,630 Mcf of gas per day for United and Transco from a point of interconnection with the pipeline system proposed by HIOS in West Cameron Block 167, offshore Louisiana, to a point of interconnection with the existing onshore facilities of Transco near Johnson's Bayou, Cameron Parish, Louisiana. Applicant states that it would have a capacity with no additional capital expenditure to transport approximately 50 percent of the gas presently expected to be available from the blocks to be attached to the pipeline and without substantial expenditures for additional facilities the pipeline system is said to be capable of an ultimate capacity of 1 million Mcf per day. It is stated that applicant plans to commence construction of the instant proposal in May 1976, and projects a completion and in-service date of January 1, 1977.

Applicant states that the total environmental effect of the project would be limited to slight and temporary disturbances of the onshore and offshore terrain along the pipeline right-of-way, but that the pipeline would provide United and Transco with additional supplies of natural gas. Transco and United are said to be presently curtailing their customers at the average annual rate of 38.5 percent and 43.6 percent, respectively.

Applicant estimates that during the first year of operation the annual cost of service of the pipeline would be $13,391,000, approximately, with a 12 percent overall rate of return. The gas transportation agreements based on Applicant's presently estimated annual costs are said to provide for a demand charge of $2.26 for each Mcf of demand quantity. The estimated cost of service is said to be as follows:

Particulars	*Amount*
Operating expanses	$1,071,000
Depreciation (8.38% × $49,124,000)	4,092,000
Ad valorem taxes	294,000
Federal income taxes	1,902,000
State income taxes	61,000
Return at 12 percent	5,917,000
Total cost of service	$13,337,000
Contract demand (Mcf)	491,600
Demand rate (per Mcf of contract demand)	$2.26

The estimated cost of the proposed facilities is said to be approximately $49,124,000, and the cost of the proposed facilities would be initially financed by $12,500,000 in equity contributions, with the remainder being financed by short-term loans which would be repaid with the proceeds from the subsequent issuances of long-term debt securities.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commision 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 Commision's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate s required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29544;Filed 11-3-75;8:45 am]

[1] Notice published November 20, 1974 (39 FR 40817).

[Docket No. E-8619]

WISCONSIN ELECTRIC POWER CO. AND WISCONSIN MICHIGAN POWER CO.

Certification of Proposed Settlement Agreement and Record of Hearing

OCTOBER 24, 1975.

Take notice that on October 16, 1975 the presiding Administrative Law Judge William L. Ellis certified to the Commission for its consideration a proposed settlement agreement and accompanying record in the above-designated proceeding. The settlement agreement, if approved, would resolve all issues in this proceeding.

The proposed settlement involves a joint filing by Wisconsin Electric Power Company and its subsidiary, Wisconsin Michigan Electric Power Company (Applicants), to increase the rates for service to their wholesale customers tendered to the Commission on February 4, 1974, and effective subject to refund since September 20, 1974.

The rate schedule settled upon will reduce the revenue increase sought by the Applicants from $3,015,016 to $2,637,499 and would eliminate a restriction on sale for further resale of energy furnished under Applicants' rate for wholesale service to large electric utilities.

The agreement also provides for a moratorium against any further rate increase to become effective before January 1, 1976.

Any person wishing to do so may file comments in writing concerning the proposed settlement agreement to the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20246. All initial comments should be submitted on or before November 5, 1975. Any reply comments shall be filed on or before November 26, 1975. Copies of the settlement agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-29595 Filed 11-3-75;8:45 am]

FEDERAL RESERVE SYSTEM

ANCORP BANCSHARES, INC.

Proposed Acquisition of Ancorp Insurance Co.

Ancorp Bancshares, Inc., Chattanooga, Tennessee, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of Ancorp Insurance Company, Phoenix, Arizona. Notice of the application was published on September 25, 1975 in The Record Reporter, a newspaper circlated in Phoenix, Arizona and on September 18, 1975 in the Chattanooga Times a newspaper circlated in Chattanooga, Tennessee.

Applicant states that the proposed subsidiary would engage de novo in the activities of underwriting, as reinsurer, credit life and credit accident and health insurance issued in connection with extensions of credit by the bank

holding company system. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 28, 1975.

Board of Governors of the Federal Reserve System, October 24, 1975.

[SEAL] ROBERT SMITH, III,
Assistant Secretary of the Board.

[FR Doc.75-29541 Filed 11-3-75;8:45 am]

BANCORPORATION OF MONTANA

Order Approving Acquisition of Bank

Bancorporation of Montana, Great Falls, Montana ("Applicant"), a bank holding company within the meaning of the Bank Holding Company Act, has applied for the System's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of The First State Bank of Thompson Falls, Thompson Falls, Montana ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act (40 FR 41563, September 8, 1975). The time for filing comments and views has expired, and none has been received. The Federal Reserve Bank of Minneapolis has considered the application in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls twelve banks in Montana with deposits of $137 million representing 5.2 percent of total commercial bank deposits in Montana and is the fourth largest banking organization in the State.[1] Bank, with total deposits of $9.2 million, is the second largest of two banks in the relevant banking market and controls 49 percent of market deposits.[2] Acquisition of Bank would increase Applicant's share of State deposits to 5.6 percent and Applicant would remain as the State's fourth largest banking organization. Applicant's acquisition of Bank will have no appreciable effect on the concentration of banking resources in the State.

Bank is the only bank in the city of Thompson Falls (population 3,250), located in the extreme northwestern portion of the State. The area, characterized by mountainous terrain, is isolated from the major population centers of Montana. Applicant's nearest banking subsidiary is located approximately 100 road miles from Bank. No meaningful competition exists between any of Applicant's banking subsidiaries and Bank nor, in view of the distances involved and Montana's restrictive statutes concerning branch banking, does it appear that any significant future competition would be eliminated. Furthermore, it is unlikely that Applicant would enter the Thompson Falls market on a de novo basis because although market deposits within the relevant market have grown faster than the Montana average, the area is sparsely populated and isolated from any major population center or significant source of commerce. Therefore, on the basis of the record, it is concluded that consummation of the proposal will not have a significant adverse effect on existing or potential competition in any relevant area and that competitive considerations are consistent with approval of the application.

The financial and managerial resources and future prospects of Applicant, its subsidiaries, and Bank are regarded as generally satisfactory, particularly in light of Applicant's commitment to improve the capital position of certain of its subsidiary banks. Therefore, considerations relating to banking factors of the application are consistent with approval.

Applicant proposes to offer trust services to the community in question through one of its subsidiaries and also proposes to introduce expanded bank card services, including convenience checks and overdraft facilities to the community. Therefore, considerations relating to the convenience and needs of the community to be served lend weight toward approval of the application. On the basis of the record, it is this Reserve Bank's judgment that the proposed acquisition is in the public interest and should be approved.

For the reasons summarized above, the Federal Reserve Bank of Minneapolis hereby approves the application. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this order, or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board of Governors or by the Federal Reserve Bank of Minneapolis pursuant to delegated authority.

By order of the Federal Reserve Bank of Minneapolis, acting pursuant to delegated authority for the Board of Governors, effective October 16, 1975.

[SEAL] L. G. GABLE,
Vice President.

[FR Doc. 75-29542 Filed 11-3-75; 8:45 am]

CITIZENS BANCORPORATION

Order Denying Formation of Bank Holding Co.

Citizens Bancorporation, Charles City, Iowa, 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 80 per cent or more of the voting shares of The Citizens National Bank of Charles City, Charles City, Iowa ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, a non-operating company with no subsidiaries, was organized for the purpose of becoming a bank holding company through the acquisition of Bank ($14.6 million in deposits).[1] Bank is the third largest of five banks operating in the Charles City banking market[2] and controls approximately 19 percent of the total commercial bank deposits therein. Upon acquisition of Bank, Applicant would control the 215th largest bank in Iowa, holding .14 percent of total deposits in commercial banks in the State. Since the purpose of the proposed transaction is to effect a transfer of the ownership of Bank from individuals to a corporation owned by the same individuals, consummation of the proposal herein would not eliminate existing or potential competition, nor have an adverse effect on other area banks.

Applicant's principal is also a principal in The Kanabec Credit Company, Mora, Minnesota, a registered one-bank holding company, which owns 84 percent of The Kanabec State Bank, Mora, Minnesota. In addition, this individual and his brother together own 88 percent of The Sibley County Bank, Henderson, Minnesota. Since both of these banks are located in banking markets separate from the relevant market in this case, and the closest one is approximately 140 miles

[1] All banking data are as of December 31, 1974, and reflect holding company formations and acquisitions approved by the System through September 1975.

[2] Market is approximated by the cities of Thompson Falls and Plains, Montana, and the immediate surrounding area.

[1] All banking data are as of December 31, 1974.

[2] The Charles City banking market is approximated by Floyd County, except for the town of Nora Springs, and includes the town of Nashua in Chickasaw County.

from Bank, consummation of the proposal would eliminate no existing competition. Therefore, competitive considerations are consistent with approval of the application.

The Board has indicated on previous occasions that it believes that a holding company should provide a source of strength to its subsidiary bank(s) and that every proposed formation and acquisition will be closely examined with this consideration in mind. With respect to the present proposal, Applicant would incur substantial debt which Applicant proposes to service over a 12-year period through dividends from Bank. In the Board's view, the projected earnings of Applicant do not appear to provide Applicant with the necessary financial flexibility to service its debt as well as to serve as a financial source of strength to Bank and to meet unexpected problems. Furthermore, the Board notes with concern the highly leveraged condition of The Kanabec Credit Company as well as the high level of debt incurred by Applicant's principal in acquiring The Sibley County Bank and Bank. This situation could impair the ability of Applicant's principal to aid Applicant in the event it incurs problems servicing its acquisition debt while at the same time maintaining an adequate capital account at Bank. While the Board recognizes that denial herein cannot affect present relationships, the Board believes that it should not approve a holding company debt structure that could impair the financial condition of Bank, nor would the public interest be served by such Board action. Therefore, on the basis of these and other facts of record, the Board has determined that considerations relating to financial factors lend weight toward denial of the application.

Applicant has proposed some changes which could benefit the community, including certain fiduciary services, a strengthened agricultural lending program, and the future use of electronic terminal devices. However, the introduction of these services is not dependent upon formation of Applicant as a bank holding company and, in any event, does not outweigh the aforementioned adverse banking factors connected with this proposal.

On the basis of all of the circumstances concerning this application, the Board concludes that the financial considerations involved in this proposal present adverse circumstances bearing upon the financial condition and prospects of both Applicant and Bank. Such adverse factors are not outweighed by any procompetitive effects or by benefits which would result in serving the convenience and needs of the community. Accordingly, it is the Board's judgment that approval of the application would not be in the public interest and that the application should be denied.

On the basis of the record, the application is denied for the reasons summarized above.

By order of the Board of Governors,[*] effective October 24, 1975.

[SEAL] THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.75-29543 Filed 11-3-75;8:45 am]

DALE SPRAGUE ENTERPRISES, INC.

Formation of Bank Holding Co.

Dale Sprague Enterprises, Inc., Blue Mound, Kansas has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 80 per cent or more of the voting shares of Farmers State Bank, Blue Mound, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Dale Sprague Enterprises, Inc. has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to engage de novo in the activities of a general insurance agency. Notice of the application was published on July 17, 1975 in The Mound City Republic, a newspaper circulated in Linn County, Kansas.

Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 28, 1975.

[*] Voting for this action: Vice Chairman Mitchell and Governors Bucher, Coldwell, and Jackson. Absent and not voting: Chairman Burns and Governors Holland and Wallich.

Board of Governors of the Federal Reserve System, October 24, 1975.

[SEAL] ROBERT SMITH, III,
Assistant Secretary of the Board.

[FR Doc.75-29544 Filed 11-3-75;8:45 am]

FIRST AMTENN CORP.

Order Denying Acquisition of Bank

First Amtenn Corporation, Nashville, Tennessee, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire all of the voting shares (less directors' qualifying shares) of The First National Bank of Sparta, Sparta, Tennessee ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the second largest banking organization in Tennessee, controls eight banks with aggregate deposits of approximately $1.2 billion, representing 9.4 percent of the total deposits in commercial banks in the State.[1] Acquisition of Bank would increase Applicant's share of State deposits by 0.26 percent and would not significantly increase the concentration of banking resources in Tennessee.

Bank holds deposits of approximately $32 million, representing 66 percent of the total deposits in commercial banks in the relevant market,[2] and ranks as the larger of two banks operating in the market. Applicant's subsidiary bank closest to Bank is located 60 miles away in Tullahoma, Tennessee. It does not appear that any meaningful competition presently exists between Applicant's banking subsidiaries and Bank. Furthermore, it does not appear that any significant competition would develop in the foreseeable future between Applicant and Bank in view of the distances involved and Tennessee law, which prohibits Applicant from entering the relevant market de novo prior to 1980. Moreover, consummation of the proposed transaction could have a salutory effect on competition by permitting Bank's sole competitor in the market, a branch office of Commerce Union Bank of Nashville,

[1] All banking data are as of December 31, 1974, and reflect bank holding company formations and acquisitions approved through September 30, 1975.

[2] The relevant market for purposes of analyzing the competitive effects of the subject proposal is approximated by all of White County, Tennessee.

Nashville, Tennessee, to reorganize itself into a bank with branching powers. Therefore, the Board concludes that consummation of the proposal would not have any significantly adverse effects on existing or potential competition in any relevant area, and that the competitive considerations are consistent with approval of the application.

As indicated on previous occasions, the Board believes that a holding company should be a source of financial and managerial strength to its subsidiary bank(s), and that the Board will closely examine the condition of the applicant in each case with this consideration in mind. The subject proposal is not an exchange of shares but contemplates an acquisition debt of more than $6.6 million, including an immediate cash outlay of almost $1 million. The funds required to service this debt would be a significant cash drain on Applicant. In the Board's view, the projected earnings of Applicant do not provide Applicant with the necessary funds to meet this proposed increase in its annual debt servicing requirements while at the same time maintaining and strengthening the capital at its subsidiary banks. Under these circumstances, the Board believes that Applicant should concentrate its financial and managerial resources toward strengthening its existing subsidiaries before seeking further expansion of its banking interests. Accordingly, the Board concludes that considerations relating to the financial and managerial resources and future prospects weigh against approval of the application.

With respect to convenience and needs considerations, Applicant proposes to expand the services presently offered by Bank. While these considerations relating to the convenience and needs of the community to be served lend some weight toward approval of the application, they do not outweigh the adverse findings with respect to the financial factors involved in Applicant's proposal.

Based upon the foregoing and other considerations reflected in the record, the Board concludes that the financial considerations involved in the proposal present adverse factors bearing on the financial condition and future prospects of Applicant and Bank. Such adverse factors are outweighed by any procompetitive effects or by the benefits which would result in serving the convenience and needs of the community. Accordingly, it is the Board's judgment that approval of the application would not be in the public interest and that the application should be, and hereby is, denied.

By order of the Board of Governors,[1] effective October 28, 1975.

[SEAL] THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.75-29545 Filed 11-3-75;8:45 am]

[1] Voting for this action: Chairman Burns and Governors Bucher, Holland, Coldwell and Jackson. Absent and not voting: Governors Mitchell and Wallich.

FIRST FINANCIAL CORP.

Order Approving Acquisition of Bank

First Financial Corporation, Tampa, Florida, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 90 percent or more of the voting shares of The First American Bank of Pensacola, Pensacola, Florida ("Bank").

Notice of the application affording opportunity for interested persons to submit comments and views has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and none has been received. This Federal Reserve Bank has considered the application in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the seventh largest banking organization in Florida, controls sixteen banks which have deposits of $1.08 billion or 4.5 percent of deposits in all commercial banks of the State. (Banking data are as of December 31, 1974, and reflect acquisitions and formations approved by the Board through August 19, 1975). Acquisition of Bank, having deposits of $26.3 million, would increase Applicant's share of Florida's commercial bank deposits by less than one percent, and would not change Applicant's rank among other banking organizations in the State in aggregate commercial bank deposits. No undue concentration of banking resources in Florida would result.

Applicant is seeking to make its initial entry into the Pensacola banking market, consisting of Escambia and Santa Rosa counties in the northwest portion of the State. Applicant, in acquiring Bank, the sixth largest bank in the market with deposits representing 6.4 percent of commercial bank deposits in the market, will not be gaining a dominant position.

Applicant's closest subsidiary bank is at Quincy, Florida, 180 miles east of Bank. No competition exists between Applicant's banking subsidiaries and Bank, and it is not likely that future competition would develop between them. The acquisition would have no adverse competitive effects.

The financial and managerial resources of Applicant, its subsidiaries and Bank are generally satisfactory; future prospects appear favorable. The proposed acquisition would allow Bank to make available to the public international services, access to qualified personnel for financial advice, and trust services. Considerations relating to convenience and needs of the community to be served lend weight toward approval of the application. It is this Federal Reserve Bank's judgment that consummation of the proposed transaction would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this order or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Federal Reserve Bank of Atlanta acting under delegated authority for the Board of Governors of this Federal Reserve System, effective October 21, 1975.

[SEAL] KYLE K. FOSSUM,
First Vice President.

[FR Doc.75-29546 Filed 11-3-75;8:45 am]

FOREIGN-TRADE ZONES BOARD

[Order No. 108]

LAKE CALUMET HARBOR AREA, CHICAGO, ILL.

Resolution and Order Approving Application of the Chicago Regional Port District for a Foreign-Trade Zone

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

RESOLUTION AND ORDER

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended, (19 U.S.C. 81a–81u) the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter hereby orders:

After consideration of the application of the Chicago Regional Port District, a municipal corporation, filed with the Foreign-Trade Zones Board (the Board) on April 8, 1975, requesting a grant of authority for the establishing, operating and maintaining of a foreign-trade zone in Chicago's Lake Calumet Harbor area, Chicago, Illinois, the Board finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Since the proposal involves an industrial park type zone that envisages the construction of buildings by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal: *Providing*, That prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the District Army Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board order.

GRANT

TO ESTABLISH, OPERATE, AND MAINTAIN A FOREIGN-TRADE ZONE IN THE LAKE CALUMET HARBOR AREA, CHICAGO, ILLINOIS

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended, (19 U.S.C. 81a–81u) (hereinafter referred to as "the Act") the Foreign-Trade Zones Board (hereinafter referred to as "the Board") is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Chicago Regional Port District, a municipal corporation, (hereinafter referred to as "the Grantee"), has made application (filed April 8, 1975) in due and proper form to the Board requesting the establishment, operation, and maintenance of a foreign-trade zone in the Lake Calumet Harbor area, Chicago, Illinois;

Whereas notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 22, at the location mentioned above and more particularly described on the maps and drawings accompanying the application requesting authority for a foreign-trade zone in the Lake Calumet Harbor area of Chicago, Illinois, marked as Exhibits IX and X, said grant being subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations, to-wit:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operation within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefore.

The grant is further subject to settlement locally by the District Director of Customs and the District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer, Rogers C. B. Morton, at Washington, D.C., this 29th day of October 1975, pursuant to Order of the Board.

FOREIGN-TRADE ZONES BOARD,
ROGERS MORTON,
Chairman and Executive Officer.

ATTEST: JOHN J. DAPONTE, Jr.,
Executive Secretary.

[FR Doc.75-29548 Filed 11-3-75;8:45 am]

INTERNATIONAL TRADE COMMISSION

[AA1921-148]

VINYL CLAD FENCE FABRIC FROM CANADA

Determination of No Injury or Likelihood Thereof

OCTOBER 24, 1975.

On July 24, 1975, the United States International Trade Commission received advice from the Department of the Treasury that vinyl clad fence fabric from Canada is being, or is likely to be, sold in the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on July 29, 1975, the Commission instituted investigation No. AA1921-148 under section 201(a) of said act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such vinyl clad fence fabric into the United States.

Notice of the institution of the investigation and of a public hearing to be held in connection therewith was published in the FEDERAL REGISTER of August 4, 1975 (40 FR 32796). The hearing was held on September 9, 1975.

In arriving at its determination, the Commission gave due consideration to written submissions from interested parties, evidence adduced at the hearing, and all factual information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of the investigation, the Commission[1] has unanimously determined that an industry in the United States is not being injured, or is not likely to be injured, or is not prevented from being established, by reason of the importation of vinyl clad fence fabric from Canada that is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

STATEMENT OF REASONS FOR NEGATIVE DETERMINATION OF CHAIRMAN WILL E. LEONARD AND COMMISSIONER CATHERINE BEDELL[2]

The Antidumping Act, 1921, as amended, requires that the U.S. International Trade Commission find two conditions satisfied before an affirmative determination shall be made. The first condition is that an industry in the United States is being, or is likely to be, injured, or an industry in the United States is prevented from being established.[3] Second, the requisite injury must be "by reason of" the importation into the United States of the merchandise which the Department of the Treasury (Treasury) has determined is being, or is likely to be, sold at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended.

On the basis of the subject investigation (Inv. No. AA1921-148), we have determined that an industry in the United States is not being nor is likely to be injured by reason of the importation of vinyl clad fence fabric from Canada sold or likely to be sold at LTFV. We have made a negative determination because we do not find the first condition referred to above—an industry is being, or is likely to be, injured—satisfied by the evidence obtained in this investigation.[4]

Imported article and U.S. industry. The imported merchandise in this proceeding for which the Treasury found sales at LTFV is vinyl clad fence fabric. Vinyl clad fence fabric competes with other types of fencing, particularly galvanized steel chain link fencing, although the vinyl clad product has special physical properties and esthetic appeal distinct from galvanized steel chain link fencing.

With respect to what industry is allegedly injured or likely to be injured, the Commission said (at p. 4) in Lock-In Amplifiers and Parts Thereof From the United Kingdom, Investigation No. AA-1921-146, USITC Publication 736 (July 1975):

> The Antidumping Act states that there must be injury to, or likelihood of injury to, or the prevention of the establishment of, "an industry" in the United States in order for relief to be forthcoming. The use of the indefinite article "an," rather than the definite article "the," allows the Commission to examine the impact of the LTFV sales on more than one industry, if it deems such course of action is appropriate. If any industry is injured by LTFV imports, the statute is satisfied. Out of practical considerations and in its sound discretion, the Commission has usually looked at the industry in the United States that would most likely be impacted by LTFV imports to assess injury. If no injury were found to such an industry, and no evidence of injury to another possible industry has been obtained, the Commission has usually concluded that there was no injury to an industry. The industry most likely to be impacted has usually been defined in terms of the domestic facilities devoted to the production of the article most comparable to the LTFV article.

[1] Commissioner Parker did not participate in the decision.

[2] Vice Chairman Daniel Minchew concurs in the result.

[3] Prevention of the establishment of an industry is not an issue in the instant case, and it will not be discussed further.

[4] Failure of the first condition to be met makes consideration of the second condition unnecessary.

Without determining that it is properly a distinct industry,[5] we have examined in this case the impact of LTFV sales on the domestic facilities of the U.S. producers that are devoted to the production of vinyl clad fence fabric. We find that the facilities producing this article are not injured, nor are they likely to be injured, and, further, that there is no evidence of injury by reason of the LTFV sales to any other facilities which could be construed to comprise an industry.

No injury. Evidence developed by the Commission in connection with this investigation clearly indicates that no domestic industry has been injured. U.S. producers' shipments of vinyl clad fence fabric increased annually during 1970–74, rising from 7,583 tons to 12,374 tons, an increase of 63 percent. During this same period, exports to the United States by the Canadian producer that supplied the preponderance of the LTFV imports declined from 20 percent of U.S. consumption in 1970 to 10.4 percent in 1974, the year in which Treasury found LTFV sales. It was demonstrated that certain established U.S. producers of this product lost part of their market share in 1974 as other, new and smaller U.S. producers increased their market share. This is evidenced by the fact that one producer which made its first shipments of vinyl clad fencing in 1973 increased its share of U.S. producers' total shipments from less than 2 percent in 1973 to about 12.5 percent in 1974. It is also noted that the U.S. producers were confronted with increased quantities of competitively priced fair value imports from Canada during each of the years 1972–74.

Individual U.S. producers' prices for an item of vinyl clad fence fabric (2 inch mesh x 9 gauge x 4 feet high x 50 foot rolls), which is representative of the pricing for the great bulk of total industry shipments, increased during 1973–74 by amounts ranging from 60 percent to over 100 percent. Since late 1973 the prices charged by the principal supplier of the LTFV imports have been as high as or higher than those of any of the 6 domestic producers that supplied the Commission with pricing data. Such large price increases by domestic producers and the consistently higher or equal prices of the imported article establish that there has been no price depression and also refute any claim of price suppression.

Three firms which in the aggregate account for well over two-thirds of total U.S. producers' sales of vinyl clad fence fabric provided the Commission with financial information; two of these firms provided the information on the total operations of their establishments in which vinyl clad fence fabric is produced, and the other firm provided information on its total operations. The net operating profit to net sales ratio of these firms on their combined operations increased from 3.3 percent in 1972 to 10.6 percent in 1973 and to 13.5 percent in 1974, the year in which Treasury found LTFV sales.

Two firms provided the Commission separate data on the profitability of their vinyl clad fence fabric operations. One of these firms reported its net operating profit to net sales ratio on these operations declined slightly in 1973 as compared to 1972 and then increased sharply in 1974. The other firm reported its ratio of net profit to net sales increased in 1973 as compared to 1972 and then declined in 1974. Despite these fluctuations both producers reported substantial operating profits on their vinyl clad fence fabric operations in each of the years 1972–74.

No likelihood of injury. The Report of the Senate Committee on Finance (S. Rept. No. 93–1298) on the bill which became the Trade Act of 1974 remarked (at p. 180) on Commission practice under the Antidumping Act, 1921, in the following manner:

> The Commission's affirmative determinations that an industry "is likely to be injured" by less-than-fair-value imports are based upon evidence showing that the likelihood is real and imminent and not on mere supposition, speculation, or conjecture.

There is no evidence in this investigation that shows any industry is likely to be injured in any real and imminent sense. There is evidence of a strong anticipated growth in the U.S. market for vinyl clad fence fabric, and it is anticipated that U.S. producers of vinyl clad fence fabric will have increased production and sales in view of such growth. The Canadian firm which has supplied the bulk of the LTFV imports has a limited capacity to increase its shipments to the United States. Further, as indicated above, the trend of LTFV imports of vinyl clad fence fabric has been downward over the last several years.

Conclusion. Accordingly, for the reasons indicated, we have determined that an industry is not being injured nor is likely to be injured by reason of imports of vinyl clad fence fabric from Canada that are being, or are likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

CONCURRING STATEMENT OF REASONS OF COMMISSIONERS MOORE AND ABLONDI

The facts in this case are not in dispute, and they present a classic example of what the Senate Committee on Finance, in its Report on the Trade Act of 1974, has described as "technical dumping." Therefore, we have made a negative determination.

In its Report on the Trade Act of 1974, the Senate Finance Committee provided a lengthy definition of "technical dumping" and described the circumstances under which the U.S. International Trade Commission should apply such definition.

A portion of the relevant language of the Finance Committee Report is as follows:

> * * * the Antidumping Act does not proscribe transactions which involve selling an imported product at a price which is not lower than that needed to make the product competitive in the U.S. market, even though the price of the imported product is lower than its home market price. Such so-called "technical dumping" is not anti-competitive, hence, not unfair; it is procompetitive in effect.[6]

Thus, technical dumping occurs when LTFV (less than fair value) imported products are sold in the U.S. market at prices equal to or higher than the prices paid for comparable domestic products. This absence of underselling by competitive LTFV imports has on numerous occasions been characterized by the Commission in antidumping investigations as "technical dumping."

The term "technical dumping" has appeared frequently in Commission determinations under the Antidumping Act, 1921, as amended. For example, in Rayon Staple Fiber from France the Commission stated, "Thus the case involved purely 'technical' dumping prices."[7] The concept was further recognized and articulated in Technical Vanillin from Canada, in which the majority of Commissioners stated:

> The importation of an article sold "at less than fair value" is not ipso facto injurious. The sole exporter of Canadian technical vanillin has sold its product * * * to U.S. consumers at delivered prices equal to or higher than the delivered (or their equivalent) prices offered by the predominant U.S. producer of technical vanillin. * * * The importation of Canadian technical vanillin under such circumstances cannot be considered as injurious or likely to injure an industry in the United States.[8]

How the dumping margin arose. Sales of vinyl clad fence fabric in the Canadian market were made on an F.O.B. delivered basis to all Canadian customers in Canadian currency. At the time of exportation, the Canadian currency was converted to U.S. currency at exchange rates certified by the Federal Reserve Bank of New York. During the period of the Treasury Department's investigation (May through October 1974) the United States dollar was worth less than the Canadian dollar, i.e., one Canadian dollar was worth between $1.02 and $1.03. During this period, when the value of the Canadian dollar exceeded the value of the United States dollar, the sale price in the United States of vinyl clad fence fabric exported by the primary Canadian LTFV exporter was lower than its home market sale price when expressed in United States dollars. According to the Treasury Department file received by the Commission in this

[5] See the discussion (at p. 3) with respect to the injured industry in Electric Golf Cars From Poland, Investigation No. AA1921–147, USITC Publication 740 (September 1975).

[6] Senate Report No. 93–1298, 93d Cong., 2d sess., at p. 179.

[7] Investigation No. AA1921–11, 1959.

[8] Technical Vanillin from Canada, Investigation No. AA1921–26, TC Publication 88, 1963. Also see, Pocket Pencil Sharpeners, Tariff Commission Investigation under the Antidumping Act, 1921, as amended, August 29, 1955; Brass Key Blanks from Canada, Investigation No. AA1921–71, TC Publication 392, 1971.

investigation, the small dumping margins (2.0 to 4.0 percent) resulted primarily from an unfavorable currency exchange rate which existed from May through October 1974.

Application of "technical dumping" to the facts in this case. The LTFV imports are made to the same specifications (e.g., wire and mesh size, thickness in vinyl coating) as the domestically produced vinyl clad fence fabric. In addition, the LTFV imports have been selling in the same market served by the domestic producers and, in some instances, sales have been made to the same domestic distributors. The imports, however, have not had an anticompetitive price advantage over the prices of articles sold by U.S. producers in the domestic market. In fact, during the period of the Treasury Department's investigation the LTFV imported vinyl clad fence fabric was sold consistently at delivered prices equal to or higher than comparable vinyl clad fence fabric sold by domestic producers. Such LTFV sales therefore do not fall within the ambit of discriminatory sales which might adversely affect domestic competition and thereby cause injury to an industry in the United States within the meaning of the Antidumping Act, 1921, as amended.

Conclusion. Based on the facts developed during this investigation, we have concluded this clearly is a case involving technical dumping; that is, the LTFV imports were sold in the U.S. market at prices equal to or exceeding prices paid for comparable domestic merchandise. Such sales are not anticompetitive, but, as the Senate Finance Committee has pointed out, they are "procompetitive in effect."

Therefore, we concur with our colleagues in the determination that there is no injury or likelihood of injury to an industry in the Unted States by reason of LTFV sales of vinyl clad fence fabric from Canada.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.75-29531 Filed 11-3-75;8:45 am]

NATIONAL ENDOWMENT FOR THE ARTS AND THE HUMANITIES

FELLOWSHIP PANEL ADVISORY COMMITTEE

Meeting

OCTOBER 23, 1975.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given that a meeting of the Fellowships Panel will be held at Washington, D.C. on December 1, 8, 12, 15, 17, and 19, 1975, from 9 a.m. to 5:30 p.m.

The purpose of the meeting is to review Summer Stipend applications submitted to the National Endowment for the Humanities for 1976 summer grants.

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meeting would fall within exemptions (4) and (6) of 6 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. John W. Jordan, 806 15th Street, NW., Washington, D.C. 20506, or call area code 202-382-2031.

JOHN W. JORDAN,
Advisory Committee Management Officer.

[FR Doc.75-29523 Filed 11-3-75;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR ECONOMICS

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name. Advisory Panel for Economics.
Date. November 21-22, 1975.
Time. 9:00 a.m. each day.
Place. Room 321, National Science Foundation, 1800 G Street NW., Washington, D.C.
Type of meeting. Closed.
Contact person. Dr. James H. Blackman, Program Director for Economics, Room 205, National Science Foundation, Washington, D.C. 20550, telephone 202/632-5968.
Purpose of Advisory Panel. To provide advice and recommendations concerning support for research in Economics.

Agenda. To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing. The proposals and projects being reviewed include 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).

Authority to close meeting. The determination made on February 21, 1975, by the Director of the National Science Foundation pursuant to provisions of section 10(d) of Public Law 92-463.

GAIL A. MCHENRY,
Acting Committee Management Officer.

[FR Doc.75-29582 Filed 11-3-75;8:45 am]

NATIONAL MAGNET LABORATORY VISITING COMMITTEE

Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, the National Science Foundation announces the following meeting:

Name. National Magnet Laboratory Visiting Committee.
Date. November 20 and 21, 1975.
Time. 9:15 a.m. each day.
Place. Francis Bitter National Magnet Laboratory, 170 Albany Street, Cambridge, Massachusetts.
Type of meeting. Part open—Open on November 20; closed on November 21.
Contact person. Dr. William T. Oosterhuis, Staff Association for Special Projects, Division of Materials Research, Room 408, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-7334.
Summary minutes—(Open Portion). May be obtained from the Committee Management Coordination Staff, Management Analysis Office, National Science Foundation, Rm. 248, Washington, D.C. 20550.
Purpose of Committee. To provide the Foundation with specific guidance as to how the National Magnet Laboratory may best serve as a national facility responsive to the needs of the scientific community.

NOVEMBER 20—OPEN

Agenda. Welcoming Remarks—Vice President for Research, Massachusetts Institute for Technology (MIT). Introduction—Director, National Magnet Laboratory (NML). Current Program and Future Plans of the Magnet Research and Development Groups—NML Staff Member. Singlet-Triplet Anticrossings in the He, H_2 and D_2—Representatives from the Bell Laboratories.
Shear Viscosities of Liquid Crystals—Professor, University of Rhode Island.
Alcator—NML Staff Member.
Nuclear Magnetic Resonance Program—NML Staff Member.
General Tour (primarily for new members)—Vice President for Research, MIT.
Raman Scattering—NML Staff Members.
MHD Disk Generator—Professor, Dept. of Aeronautics and Astronautics, MIT.
Recent Spin—Polarized Tunneling Measurements in Superconductors and Ferromagnets—NML Staff Member.
Electronic Properties of Active Sites of Metalloprotein Synthetic Analogs—NML Staff Member.
Recent Studies of the Magnetic Fields of the Human Body—NML Staff Member.
Tour with Demonstrations and Discussions at Scheduled Stops.

NOVEMBER 21—CLOSED

Evaluate the management and the programs of the Laboratory.

Reason for closing. The committee will be reviewing, discussing, and evaluating the management operations and scientific programs of the Laboratory. This review concerns matters which fall within the exemptions of 5 U.S.C. 552(b), (4), (5), and (6).

Authority to close meeting. The determination made in February 21, 1975, by the Director of the National Science Foundation pursuant to provisions of section 10(d) of Pub. L. 92-463.

GAIL A. MCHENRY,
Acting Committee Management Officer.

OCTOBER 29, 1975.

[FR Doc.75-29583 Filed 11-3-75;8:45 am]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON REGULATORY GUIDES

Change of Agenda

Discussion of Regulatory Guide 1.96, Rev. 1, "Design of Main Steam Isolation Valve Leakage Control Systems for Boiling Water Nuclear Power Plants," at the November 5, 1975 meeting of the ACRS Regulatory Guides Subcommittee has been postponed. This was listed as Item No. 3 on the agenda for that portion of the above meeting which will be open to the public, published at 40 FR 49156, October 21, 1975.

All other matters pertaining to the meeting remain unchanged.

Dated: October 30, 1975.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.75-29552 Filed 11-3-75;8:45 am]

[Docket No. 50-333]

POWER AUTHORITY OF THE STATE OF NEW YORK AND NIAGARA MOHAWK POWER CORP.

Issuance of Amendment to Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 3 to Facility Operating License No. DPR-59 issued to the Power Authority of the State of New York and Niagara Mohawk Power Corporation, located in Scriba, Oswego County, New York. The amendment is effective as of its date of issuance.

This amendment authorizes 25 miscellaneous Appendix A and two Appendix B Technical Specification changes. The Appendix A changes relate to the correction of typographical errors, clarification of the specifications, and make the specifications consist with the Final Safety Analysis Report (FSAR). The Appendix B changes establish consistency in the Site Radiological Environmental Monitoring Program for the two plants on the site (Facility License No. DPR-59 and License No. DPR-63), and achieve consistency with Appendix A in the administrative controls of the Technical Specifications.

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 Ch. 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 March 13, 1975, (2) Amendment No. 3 to License No. DPR-59, with Change No. 3 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 Oswego City Library, 120 East Second Street, Oswego, New York.

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, Md., this 24th, October 1975.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Reactor Licensing.

[FR Doc.75-29549 Filed 11-3-75;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 delineate 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 4.9, Revision 1, "Preparation of Environmental Reports for Commercial Uranium Enrichment Facilities," provides assistance to applicants for the development of environmental reports dealing with the construction, operation, and decommissioning of uranium enrichment facilities. This revision reflects comments received from the public.

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 4 Regulatory Guides currently being developed include the following:

Cooling Water System—Protection of Aquatic Organisms (Entrapment).
Cooling Water System—Protection of Aquatic Organisms (Entrainment).
Cooling Water System—Protection of Aquatic Organisms (Cold Shock).
Effluent Monitoring Guide for UF_6 Conversion Facilities.
Effluent Monitoring Guide for Uranium Mills.
Effluent Monitoring Guide for Fuel Fabrication Facilities.
Effluent Monitoring Guide for Irradiated Fuel Reprocessing.
Analytical Models for Estimating Radioisotope Concentration in Different Water Bodies.
Methods for Estimating Atmospheric Dispersion of Gaseous Effluents from Routine Releases.
Calculation of Releases of Radioactive Materials in Liquid and Gaseous Effluents from Boiling Water Reactors.
Calculation of Releases of Radioactive Materials in Liquid and Gaseous Effluents from Pressurized Water Reactors.
Calculation of Annual Average Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Implementing Appendix I.
Land Use Assessment—Agriculture.
Nuclear Power Stations—Guide to Terrestrial Studies.
Preparation of Early Site Review Reports for Nuclear Power Stations.
Assessment of Environmental Impacts of Renewals and Amendments of Licenses for Nuclear Fuel Cycle Facilities.
Environmental Technical Specifications for Nuclear Power Plants.

(5 U.S.C. 552(a))

Dated at Rockville, Md., this 28th day of October 1975.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc.75-29551 Filed 11-3-75;8:45 am]

[Docket No. 50-244]

ROCHESTER GAS & ELECTRIC CORP.

Proposed Issuance of Amendment to Facility Operating License

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-18 issued to Rochester Gas & Electric Corporation (the licensee), for operation of the R. E. Ginna Nuclear Power Plant, located in Wayne County, New York.

In accordance with the licensee's application for a license amendment dated September 22, 1975, the amendment would increase the shutdown margin requirements in the Technical Specifications for certain conditions of reactor operation. This increase is the result of recent reanalyses of the main steam line break accident. The licensee has committed to use the most restrictive of the proposed shutdown margin requirements for all operating conditions until the NRC review of this application and the resulting amendment are completed.

Prior to issuance of the proposed license amendment, 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 December 4, 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 Arvin E. Upton, Esquire, LeBoeuf, Lamb, Leiby & MacRae, 1757 N Street, NW., Washington, D.C. 20036, 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 September 22, 1975, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Lyons Public Library, 67 Canal Street, Lyons, New York 14489 and the Rochester Public Library, 115 South Avenue, Rochester, New York 14627. 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, Md., this 23d day of October 1975.

For the Nuclear Regulatory Commission.

ROBERT A. PURPLE,
Chief, Operating Reactors Branch #1, Division of Reactor Licensing.

[FR Doc.75-29473 Filed 11-3-75;8:45 am]

[Dockets 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 an amendment to Facility Operating Licenses Nos. DPR-24 and DPR-27 issued to Wisconsin Electric Power Company and Wisconsin Michigan Power Company (the licensees), for operation of the Point Beach Nuclear Plant, Units 1 and 2, located in the Town of Two Creeks, Manitowoc County, Wisconsin.

The amendment would revise the provisions in the Technical Specifications related to maintaining steam generator tube integrity by changing the primary to secondary leak rate limits and by adding steam generator tube surveillance requirements in accordance with the licensee's applications for amendments dated August 30, 1974 and August 14, 1975.

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 regulations.

By December 4, 1975 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 amendments to the subject facility operating licenses. 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 Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts & Trowbridge, 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 applications for amendments dated August 30, 1974 and August 14, 1975, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Manitowoc Public Library, 808 Hamilton Street, Manitowoc, Wisconsin 54220. 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, Md., this 29th day of October 1975.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Division of Reactor Licensing.

[FR Doc.75-29550 Filed 11-3-75;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on 10/30/75 (44 U.S.C. 3509). The

purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

COMMUNITY SERVICES ADMINISTRATION

Building Winterization Plan, CSA 481, annually, low-income households desiring winterization, Human Resources Division, 395-3532.

SELECTIVE SERVICE SYSTEM

Certificate of service performed, SSS RS-7, monthly, RSP employer, Lowry, R. L., 395-3772.

Statement of Intention—Presidential Clemency Board of Office of Pardon Attorney Referral, SSS RS-9, on occasion, RSP enrollee, Lowry, R. L., 395-3772.

Statement of Intention (DOD referral), SSS RS-8, on occasion, RSP enrollee, Lowry, R. L., 395-3772.

Statement of Understanding, SSS RS-6, on occasion, enrollees in RSP, Lowry, R. L., 395-3772.

DEPARTMENT OF COMMERCE

Bureau of Census:

Export Mailing List, Request Form, DIB-4052P, on occasion, export oriented business persons, Caywood, D. P., 395-3443.

Privacy and Confidentiality as Factors in Survey Resopnse, single-time, survey research centers, Hulett, D. T., 395-4730.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration, (A) patient interview questionnaire, (B) physician interview questionnaire, (C) facility survey questionnaire, SSA-3214, SSA-3214A, SSA-3214B, other (see SF-83), surgical patients, physicians, surgical facilities human resources division, Dick Eisinger, 395-3532.

Office of the Secretary:

Vietnam Resettlement Operation Feedback Survey, Second Wave Survey, OS-56-75, single-time, individuals, Caywood, D.P., 395-3443.

Proposal Application Forms, 0001, 0002, annually, institutions of higher education, Lowry, R. L., 395-3772.

DEPARTMENT OF THE INTERIOR

Departmental and Other Application for Youth Conservation Corps, annually, youth 15-18 years of age, Lowry, R. L., 395-3772.

REVISIONS

VETERANS ADMINISTRATION

Court Appointed Fiduciarys Account, VA-27-4706, annually, fiduciaries, Caywood, D. P., 395-3443.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control, Tuberculosis Statistics and Program Evaluation Activity, CDC 5.1393, annually, State and local health departments, Dick Eisinger, 395-6140.

EXTENSIONS

NATIONAL MEDIATION BOARD

Application for Mediation Services, NMB-2, on occasion, railroad and airline mgmt. and unions, Marsha Traynham, 395-4529.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration: Summary of Loan Fund Requirements, REA 494, on occasion, REA telephone borrowers, Marsha Traynham, 395-4529.

Rural Electrification Administration: Service Requirements and Construction Cost Estimates, REA 495, on occasion, REA telephone borrowers, Marsha Traynham, 395-4529.

DEPARTMENT OF COMMERCE

Bureau of Census: Monthly Confectionery Survey by Type of Confectionery, M20C.1, monthly, confectionery manufacturers, Marsha Traynham, 395-4529.

Bureau of Census: Production of Pulp, Paper and Board, MA-26C, annually, paper and paperboard mills, Marsha Traynham, 395-4529.

Bureau of Census: Animal and Vegetable Fats and Oils—Monthly Report of Warehouse Stocks, M20H, monthly, public warehouses and storage facilities, Marsha Traynham, 395-4529.

Bureau of Census: Animal and Vegetable Fats and Oils, Monthly Report of Consumers, M20M, monthly, consumers of fats and oils, Marsha Traynham, 395-4529.

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Food and Drug Administration: Application for Commission (State Officials to act as Agents for FDA), FD-1777, on occasion, State Government agencies, Marsha Traynham, 395-4529.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.75-29659 Filed 11-3-75;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[811-1253]

CAPITAL INVESTORS CORP.

Filing of Application for an Order Declaring That Company Has Ceased To Be an Investment Company

OCTOBER 29, 1975.

Notice is hereby given that Capital Investors Corporation, Capital Building, Front & Ryman Streets, Missoula, Montana 59801; ("Applicant"), a Montana corporation which is a closed-end, nondiversified, management investment company registered under the Investment Company Act of 1940 ("Act"), has filed an application on August 14, 1975, and an admendment thereto on October 15, 1975, for an order of the Commission declaring that the Applicant has ceased to be an investment company as defined in the Act. 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 states that it was licensed on October 12, 1962 by the Small Business Administration ("SBA") as a small business investment company ("SBIC") under the Small Business Investment Act of 1958; and that the surrender of said license was accepted by the SBA on July 8, 1975.

Applicant further states that, on April 25, 1975, it and Western Venture Resources, Inc. ("Western"), a privately owned SBIC, entered into a Purchase Agreement ("Agreement") whereby Applicant would sell substantially all of its assets to Western and Western would assume substantially all of the liablities of the Applicant. Applicant represents that its shareholders approved the Agreement at a Special Meeting on May 20, 1975, and voted to dissolve the corporation on June 17, 1975.

Applicant further represents that it has filed a notice of intent to dissolve with the Secretary of State of Montana and that the filing of the final Articles of Dissolution is contingent upon receipt of a tax clearance certificate from the Department of Revenue, State of Montana. Applicant states that pending final dissolution, it will hold only cash proceeds and certain accounts receivable until the distribution of these proceeds to the shareholders at which time its corporate existence will terminate. Applicant represents that any net proceeds remaining after winding-up its affairs will be distributed to shareholders.

Applicant states that it has ceased all investment activity and no longer proposes to engage in the business of investing, re-investing or trading in securities. Applicant further states that its outstanding securities, other than short-term paper, are currently held beneficially by less than 100 persons, that no corporate holder of its securities has invested more than five percent (5 percent) of its assets in said securities, and that it is not making and does not presently propose to make a public offering of its securities.

Section 8(f) of the Act provides, in pertinent part, that when the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 24, 1975 at 5:30 p.m., submit to the Commission in writing a request for a hearing on this matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being

served is located more than 500 miles from the point of mailing) upon Applicant at the address set forth above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

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

[FR Doc.75-29533 Filed 11-3-75;8:45 am]

[File No. 20-2093A1, etc; Release No. 33-5636]

CENTURY PETROLEUM CORP.

Temporary Suspension Order; Opportunity for Hearing

In the matter of the following offering sheet(s) filed by Century Petroleum Corporation:

(File No. 20-2093A1) on May 14, 1975 covering non-producing working interests in the Century Petroleum Corporation—Century No. 1-Adolph Kuffman.

(File No. 20-2093A3) on July 10, 1975 covering non-producing working interests in the Century Petroleum Corporation—Century No. 3-Earl L. Brown.

(File No. 20-2093A4) on July 22, 1975 covering non-producing working interests in the Century Petroleum Corporation—Century No. 4-Earl L. Brown.

(File No. 20-2093A5) on August 15, 1975 covering non-producing working interests in the Century Petroleum Corporation—Century No. 5-Earl L. Brown.

(File No. 20-2093A6) on September 22, 1975 covering non-producing working interests in the Century Petroleum Corporation—Century No. 6-Vance N. Harms.

Century Petroleum Corporation having filed the above offering sheets with the Securities and Exchange Commission pursuant to Regulation B of the general rules and regulations under the Securities Act of 1933, as amended, for the purpose of obtaining an exemption from registration with respect to a proposed public offering of securities as specified in said offering sheet; and

The Commission having reason to believe, after filing of the offering sheets that:

1. No exemption is available for this offering under Regulation B according to Rule 306(a)(2) (17 CFR 230.306(a)(2)) because William J. Briggs, now president of Century Petroleum Corporation, was restrained and enjoined permanently on February 14, 1975, by the Supreme Court of the State of New York, in and for the County of New York, from offering or selling securities within and from the State of New York, including securities in the form of working interests in oil leases, without complying with Article 23-A of the General Business Law; and further was restrained and enjoined from violating the provisions of Article 23-A of the General Business Law of the State of New York.

2. No exemption is available for this offering under Regulation B because the offering sheet used failed to comply with Rules 330 (a) and (b) of Regulation B (17 CFR 230.330 (a) and (b)) by failing to disclose that on February 14, 1975, Wiliam J. Briggs, now president of Century Petroleum Corporation, was restrained and enjoined permanently by the Supreme Court of the State of New York, in and for the County of New York, from offering or selling securities within and from the State of New York, including securities in the form of working interests in oil leases without complying with Article 23-A of the General Business Law; and further was restrained and enjoined from violating the provisions of Article 23-A of the General Business Law of the State of New York.

It is ordered, Pursuant to Rule 334(a) of the general rules and regulations promulgated by the Commission under the Securities Act of 1933, as amended, that the exemption available pursuant to Regulation B under section 3(b) of said Act with respect to said offering sheet be, and hereby is, temporarily suspended pending a final hearing thereon with respect to the objections hereinbefore enumerated.

It is further ordered, That each person, on whose behalf said offering sheet was filed, be, and hereby is, given notice that each such person is entitled to a hearing before the Commission, or an officer or officers of, and designated by, the Commission, for the purpose of determining such matters; that upon receipt of a written request from such a person within thirty days after the date of this order the Commission will, for the purpose of determining such matters, set the matter for hearing at a place to be designated by the Commission, within thirty days after receipt of such request; and that notice of the time and place of such hearing will thereupon be promptly given by the Commission.

Notice is directed to Rule 336(b) which provides that if no hearing is requested and none is ordered by the Commission, the order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission.

It is further ordered, Pursuant to Rule 7 of the Commission's rules of practice, that if such a person does request a hearing pursuant to Rule 336 of Regulation B that such person shall file an answer to the allegations contained in this order within 15 days of requesting such a hearing.

Notice is directed to Rule 7(c) of the Commission's rules of practice which provides that any allegation not denied shall be deemed to be admitted.

By the Commission.

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

OCTOBER 28, 1975.

[FR Doc.75-29537 Filed 11-3-75;8:45 am]

[File No. 20-1887A33, etc.; Release No. 33-5637]

DALLAS OIL & GAS, INC.

Temporary Suspension Order; Opportunity for Hearing

In the matter of the following offering sheet(s) filed by Dallas Oil & Gas, Inc.:

(File No. 20-1887A33) on March 6, 1975 covering non-producing working interests in the Dallas Oil & Gas, Inc.—Dallas No. 32-Allan Pickus.

(File No. 20-1887A34) on March 13, 1975 covering non-producing working interests in the Dallas Oil & Gas, Inc.—Dallas No. 40-Schroeder.

(File No. 20-1887A35) on March 21, 1975 covering non-producing working interests in the Dallas Oil & Gas, Inc.—Dallas No. 34-Frank Martin.

(File No. 20-1887A36) on March 25, 1975 covering non-producing working interests in the Dallas Oil & Gas, Inc.—Dallas No. 33-George LeVasser.

(File No. 20-1887A37) on April 15, 1975 covering non-producing working interests in the Dallas Oil & Gas, Inc.—Dallas No. 35-Howard Graves.

(File No. 20-1887A38) on May 1, 1975 covering non-producing working interests in the Dallas Oil & Gas, Inc.—Dallas No. 36-Arthur H. Lamborn.

(File No. 20-1887A39) on May 5, 1975 covering non-producing working interests in the Dallas Oil & Gas, Inc.—Dallas No. 37-Breck Harris.

(File No. 20-1887A40) on May 29, 1975 covering non-producing working interests in the Dallas Oil & Gas, Inc.—Dallas No. 38-Sandy I., C. C. Boles Lease.

(File No. 20-1887A41) on June 5, 1975 covering non-producing working interests in the Dallas Oil & Gas, Inc.—Dallas No. 39-Debbie; Frank Martin Lease.

(File No. 20-1887A42) on June 12, 1975 covering non-producing working interests in the Dallas Oil & Gas, Inc.—Dallas No. 41-Bob Wayne, C. C. Boles Lease.

(File No. 20-1887A43) on June 13, 1975 covering non-producing working interests in the Dallas Oil & Gas, Inc.—Dallas No. 42-Jerry Phillips, C. C. Boles Lease.

(File No. 20-1887A44) on June 27, 1975 covering non-producing working interests in the Dallas Oil & Gas, Inc.—Dallas No. 50-Michelle, Clifford John & Sonona Gail Leech Teinert, Donald L. & Eliz. Koch Lease.

(File No. 20-1887A45) on August 18, 1975 covering non-producing working interests in the Dallas Oil & Gas, Inc.—Dallas No. 34A-Tasca G. Johnson Heirs Lease.

(File No. 20-1887A46) on August 27, 1975 covering non-producing working interests in the Dallas Oil & Gas, Inc.—Dallas No. 43-Darwin E. Peterson, Johnson Heirs.

(File No. 20-1887A47) on September 15, 1975 covering non-producing working interests in the Dallas Oil & Gas, Inc.—Dallas No. 44-C. B. Long & J. H. Johnson Heirs.

Dallas Oil & Gas, Inc. having filed the above offering sheets with the Securities

and Exchange Commission pursuant to Regulation B of the general rules and regulations under the Securities Act of 1933, as amended, for the purpose of obtaining an exemption from registration with respect to a proposed public offering of securities as specified in said offering sheet; and

The Commission having reason to believe, after filing of the offering sheets that:

1. No exemption is available for this offering under Regulation B according to Rule 306(a)(2) (17 CFR 230.306(a)(2)) because Dallas Oil & Gas, Inc., and Ray Griffin, president of Dallas Oil & Gas, Inc. were restrained and enjoined permanently on February 14, 1975, by the Supreme Court of the State of New York, in and for the County of New York, from offering or selling securities within and from the State of New York, including securities in the form of working interests in oil leases, without complying with Article 23-A of the General Business Law; and further were restrained and enjoined from violating the provisions of Article 23-A of the General Business Law of the State of New York.

2. No exemption is available for this offering under Regulation B because the offering sheet used failed to comply with Rules 330(a) and 330(b) of Regulation B (17 CFR 230.330(a) and (b)) by failing to disclose that on February 14, 1975, Dallas Oil & Gas, Inc. and Ray Griffin, president of Dallas Oil & Gas, Inc., were restrained and enjoined permanently by the Supreme Court of the State of New York, in and for the County of New York, from offering or selling securities within and from the State of New York, including securities in the form of working interests in oil leases, without complying with Article 23-A of the General Business Law; and further were restrained and enjoined from violating the provisions of Article 23-A of the General Business Law of the State of New York.

It is ordered, Pursuant to Rule 334(a) of the general rules and regulations promulgated by the Commission under the Securities Act of 1933, as amended, that the exemption available pursuant to Regulation B under section 3(b) of said Act with respect to said offering sheet be, and hereby is, temporarily suspended pending a final hearing thereon with respect to the objections hereinbefore enumerated.

It is further ordered, That each person, on whose behalf said offering sheet was filed, be and hereby is, given notice that each such person is entitled to a hearing before the Commission, or an officer or officers of, and designated by, the Commission, for the purpose of determining such matters; that upon receipt of a written request from such a person within 30 days after the date of this order from the Commission will, for the purpose of determining such matters, set the matter for hearing at a place to be designated by the Commission, within 30 days after receipt of such request; and that notice of the time and place of such hearing will thereupon be promptly given by the Commission.

Notice is directed to Rule 336(b) which provides that if no hearing is requested and none is ordered by the Commission, the order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission.

It is further ordered, Pursuant to Rule 7 of the Commission's rules of practice, that if such a person does request a hearing pursuant to Rule 336 of Regulation B that such person shall file an answer to the allegations contained in this order within 15 days of requesting such a hearing.

Notice is directed to Rule 7(c) of the Commission's rules of practice which provides that any allegation not denied shall be deemed to be admitted.

By the Commission.

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

OCTOBER 28, 1975.

[FR Doc.75-29536 Filed 11-3-75;8:45 am]

[811-2384]

DELTA CAPITAL CORP.

Proposal To Terminate Registration

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940 ("Act") to declare by order upon its own motion that Delta Capital Corporation, c/o Noah E. Hurley, 312 Ellison Road, Sommerset, New Jersey 08873 ("Delta"), registered under the Act as an open-end, diversified management investment company has ceased to be an investment company as defined in the Act.

Materials in the Commission's records indicate that Delta was organized as a Delaware corporation on February 21, 1973. Delta filed a Notification of Registration on Form N-8A on June 11, 1973 and a Registration Statement on Form N-8B on July 9, 1973.

Materials in the Commission's records indicate that none of Delta's securities have ever been offered or sold to the public and that Delta never became an operating investment company. Materials in the Commission's records also indicate that Delta has been dissolved as a corporation by the State of Delaware under the laws of which it was organized.

Section 8(f) of the Act provides, in pertinent part, that when the Commission on its own motion, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 24, 1975 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Delta at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

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

[FR Doc.75-29534 Filed 11-3-75;8:45 am]

[File No. 500-1]

ROYAL PROPERTIES INC.

Suspension of Trading

OCTOBER 29, 1975.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Royal Properties Incorporated being trade otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from October 30, 1975 through November 8, 1975.

By the Commission.

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

[FR Doc.75-29535 Filed 11-3-75;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 30—Rev. 15; Amdt. 4]

ASSISTANT BRANCH MANAGER

Delegation of Authority

Correction

In FR Doc. 75-28193 appearing on page 49159 in the FEDERAL REGISTER, Tuesday, October 21, 1975, the portion of the Table appearing on page 29160, captioned PART II, entries numbered "1." and "2." should be changed to read as follows:

PART II.—*Disaster program*

* * * * * * *

SECTION A—DISASTER LOAN AUTHORITY

1. *Direct and immediate participation 7(b)(1) physical disaster loans (SBAct).*
a. * * *
(1) *Home loans:* * * *
(i) Assistant branch manager for F. & I., Biloxi branch office only
(2) *Business loans:* * * *
(i) Assistant branch manager for F. & I., Biloxi branch office only $500,000
2. *Guaranteed Physical Disaster Loans 7(b)(1) (SBAct).* * * *

	Home loans	*Business loans*
(i) Assistant branch manager for F. & I., Biloxi branch office only	100,000	$500,000
3. *Direct and immediate participation economic injury disaster loans (SBAct).* * * *		
(i) Assistant branch manager for F. & I., Biloxi branch office only		300,000
4. *Guaranteed economic injury disaster loans (SBAct).* * * *		
(i) Assistant branch manager for F. & I., Biloxi branch office only		900,000
5. *Processing representative.* * * *		
(i) Assistant branch manager for F. & I., Biloxi branch office only		

* * * * * * *

BOSTON DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Boston District Advisory Council will hold a public meeting at 11 a.m., Wednesday, December 3, 1975, at the Sheraton Tara Motor Inn in Framingham, Massachusetts, to discuss such business as may be presented by members, staff of the Small Business Administration, and others attending.

For further information, call or write Richard F. Tomeo, 150 Causeway Street, Boston, Massachusetts 02114, (617) 223-4074.

Dated: October 28, 1975.

ANTHONY S. STASIO,
Chief Counsel for Advocacy,
Small Business Administration.

[FR Doc.75-29560 Filed 11-3-75;8:45 am]

CLEVELAND DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Cleveland District Advisory Council will hold a public meeting at 9 a.m., Thursday, November 20, 1975, at the Holiday Inn Lakeside, 1111 East 12th Street, Cleveland, Ohio, to discuss such business as may be presented by members, staff of the Small Business Administration, and others attending.

For further information, call or write S. C. Hemming, Federal Office Building, 1240 East Ninth Street, Cleveland, Ohio 44199, (216) 522-4182.

Dated: October 28, 1975.

ANTHONY S. STASIO,
Chief Counsel for Advocacy,
Small Business Administration.

[FR Doc.75-29561 Filed 11-3-75;8:45 am]

SAN FRANCISCO DISTRICT ADVISORY COUNCIL

Public Meeting

The San Francisco District Advisory Council will hold a public meeting at the Federal Building, Fresno, California, at 10 a.m., Monday, November 24, 1975, to discuss such business as may be presented by members, staff of the Small Business Administration, and others attending.

For further information, call or write Gus Anselmo, 450 Golden Gate Avenue, Box 36044, San Francisco, California 94102, (415) 556-7490.

Dated: October 28, 1975.

ANTHONY S. STASIO,
Chief Counsel for Advocacy,
Small Business Administration.

[FR Doc.75-29562 Filed 11-3-75;8:45 am]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

KHMER REPUBLIC AND VIETNAM (SOUTH)

Notice of Intention To Terminate Designations of Certain Countries as Beneficiary Developing Countries for Purposes of the Generalized System of Preferences

Notice is hereby given on behalf of the President of his intention to terminate the status of the Khmer Republic and Vietnam (South) as beneficiary developing countries for purposes of the Generalized System of Preferences under Title V of the Trade Act of 1974 (19 U.S.C. 2461-2465), and to issue an Executive order amending Executive Order 11844 of March 24, 1975 by deleting from the list of beneficiary developing countries designated therein: "Khmer Republic" and "Vietnam (South)". The House of Representatives and the Senate have been notified of this intention.

Section 504(b) of the Trade Act provides that the President shall "withdraw, or suspend the designation of any country as a beneficiary developing country if, after such designation, he determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under section 502(b)." It has been determined that the Khmer Republic and Vietnam (South) no longer meet the eligibility criteria set forth in section 502(b) of the Trade Act, particularly section 502(b)(1), which denies eligibility "if such country is a communist country, unless (A) the products of such country receive nondiscriminatory treatment, (B) such country is a contracting party to the general agreement on tariffs and trade and a member of the international monetary fund, and (C) such country is not dominated or controlled by international communism."

An additional public announcement of the contents of this notice will be made by my office, in view of the fact that the United States does not maintain diplomatic relations or other communications with the Khmer Republic and Vietnam (South).

FREDERICK B. DENT,
Ambassador.

[FR Doc.75-29758 Filed 11-3-75;8:45 am]

VETERANS ADMINISTRATION

SPECIAL MEDICAL ADVISORY GROUP

Meeting

The Veterans Administration gives notice pursuant to Pub. L. 92-463 that a meeting of the Special Medical Advisory Group, authorized by 38 U.S.C. 4112(a), will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, D.C., on November 24 and 25, 1975. The purpose of the Special Medical Advisory Group is to advise the Administrator and the Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery. At the forthcoming meeting, committee members will review and discuss various aspects of the Veterans Administration's health care system, including programs of patient care, medical and prosthetics research, and health manpower education and training.

The general session will convene at 9 a.m. on November 24, and break into subcommittee meetings following the noon hour. The November 25 session will commence at 8:30 a.m., and will also be open to the public (up to seating capacity of the room) until 11 a.m. Due to space limitations, it will be necessary for those wishing to attend to contact Mr. Robert E. Lindsey, Committee Management Officer for the Special Medical Advisory Group, Room 808 Veterans Administration Central Office, prior to 4:30 p.m., November 20, 1975. (Phone 202-389-2588)

Commencing at 11 a.m., November 25 and until adjournment, the meeting will be closed for a report and recommendations of the Subcommittee on Academic Affairs, followed by an executive session of the Special Medical Advisory Group. The Subcommittee reviews grant applications and makes recommendations essential in the decision-making role of the agency. The closed portion of the meeting involve: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of grant applications, and similar documents which are exempt from disclosure under the intragency memoranda exemption (exemption (5)) to section 552(b) of title 5, United States Code. The portion of the meeting which neces-

sitates examination of these documents will be closed to prevent inadvertent disclosure of these exempt records.

Dated: October 29, 1975.

[SEAL] R. L. ROUDEBUSH,
Administrator.

[FR Doc.75-29568 Filed 11-3-75;8:45 am]

DEPARTMENT OF LABOR

Bureau of Labor Statistics

BUSINESS RESEARCH ADVISORY COUNCIL'S COMMITTEE ON CONSUMER AND WHOLESALE PRICES

Meeting

The BRAC Committee on Consumer and Wholesale Prices will meet at 9:30 a.m., December 3, 1975, at the General Accounting Office Building, 441 G Street, NW., Room 2106, Washington, D.C. The agenda for the meeting is as follows:

1. Review of Alternative Methods of Treating Owner-Occupied Housing in the CPI Revision.
2. Other Business.

This meeting is open to the public. It is suggested that persons planning to attend this meeting as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on (Area Code 202) 523-1559.

Signed at Washington, D.C., this 30th day of October 1975.

JULIUS SHISKIN,
Commissioner of Labor Statistics.

[FR Doc.75-29575 Filed 11-3-75;8:45 am]

Occupational Safety and Health Administration

[Dockets SCP 7, 8]

STANDARDS COMPLETION PROJECT

Availability of Draft Technical Standards

On March 18, 1974, the Assistant Secretary of Labor for Occupational Safety and Health announced the joint OSHA/NIOSH Standards Completion Project. The purpose of the project is to issue completed standards for all of the toxic materials listed in Tables Z-1, Z-2, and Z-3 of 29 CFR 1910.1000 (formerly Tables G-1, G-2, and G-3 of 29 CFR 1910.93), with the exception of some substances which are or will be the subjects of NIOSH Criteria Documents. These exceptions will be the subject of separate rulemaking proceedings, outside of the Standards Completion Project.

Section 1910.1000 lists exposure limits for certain hazardous or toxic substances. The new standards will establish requirements for monitoring employee exposure, medical surveillance, methods of compliance, handling and use of each substance, employee training, recordkeeping, sanitation, and housekeeping, among other things. In addition, the proposals are also designed to enable employers to better understand and comply with existing OSHA standards. The exposure limits listed in § 1910.1000 are not at issue in the proposals, and no changes to these limits will be proposed or made in the standards issued as part of the Standards Completion Project.

Drafts of the technical content of proposed standards for the following substances, designated Set G, Standards Completion Project, have been prepared:

butadiene
dioxane
heptane
methylcyclohexane
naphtha (coaltar)
octane
pentane
petroleum distillates (naphtha)
propylene dichloride
turpentine

Also prepared are drafts of the technical content of proposed standards for the group of substance designated Set H. These substances are:

Benzyl Chloride
Bromoform
Chlorobromomethane
1,2-Dichloroethylene
Methyl Iodide
Ethyl Bromide
Difluorodibromomethane
Hexachloronaphthalene

These draft technical standards reflect only the technical intent of NIOSH and OSHA and do not necessarily contain the specific language which will appear in the proposed standards. Copies of the draft technical standards on the above listed substances are available for inspection or for purchase, at the standard copying fee, at the Occupational Safety and Health Administration, U.S. Department of Labor, Room N3620, 200 Constitution Avenue, NW., Washington, D.C. 20210. Copies are also available at any of the following OSHA Regional and Area Offices:

REGIONAL OFFICES

U.S. Department of Labor, Occupational Safety and Health Administration, 18 Oliver Street, Boston, Massachusetts 02110.

U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza), Room 3445, New York, New York 10036.

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building—Suite 15220, 3535 Market Street, Philadelphia, Pennsylvania 19104.

U.S. Department of Labor, Occupational Safety and Health Administration, 1375 Peachtree Street, NE., Suite 587 Atlanta, Georgia 30309.

U.S. Department of Labor, Occupational Safety and Health Administration, 230 South Dearborn Street, 32nd Floor, Room 3259, Chicago, Illinois 60604.

U.S. Department of Labor, Occupational Safety and Health Administration, 555 Griffin Square Building, Room 602, Griffin at Young, Dallas, Texas 75202.

U.S. Department of Labor, Occupational Safety and Health Administration, 911 Walnut Street, Room 3000, Kansas City, Missouri 64106.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building, Room 15010, 1961 Stout Street, Denver, Colorado 80202.

U.S. Department of Labor, Occupational Safety and Health Administration, 9470 Federal Building, 450 Golden Gate Avenue, Box 36017, San Francisco, California 94102.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 6048, 900 First Avenue, Seattle, Washington 98174.

AREA OFFICES

U.S. Department of Labor, Occupational Safety and Health Administration, Custom House Building, Room 703, State Street, Boston, Massachusetts 02109.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building, Room 426, 55 Pleasant Street, Concord, New Hampshire 03301.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building, Room 617B, 450 Main Street, Hartford, Connecticut 06103.

U.S. Department of Labor, Occupational Safety and Health Administration, U.S. Post Office, and Courthouse Building, 436 Dwight Street, Room 501, Springfield, Massachusetts 01103.

U.S. Department of Labor, Occupational Safety and Health Administration, 90 Church Street, Room 1405, New York, New York 10007.

U.S. Department of Labor, Occupational Safety and Health Administration, Bell Mead GSA Depot Building T3, Belle Mead, New Jersey 08502.

U.S. Department of Labor, Occupational Safety and Health Administration, 519 Federal Street, Room 408, Camden, New Jersey 08101.

U.S. Department of Labor, Occupational Safety and Health Administration, Picatinney Arsenal Building 171, Dover, New Jersey 07801.

U.S. Department of Labor, Occupational Safety and Health Administration, Teterboro Airport Prof. Building, 377 Route 17, Room 206, Hasbrouck Hts., New Jersey 07604.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, 970 Broad Street, Room 1435C, Newark, New Jersey 07102.

U.S. Department of Labor, Occupational Safety and Health Administration, Clinton Avenue and N. Pearl Street, Room 132, Albany, New York 12207.

U.S. Department of Labor, Occupational Safety and Health Administration, 111 W. Huron Street, Room 1002, Buffalo, New York 14202.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 203, Midtown Plaza, 700 East Water Street, Syracuse, New York 13210.

U.S. Department of Labor, Occupational Safety and Health Administration, 370 Old Country Road, Garden City, Long Island, New York 11530.

U.S. Department of Labor, Occupational Safety and Health Administration, Condominium San Alberto Building, 605 Condado Avenue, Room 328, Santurce, Puerto Rico 00907.

U.S. Department of Labor, Occupational Safety and Health Administration, William J. Green, Jr. Federal Building, 600 Arch Street, Room 4456, Philadelphia, Pennsylvania 19106.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building, Room 1110-A, 31 Hopkins Plaza, Charles Center, Baltimore, Maryland 21201.

U.S. Department of Labor, Occupational Safety and Health Administration, Room LL2, 400 First Street, NW., Washington, D.C. 20210.

U.S. Department of Labor, Occupational Safety and Health Administration, Charleston National Plaza, Suite 1726, 700 Virginia Street, Charleston, West Virginia 25301.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 802, Jonnet Building, 4099 William Penn Highway, Monroeville, Pennsylvania 15146.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building, Room 8015, 400 N. 8th Street, P.O. Box 10186, Richmond, Virginia 23240.

U.S. Department of Labor, Occupational Safety and Health Administration, Building 10, Suite 33, La Vista Perimeter Park, Tucker, Georgia 30084.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 613A, 310 New Bern Avenue, Raleigh, North Carolina 27601.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 204, Bridge Building, 3200 E. Oakland Park Boulevard, Fort Lauderdale, Florida 33308.

U.S. Department of Labor, Occupational Safety and Health Administration, 1600 Hayes Street, Suite 302, Nashville, Tennessee 37203.

U.S. Department of Labor, Occupational Safety and Health Administration, 2809 Art Museum Drive, Art Museum Plaza, Suite 4, Jacksonville, Florida 32207.

U.S. Department of Labor, Occupational Safety and Health Administration, Todd Mall, 2047 Canyon Road, Birmingham, Alabama 35216.

U.S. Department of Labor, Occupational Safety and Health Administration, Suite 554-E—600 Federal Place, Louisville, Kentucky 40202.

U.S. Department of Labor, Occupational Safety and Health Administration, Enterprise Building—Suite 204, 6605 Abercorn Street, Savannah, Georgia 31405.

U.S. Department of Labor, Occupational Safety and Health Administration, Commerce Building—Room 600, 118 North Royal Street, Mobile, Alabama 36602.

U.S. Department of Labor, Occupational Safety and Health Administration, Riverside Plaza Shopping Center, 2720 Riverside Drive, Macon, Georgia 31204.

U.S. Department of Labor, Occupational Safety and Health Administration, 1710 Gervais Street—Room 205, Columbia, South Carolina 29201.

U.S. Department of Labor, Occupational Safety and Health Administration, 650 Cleveland Street, Room 44, Clearwater, Florida 33513.

U.S. Department of Labor, Occupational Safety and Health Administration, 230 South Dearborn Street, 10th Floor, Chicago, Illinois 60604.

U.S. Department of Labor, Occupational Safety and Health Administration, 847 Federal Office Building, 1240 East Ninth Street, Cleveland, Ohio 44199.

U.S. Department of Labor, Occupational Safety and Health Administration, 360 S. Third Street, Room 109, Columbus, Ohio 43215.

U.S. Department of Labor, Occupational Safety and Health Administration, Michigan Theatre Building, Room 626, 200 Bagley Avenue, Detroit, Michigan 48226.

U.S. Department of Labor, Occupational Safety and Health Administration 110 South Fourth Street, Room 437, Minneapolis, Minnesota 55401.

U.S. Department of Labor, Occupational Safety and Health Administration, Clark Building, Room 400, 633 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.

U.S. Department of Labor, Occupational Safety and Health Administration, U.S. Post Office and Courthouse, Room 423, 46 East Ohio Street, Indianapolis, Indiana 46202.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 4028, Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 734, Federal Office Building, 234 N. Summit Street, Toledo, Ohio 43604.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 2118, 2320 La Branch Street, Houston, Texas 77004.

U.S. Department of Labor, Occupational Safety and Health Administration, Adolphus Tower, Suite 1820, 1412 Main Street, Dallas, Texas 75202.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 421, Federal Building, 1205 Texas Avenue, Lubbock, Texas 70401.

U.S. Department of Labor, Occupational Safety and Health Administration, 546 Carondelet Street, Room 202, New Orleans Louisiana 70130.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 412 Petroleum Building, 420 South Boulder, Tulsa, Oklahoma 74103.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 303, Donaghey Building, 103 East 7th Street, Little Rock, Arkansas 72201.

U.S. Department of Labor, Occupational Safety and Health Administration, 1015 Jackson Keller Road, Room 215, San Antonio, Texas 78213.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 3114, Federal Building, 500 Gold Avenue, S.W., P.O. Box 1428, Albuquerque, New Mexico 87103.

U.S. Department of Labor, Occupational Safety and Health Administration, 1627 Main Street, Room 1100, Kansas City, Missouri 64108.

U.S. Department of Labor, Occupational Safety and Health Administration, 210 North 12th Boulevard, Room 554, St. Louis, Missouri 63101.

U.S. Department of Labor, Occupational Safety and Health Administration, Petroleum Building, 221 South Broadway Street, Suite 312, Wichita, Kansas 67202.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 643, 210 Walnut Street, Des Moines, Iowa 50309.

U.S. Department of Labor, Occupational Safety and Health Administration, City National Bank Building, Harney and 16th Street, 803, Omaha, Nebraska 68102.

U.S. Department of Labor, Occupational Safety and Health Administration, 113 West 6th Street, North Platte, Nebraska 69101.

U.S. Department of Labor, Occupational Safety and Health Administration, 8527 W. Colfax Avenue, Lakewood, Colorado 80215.

U.S. Department of Labor, Occupational Safety and Health Administration, Suite 525, Petroleum Building, 2812 1st Avenue, North Billings, Montana 59101.

U.S. Department of Labor, Occupational Safety and Health Administration, Russell Building, Highway 83 North, Bismarck, North Dakota 58501.

U.S. Department of Labor, Occupational Safety and Health Administration, Court House Plaza Building, Room 408, 300 North Dakota Avenue, Sioux Falls, South Dakota 57102.

U.S. Department of Labor, Occupational Safety and Health Administration, Executive Building, Suite 309, 455 East 4th Street, South, Salt Lake City, Utah 84111.

U.S. Department of Labor, Occupational Safety and Health Administration, 100 McAllister Street, Room 1706, San Francisco, California 94102.

U.S. Department of Labor, Occupational Safety and Health Administration, Suite 318, Amerco Towers, 2721 North Central Avenue, Phoenix, Arizona 85004.

U.S. Department of Labor, Occupational Safety and Health Administration, 333 Queen Street, Suite 505, Honolulu, Hawaii 96813.

U.S. Department of Labor, Occupational Safety and Health Administration, 1100 E. William Street, Suite 222, Carson City, Nevada 89701.

U.S. Department of Labor, Occupational Safety and Health Administration, Hartwell Building, Room 401, 19 Pine Avenue, Long Beach, California 90802.

U.S. Department of Labor, Occupational Safety and Health Administration, 121—107th Street, NE., Bellevue, Washington 98004.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building, Room 227, 605 West 4th Avenue, Anchorage, Alaska 99501.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 526, Pittock Block, 921 SW. Washington Street, Portland, Oregon 97205.

U.S. Department of Labor, Occupational Safety and Health Administration, 1319 W. Idaho Street, Boise, Idaho 83702.

The draft technical standards will also be available for inspection and copying at the national and regional offices of the U.S. Department of Health, Education, and Welfare, National Institute for Occupational Safety and Health, at the following addresses:

U.S. Department of HEW, National Institute for Occupational Safety and Health, Room 10-A22, 5600 Fishers Lane, Rockville, Maryland.

U.S. Department of HEW, National Institute for Occupational Safety and Health, 1114 Commerce Street, Room 1612, Dallas, Texas 75202.

U.S. Department of HEW, National Institute for Occupational Safety and Health, P.O. Box 13716, Philadelphia, Pennsylvania 19108.

U.S. Department of HEW, National Institute for Occupational, Safety and Health, 9017 Federal Building, 19th and Stout Streets, Denver, Colorado 80202.

U.S. Department of HEW, National Institute for Occupational Safety and Health, 50 Seventh Street, N.E., Atlanta, Georgia 30323.

U.S. Department of HEW, National Institute for Occupational Safety and Health, Arcade Building, 1321 Second Street, Seattle, Washington 98101.

U.S. Department of HEW, National Institute for Occupational Safety and Health, John F. Kennedy Federal Building, Government Center, Boston, Massachusetts 02203.

U.S. Department of HEW, National Institute for Occupational Safety and Health, 26 Federal Plaza, New York, New York 10007.

U.S. Department of HEW, National Institute for Occupational Safety and Health, 601 East 12th Street, Kansas City, Missouri 64106.

U.S. Department of HEW, National Institute for Occupational Safety and Health, 228 Federal Office Building, 50 Fulton Street, San Francisco, California 94102.

U.S. Department of HEW, National Institute for Occupational Safety and Health, 300 South Wacker Drive, Chicago, Illinois 60607.

It is anticipated that standards for the above listed substances will be proposed by OSHA in the near future. At that time, a formal comment period will be provided for the proposals. However, interested persons wishing to submit written data, views, and arguments on the draft technical standards at this time may submit them to the Docket Officer, Standards Completion Project, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3620, 200 Constitution Avenue NW., Washington, D.C. 20210. Comments on Set G should be directed to Docket SCP–7. Those for Set H should be directed to Docket SCP–8. The communications will be available for public inspection and copying at the above location. Information submitted in response to the Notice of Intent to Prepare an Environmental Impact Statement, published in the FEDERAL REGISTER on September 20, 1974 (39 FR 33943), need not be resubmitted.

Signed at Washington, D.C., this 30th day of October 1975.

JOHN T. DUNLOP,
Secretary of Labor.

[FR Doc.75-29576 Filed 11-3-75;8:45 am]

Office of Employee Benefit Security

ANNUAL RETURN/REPORT FORMS

Extension of Comment Period

In the FEDERAL REGISTER of September 30, 1975, (40 FR 45134) the Department of Labor and the Department of the Treasury, Internal Revenue Service, published the proposed annual return/report forms to be filed by a plan administrator of an employee pension or welfare benfit plan or an employer as required by section 104 of the Employee Retirement Income Security Act of 1974 and section 6058(a) of the Internal Revenue Code of 1954. As a result of the large number of comments received on the forms, including numerous requests for an extension of the comment period, and further consideration of some of the issues raised in the forms and instructions, the period for commenting on the proposed forms is hereby extended. The notice accompanying the publication of the proposed forms provided for a comment period closing on October 30, 1975; however, this period is now extended until November 19, 1975.

In addition to recommendations regarding the proposed forms and instructions, the Department of Labor is soliciting comments on an additional issue. In light of further consideration of the reporting requirements for small plans, the Department of Labor is considering requiring that all plans regardless of size (contrary to the instructions printed with the proposed forms), engage an independent qualified public accountant to conduct an audit of the plan's books and records and prepare an opinion as required under section 103(a)(3)(A) of the Act.

Copies of the FEDERAL REGISTER issue containing the proposed forms may be obtained by writing or calling Distribution Manager A:FM:P, Room 1237, Internal Revenue, Building, 1111 Constitution Avenue NW., Washington, D.C. 20224, Telephone (202) 964–3132, or Public Information Office, Room N5641, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20216, Telephone (202) 523–7408.

Three copies of any comments or recommendations should be sent to the Chairman, Tax Forms Coordinating Committee, Room 1515, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. 20224.

Issued in Washington, D.C., this 31st day of October 1975.

JAMES D. HUTCHINSON,
Administrator for Pension and Welfare Benefit Programs.

ALVIN D. LURIE,
Assistant Commissioner (Employee Plans and Exempt Organizations), Internal Revenue Service.

[FR Doc.75-29671 Filed 11-3-75;8:45 am]

Office of the Secretary

[TA-W-119]

ANACONDA CO., HASTINGS-ON-HUDSON, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA–W–119: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 25, 1975 in response to a worker petition received on August 25, 1975 which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of workers formerly producing copper wire and cable at the Hastings-on-Hudson, New York plant of the Wire and Cable Division, Anaconda Company, New York, New York.

The notice of investigation was published in the FEDERAL REGISTER (40 FR 40887) on September 4, 1975. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Anaconda Company, its customers, U.S. International Trade Commission, the Department of Commerce, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers declined 36.8 percent in the first half of 1975 compared to the like period in 1974. Employment of production workers ceased in June 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Production at the Hastings-on-Hudson plant declined 38.5 percent in the first half of 1975 compared to the first half of 1974. Sales declined 64.4 percent in the first half of 1975 compared to the first half of 1974. Production at the plant ceased in June 1975.

INCREASED IMPORTS CONTRIBUTED IMPORTANTLY

Imports of insulated power wire and cable like or directly competitive with that produced at the Hastings-on-Hudson plant have decreased, relative to domestic consumption and production, from 15.0 percent and 17.2 percent respectively in 1970 to 4.3 percent and 4.4 percent respectively in 1974. The ratios of imports of all insulated wire and cable to domestic production and consumption declined from less than 3 percent in 1970 to less than 2 percent in 1974.

Mayor customers of the Hastings-on-Hudson plant, primarily electric utility companies, reduced purchases of the major product of that plant, paper-insulated power cable, due to adverse domestic economic conditions. No customers transferred purchases of copper wire and cable from domestic manufacturers to foreign producers.

When sales of the major products manufactured at Hastings-on-Hudson declined due to adverse domestic economic conditions, Anaconda Company closed that plant, ceased production of major product lines of power cable, and transferred remaining product lines to other domestic facilities.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly

competitive with copper wire and cable produced at the Hastings-on-Hudson plant of the Wire and Cable Division, Anaconda Company did not contribute importantly to the total or partial separations of the workers at such plant.

Signed at Washington, D.C., this 24th day of October 1975.

HERBERT N. BLACKMAN,
Associate Deputy Under Secretary for Trade and Adjustment Policy.

[FR Doc.75-29577 Filed 11-3-75;8:45 am]

[TA-W-123]

CLAROSTAT MANUFACTURING CO., ORANGE, VA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-123; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 25, 1975 in response to a worker petition received on that date which was filed by the International Union of Electrical Radio and Machine Workers on behalf of workers formerly producing fixed and variable resistors at the Orange, Virginia plant of the Clarostat Manufacturing Company of Dover, New Hampshire.

The notice of investigation was published in the FEDERAL REGISTER (40 FR 40887) on September 4, 1975. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Clarostat Manufacturing Company, its customers, the Department of Comerce, U.S. International Trade Commission, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated.

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

A significant number or proportion of the workers at the Orange, Virginia plant of Clarostat Manufacturing Company became totally or partially separated in the fourth quarter of 1974 and in the first half of 1975. Employment declined 41 percent in the fourth quarter of 1974 compared to the same period in 1973. Employment declined 51 percent in the first quarter of 1975 compared to the same period in 1974. The plant closed in April 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Production of fixed and variable resistors at the Orange, Virginia plant declined 13 percent and 61 percent, respectively from 1973 to 1974. Production of fixed and variable resistors declined 37 percent and 71 percent, respectively in the first quarter of 1975 compared to the first quarter of 1974.

INCREASED IMPORTS CONTRIBUTED IMPORTANTLY

Imports of articles like or directly competitive with those produced at the Clarostat Manufacturing Company's Orange, Virginia plant increased in recent years. In 1975 the Clarostat Manufacturing Company began importing electrical products like those made at Clarostat's Orange, Virginia facility.

Imports of fixed and variable wirewound resistors increased from 9.0 million units and 18.5 million units respectively, in 1973 to 18.0 million units and 47.0 million units, respectively in 1974.

The evidence developed in the Department's investigation indicates that the separation of workers engaged in the production of fixed and variable wirewound resistors was caused by the increase of competitive imports and by the transfer of production from the Orange, Virginia plant to an offshore facility. The company closed its Orange, Virginia plant because it could not compete at a profitable level with imports. The company transferred its production of fixed and variable wirewound resistors offshore to reduce production costs and remain price-competitive with imports. Offshore production began in September 1974. Company imports were received beginning in April 1975 and increased through September 1975.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with fix and variable wirewound resistors contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All hourly, piecework, and salaried workers of the Clarostat Manufacturing Company's Orange, Virginia plant who became totally or partially separated from employment on or after October 3, 1974 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 24th day of October 1975.

HERBERT N. BLACKMAN,
Associate Deputy Under Secretary for Trade and Adjustment Policy.

[FR Doc.75-29579 Filed 11-3-75;8:45 am]

[TA-W-122]

KAY-TOWNES, INC., ROME, GA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-122: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 25, 1975 in response to a worker petition received on August 25, 1975 which was filed by the International Union of Radio, Electrical and Machine Workers on behalf of workers formerly producing antennas and antenna related components at the Romefi Georgia plant of Kay-Townes, Incorporated.

The notice of investigation was published in the FEDERAL REGISTER (40 FR 40889) on September 4, 1975. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Kay-Townes, Incorporated, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers declined 56 percent in the first half of 1975 compared to the like period in 1974.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales at the Rome plant of Kay-Townes, Incorporated declined 33 percent in the first half of 1975 compared to the first half of 1974. Production declined 57 percent in the first half of 1975 compared to the first half of 1974.

INCREASED IMPORTS CONTRIBUTED IMPORTANTLY

A survey of domestic antenna producers and Kay-Townes major customers revealed that there are no known imports of antennas like or directly competitive with those produced by Kay-Townes, Inc.

Evidence developed in the Department's investigation indicates that separations at the Kay-Townes plant of workers producing antennas and antenna related components resulted from decreased orders due to depressed economic conditions. Over 90 percent of production at Kay-Townes consists of antennas and antenna related components.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with antennas produced at Kay-Townes, Incorporated did not contribute importantly to the total or partial separations of the workers at such plant.

Signed at Washington, D.C., this 24th day of October 1975.

HERBERT N. BLACKMAN,
Associate Deputy Under Secretary for Trade and Adjustment Policy.

[FR Doc.75-29578 Filed 11-3-75;8:45 am]

[TA-W-118]

JAYSON SHOE MANUFACTURING COMPANY, INC., BIRCH TREE, MO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-118; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 25, 1975 in response to a worker petition received on August 25, 1975 which was filed by workers formally producing infants and children's footwear at the Bitrch Tree, Missouri plant of Jayson Shoe Manufacturing Company, Inc., Clayton, Missouri.

The notice of investigation was published in the FEDERAL REGISTER (40 F.R. 40888) on September 4, 1975. No public hearings was requested and none was held.

In information upon which the determination was made was obtained principally from officials of Jayson Shoe Manufacturing Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers employed by Jayson Shoe declined 14 percent from 1973 to 1974 and declined 35 percent in the first 7 months of 1975 compared to the like period in 1974.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of footwear produced by Jayson Shoe declined 30 percent from 1973 to 1974 and declined 33 percent in the first 7 months of 1975 compared to the like period in 1974.

INCREASED IMPORTS CONTRIBUTED IMPORTANTLY

Imports of articles like or directly competitive with children's and misses' footwear, which represented approximately 90 percent of the firms' production, increased as a ratio to domestic consumption and production from 27.9 percent and 38.7 percent respectively in 1970 to 37.8 percent and 60.7 percent respectively in 1974.

The evidence developed in the Department's investigation indicates that increased import competition contributed importantly to the closing of the Birch Tree plant and the Jayson Shoe Manufacturing Company headquarters in Clayton, Missouri. Since 1972 several major customers reduced their purchases from Jayson Shoe and switched to lower-priced, more popularly styled imported shoes. The company ceased all production at its Birch Tree plant and closed the Clayton office because it could not compete at a profitable level with imports.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with children's and misses' footwear produced at the Birch Tree plant of Jayson Shoe Manufacturing Co., Inc. contributed importantly to the total or partial separation of the workers of that plant and of the company's headquarters staff. In accordance with the provisions of the Act, I make the following certification:

All hourly and piecework workers engaged in employment related to the production of footwear at the Birch Tree, Missouri plant of Jayson Shoe Manufacturing Company, Incorporated who became totally or partially separated from employment on or after October 3, 1974 and all hourly and salaried workers at the Clayton, Missouri headquarters of Jayson Shoe Manufacturing Company's engaged in support activities related to the production of footwear at the Birch Tree plant who became totally or partially separated from employment on or after March 29, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 24th day of October 1975.

HERBERT N. BLACKMAN,
Associate Deputy Under Secretary for Trade and Adjustment Policy.

[FR Doc.75-29580 Filed 11-3-75;8:45 am]

[TA-W-121]

MURATA MANUFACTURING CORP., ROCKMART, GA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-121; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 25, 1975 in response to a worker petition received on August 25, 1975 which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of workers formerly producing ceramic capacitors at the Rockmart, Georgia plant of Murata Manufacturing Corporation.

The notice of investigation was published in the FEDERAL REGISTER (40 FR 40889) on September 4, 1975. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Murata Manufacturing Corporation, its customers, industry analysts, information and publications of the U.S. Department of Commerce, the U.S. International Trade Commission, the Electronics Industry Association, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers declined 13 percent in the last half of 1974 compared to the like period in 1973. The average number of production workers declined 74 percent in the first half of 1975 compared to the like period in 1974.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales at the Rockmart plant of Murata Manufacturing Corporation declined 32 percent by quantity in the fourth quarter of 1974 compared to the third quarter of 1974. Production declined 55 percent by quantity in the first half of 1975 compared to the first half of 1974.

INCREASED IMPORTS CONTRIBUTED IMPORTANTLY

Imports of articles like or directly competitive with those produced at the Rockmart plant increased from 1,021 million units in 1973 to 1,110 million units in 1974. In the context of declining demand for fixed ceramic capacitors that developed in 1974, imports which sold at a substantially lower price than domestic output increased their share of the U.S. market. The ratios of imports to domestic production and consumption increased from 38.6 percent and 28.4 percent, respectively in 1973 to 50.9 percent and 34.5 percent, respectively in 1974.

Company imports in the third quarter of 1974 comprised 51 percent of total Murata capacitor supplies in the United States. In the first and second quarters of 1975 imports increased to 69 percent and 82 percent, respectively of total Murata capacitor supplies in the United States.

The evidence developed by the Department's investigation indicates that the separation of workers engaged in employment related to the production of fixed ceramic capacitors was caused by the increase of competitive imports.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with fixed ceramic capacitors produced at the Rockmart plant contributed importantly to the total or partial separation of the workers of that plant. Section 223(b)(2) of the Trade Act of 1974 provides that a certification of eligibility to apply for worker adjustment assistance may not apply to any worker last separated from the firm or subdivision more than 6 months before April 3, 1975, the effective date of the new program. In accordance with the provisions of the Act, I make the following certification:

All hourly and salaried workers engaged in employment related to the production of fixed ceramic capacitors at the Rockmart, Georgia plant of Murata Manufacturing Corporation who became totally or partially separated from employment on or after October 3, 1974 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 23d day of October 1975.

HERBERT N. BLACKMAN,
Associate Deputy Under Secretary for Trade and Adjustment Policy.

[FR Doc.75-29581 Filed 11-3-75;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 905]

ASSIGNMENT OF HEARINGS

OCTOBER 30, 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-F-12343, National Machinery Haulers, Inc.—Purchase—Larry L. Fenner Transport, Inc. and MC 140504 National Machinery Haulers, Inc., now assigned November 4, 1975 is canceled and the application is dismissed.

MC 113362 Sub 283, Ellsworth Freight Lines, Inc., now assigned November 4, 1975 at New York, New York, is canceled and the application is dismissed.

F.D. 28008, Chicago, Milwaukee, St. Paul & Pacific Railroad Company—Discontinuance of Train Nos. 2118 and 2125—Between Walworth, Wisconsin and Solon Mills, Illinois, now being assigned December 9, 1975 (2 days) at Chicago, Illinois and continued to December 11, 1975 (8:00 P.M. Local Time) at Walworth, Wisconsin; in hearing rooms to be designated later.

MC 110563 Sub 151, Coldway Food Express, Inc.; MC 114273 Sub 231, CRST, Inc.; MC 114284 Sub 65, Fox Smythe Transportation Co., Inc.; MC 117815 Sub 239, Pulley Freight Lines, Inc.; MC 118142 Sub 77, M. Bruenger & Co., Inc.; MC 118178 Sub 22, Bill Meeker; MC 119741 Sub 51, Green Field Transport Company, Inc.; MC 127042 Sub 153, Hagen, Inc.; MC 127304 Sub 12, Clear Water Truck Company, Inc.; MC 134755 Subs 49, 50, 52, Charter Express, Inc.; and MC 136786 Sub 73, Robco Transportation, Inc., now assigned November 3, 1975 at Wichita, Kansas, will be held in *Room 406, Bankruptcy Courtroom, Federal Building, 3rd and Market Streets*, instead of at the *Internal Revenue Service Building, Rooms 118 & 120, South Main St.*

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-29628 Filed 11-3-75;8:45 am]

[Notice 906]

ASSIGNMENT OF HEARINGS

OCTOBER 30, 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

No. AB 26 Sub 4, Southern Railway Company Abandonment Between Williamson and Robert, In Pike Lamar, Upson, Monroe and Crawford Counties, Georgia now being assigned January 15, 1976 (2 days), at Griffin, Ga.; in a hearing room to be later designated; instead of January 15, 1975.

MC-140389 Sub 2, Osborn Transportation, Inc., now assigned January 19, 1976 (1 week), at Atlanta, Ga.; in a hearing room to be later designated; instead of January 19, 1975.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-29629 Filed 11-3-75;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

OCTOBER 30, 1975.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1100.40) and filed on or before November 19, 1975.

FSA No. 43068—*Insulating Material from Fruita, Colorado.* Filed by Western

Trunk Line Committee, Agent, (No. A–2718), for interested rail carriers. Rates on insulating material, viz.: calcium silicante and fibre combined, in carloads, as described in the application, from Fruita, Colorado, to points in Illinois, Indiana, Kentucky, and western trunkline territory.

Grounds for relief—Market competition, short-line distance formula and grouping.

Tariff—Supplement 10 to Western Trunk Line Committee, Agent, tariff W–200–E, I.C.C. No. A–4936. Rates are published to become effective on November 28, 1975.

By the Commission.

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

[FR Doc.75-29630 Filed 11-3-75;8:45 am]

[Notice 108]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

NOVEMBER 4, 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 November 24, 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–75874. By order of October 7, 1975, the Motor Carrier Board approved the transfer to Michael L. Wherley, doing business as Leonard's Moving and Storage, York, Pa., of portion of Certificate No. MC 1540 issued July 27, 1965, to J. D. Leonard, Inc., York, Pa., authorizing the transportation of household goods, between York, Pa., and points within 25 miles thereof, on the one hand, and, on the other, points in Maryland, Delaware, New York, New Jersey, and the District of Columbia; and between York, Pa., and points within 25 miles thereof, other than Harrisburg and Lancaster, Pa., on the one hand, and, on the other, points in Virginia, West Virginia, Ohio, Michigan, Indiana, and Illinois. Christain V. Graff, 407 North Front St., Harrisburg, Pa. 17101, attorney for applicants.

No. MC–FC–75925. By order of October 29, 1975, the Motor Carrier Board approved the transfer to Nathan's Express Co., Inc., Providence, R.I., of Certificate No. MC 93422 (Sub-No. 2) issued May 8, 1952, to Nathan Slobodinsky, Hattie Rice, Executrix, D/B/A Nathan's Express, Providence, R. I., authorizing the transportation of cotton piece goods from Webster, Mass., to Providence, R.I. Leo J. Daily, Nolan & Daily, 70 Main St., Coventry, R.I. 02816, attorney for applicants.

No. MC–FC–76030. By order entered October 20, 1975, the Motor Carrier Board approved the transfer to Thomas Frank Keltner, doing business as Keltner Van and Storage Co., Lancaster, Calif., of the operating rights set forth in Certificate No. MC 135366, issued December 28, 1971, to Charles E. Postle, doing business as Rosamond Van & Storage, Rosamond, Calif., authorizing the transportation of used household goods, between specified points in California, subject to certain restrictions. Thomas F. Keltner, 44952 North Yucca Ave., Lancaster, Calif. 93534, for transferee and Charles Edwin Postle, 2828 Sierra Highway, Rosamond, Calif. 93560, for transferor.

No. MC–FC–76118. By order of October 29, 1975, the Motor Carrier Board approved the transfer to Lou Bole Carpet Carriers, Inc., Brooklyn, N.Y., of the operating rights in Certificate No. MC 138065 (Sub-No. 2) issued August 1, 1975, to Louis Bologna, doing business as Lou Bole Carpet Carriers, Brooklyn, N.Y., authorizing the transportation of floor covering, and materials, supplies, and equipment used in the installation thereof, except commodities in bulk, between New York, N.Y., on the one hand, and, on the other, points in Rockland and Westchester Counties, N.Y., Fairfield County, Conn., and a specified portion of New Jersey. Michael R. Werner, 2 West 45th Street, New York, N.Y. 10036, attorney for applicants.

ROBERT L. OSWALD, *Secretary.*

[FR Doc.75-29627 Filed 11-3-75;8:45 am]

[Notice 124]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 30, 1975.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the I.C.C. Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 200 (Sub-No. 276TA), filed October 20, 1975. Applicant: RISS INTERNATIONAL CORPORATION, 903 Grand Ave., Kansas City, Mo. 64106. Applicant's representative: Rodger J. Walsh, Suite 1200, Temple Bldg., 903 Grand Ave., Kansas City, Mo. 64106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals* (except in bulk), from Buffalo and Geneseo, N.Y., to Crosby, Laredo, and Odessa, Tex.; and from Crosby, Tex., to Buffalo and Geneseo, N.Y., for 150 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lucidol Division, Pennwalt Corporation, 1740 Military Road, Buffalo, N.Y. 14240. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Bldg., 911 Walnut St., Kansas City, Mo. 64106.

No. MC 11727 (Sub-No. 7TA) (Correction), filed July 9, 1975, published in the FEDERAL REGISTER issue of July 25, 1975, and republished as corrected this issue. Applicant: JAMES H. RUSSELL, INC., 3 Rocky Hill Road, Smithfield, R.I. 02917. Applicant's representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, Mass. 02043. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bottles and accessories therefor*, from Cliffwood, N.J., to Merrimack, N.H., and from Cartaret and Jersey City, N.J. to Nashua and Merrimack, N.H., for 180 days. Supporting shipper: Midland Glass Company, Inc., P.O. Box 557, Cliffwood, N.J. 07721. Send protests to: Gerald H. Curry, District Supervisor, 187 Westminister St., Providence, R.I. 02903. The purpose of this republication is to correct the territorial description.

No. MC 87909 (Sub-No. 22TA), filed October 20, 1975. Applicant: ARROW MOTOR FREIGHT LINE, INC., 2707 Territorial Road, St. Paul, Minn. 55114. Applicant's representative: John P. Rhodes, 2125 Commercial St., Waterloo, Iowa 50704. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Gen-*

eral 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, over regular routes between Marshalltown, Iowa, Junctions Iowa Highways 14 and 175, and Eldora, Iowa, serving no intermediate points, from Marshalltown, Iowa over Iowa Highway 14 to junction Iowa Highway 175, thence over Iowa Highway 175 to Eldora, Iowa and return over the same route serving Marshalltown, Iowa in conjunction with carriers existing authorized operations, restricted to transportation of shipments interlined with Takin Bros. Freight Line, Inc., which have originated at or are destined to points outside Iowa, and to shipments originating in Marshalltown, Iowa destined to points outside Iowa presently served by carrier, in direct or interline service. (Purpose of this application is to allow carrier to interchange and originate shipments at Marshalltown, Iowa now exchanged with Takin Bros. Freight Line, Inc., at other points on its existing routes), for 180 days. Supporting shipper: Takin Bros. Freight Line, Inc., P.O. Box 5000, 2125 Commercial St., Waterloo, Iowa 50704. Send protests to: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 107478 (Sub-No. 20TA), filed October 15, 1975. Applicant: OLD DOMINION FREIGHT LINE, P.O. Box 2006, High Point, N.C. 27261. Applicant's representative: Francis W. McInerny, 1000 16th St., NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) Agricultural *machinery and articles* used in the farming and forestry industries, from Tarboro, N.C., to points in North Dakota, South Dakota, Nebaska, Kansas, Oklahoma, Texas, Louisiana, Arkansas, Missouri, Minnesota, Wisconsin, Iowa, Illinois, Michigan, Indiana, Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida, West Virginia, Ohio, Pennsylvania, Maryland, Delaware, New Jersey, New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont, Maine, and the District of Columbia, with no transportation from compensation on return except as otherwise authorized; and (b) *Materials* and *supplies* used in the manufacture of agricultural machinery and articles used in the farming or forestry industries, (except commodities in bulk, in tank vehicles), from points in North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Louisiana, Arkansas, Missouri, Iowa Minnesota, Wisconsin, Illinois, Michigan, Indiana, Kentucky, Tenessee, Mississippi, Alabama, Georgia, Florida, West Virginia, Ohio, Pennsylvania, Maryland, Delaware, New Jersey, New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont, Maine, and the District of Columbia, to Tarboro, N.C. Restriction: Said authority is restricted to the transportation of shipments originating at or destined to the plantsites or storage facilities of the Long Manufacturing Company at Tarboro, N.C., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Long Manufacturing Company, Inc., P.O. Box 1139, Tarboro, N.C. 27886. Send protests to: Archie W. Andrews, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 26896, Raleigh, N.C. 27611.

No. MC 111401 (Sub-No. 453TA), filed October 20, 1975. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Blvd., Enid, Okla. 73701. Applicant's representative: Victor R. Comstock, P.O. Box 632, Enid, Okla. 73701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid caustic* soda, in bulk, from Houston, Tex., to Laredo, Tex., and Brownsville, Tex., for export into Mexico, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: ICC Solvent Chemical Sales Corp., E. M. Vogel, Regional Manager, 3701 Kirby St., 828, Houston, Tex. 77006. Send protests to: Marie Spillars, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Room 240 Old Post Office Bldg., 215 N.W. Third, Oklahoma City, Okla. 73102.

No. MC 112822 (Sub-No. 391TA), filed October 20, 1975. Applicant: BRAY LINES INCORPORATED, P.O. Box 1191, Cushing, Okla. 74023. Applicant's representative: Charles D. Midkiff (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs, cooking oils, animal litter, bleaching, cleaning, laundry and scouring compounds, and related materials and supplies*, when moving in mixed loads (except commodities in bulk), from the plantsite and facilities of The Clorox Company, at or near Houston, Tex., to the plantsites and facilities of The Clorox Company, at or near Atlanta, Ga., Kansas City, Kans., and Tampa, Fla., for 180 days. Supporting shipper: The Clorox Company, Beverly R. Mitchell, Asst. T.M., 7901 Oakport St., Oakland, Calif. 94621. Send protests to: Marie Spillars, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office Bldg., 215 N.W. Third, Oklahoma City, Okla. 73102.

No. MC 114569 (Sub-No. 126TA), filed October 15, 1975. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, Pa. 17072. Applicant's representative: Herbert R. Nurick, P.O. Box 1166, Harrisburg, Pa. 17108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials, supplies, equipment and machinery*, used in the manufacturing, production, distribution or sale of, and moving in mixed loads with, *confectionery, cocoa, chocolate, and products related thereto* (except in bulk), in vehicles equipped with mechanical refrigeration, from Derry Township, Dauphin County, Pa., to Oakdale, Calif., restricted to traffic originating at Derry Township, Dauphin County, Pa., and destined to the facilities of Hershey Foods Corporation, at Oakdale, Calif., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hershey Foods Corporation, 19 E. Chocolate Ave., Hershey, Pa. 17033. Send protests to: Robert P. Amerine, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 278 Federal Bldg., P.O. Box 869, Harrisburg, Pa. 17108.

No. MC 114569 (Sub-No. 127TA), filed October 17, 1975. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, Pa. 17072. Applicant's representative: Stanley C. Geist (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Motorcycles, recreational vehicles and machines, accessories and parts*, and (2) *Equipment, materials and supplies* used in the manufacture, distribution or sale of the commodities named in (1) above (except commodities in bulk), moving in both shipper or carrier-owned trailers, between Lincoln, Nebr., on the one hand, and, on the other, points in Minnesota, Iowa, Missouri, Arkansas, Louisiana, Texas, Oklahoma, Kansas, South Dakota, North Dakota, Wyoming, Colorado, New Mexico, and Arizona, restricted to traffic moving from or to facilities utilized by Kawasaki Motors Corp., U.S.A., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kawasaki Motors Corp., U.S.A., 1062 McGaw Ave., Santa Ana, Calif. 92705. Send protests to: Robert P. Amerine, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 278 Federal Bldg., P.O. Box 869, Harrisburg, Pa. 17108.

No. MC 116063 (Sub-No. 141TA), filed October 20, 1975. Applicant: WESTERN-COMMERCIAL TRANSPORT, INC., 2929 West Fifth St., P.O. Box 270, Fort Worth, Tex. 76101. Applicant's representative: W. H. Cole (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vegetable oils*, in bulk, in tank vehicles, from the facilities of Wilson & Co., Inc., at Oklahoma City, Okla., to Cincinnati, Ohio, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Wilson & Co., Inc., 4545 North Lincoln Blvd., Oklahoma City, Okla. 73105. Send protests to: H. C. Morrison, Sr., District Supervisor, Room 9A27, Federal Bldg., 819 Taylor St., Fort Worth, Tex 76102.

No. MC 116740 (Sub-No. 7TA), filed October 20, 1975. Applicant: LEE N. HICKOX, Box 134, Flora, Ill. 62839. Applicant's representative: Robert T. Law-

ley, 300 Reisch Bldg., Springfield, Ill. 62701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wooden barrel staves and heading*, from Fulton, Ill., to Louisville, Ky., for 180 days. Supporting shipper: Wayne Franklin, Director of Traffic, Blue Grass Cooperage Company, a Division of Brown-Forman Distillers Corp., 850 Dixie Highway, Louisville, Ky. 40210. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 119767 (Sub-No. 333TA), filed October 20, 1975. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: David A. Peterson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), from the plantsite and warehouse facilities of Jeno's, Inc., at or near Sodus, Mich., to points in Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin, for 180 days. Supporting shipper: Jeno's, Inc., 525 Lake Avenue South, Duluth, Minn. 55802. Send protests to: John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells St., Room 807, Milwaukee, Wis. 53203.

No. MC 120364 (Sub-No. 7TA), filed October 15, 1975. Applicant: A & B FREIGHT LINE, INC., 2800 Falund St., Rockford, Ill. 61109. Applicant's representative: Robert M. Kaske (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Refrigeration machines, equipment and parts*, from the plantsite of Imeco Co., located at Polo, Ill., to points in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Nosth Dakota, South Dakota, and Wisconsin, with *materials and supplies* on return, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Imeco Co., Vincent Dresden, Plant Manager, Polo, Ill. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1086, Chicago, Ill. 60604.

No. MC 128024 (Sub-No. 10TA), filed October 20, 1975. Applicant: MORGAN PORTABLE BUILDING TRANSPORT CORP., 10540 N. Central Expressway, Dallas, Tex. 75231. Applicant's representative: Dean Madden (same address as applicant). Authority sought to opate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Portable buildings*, on vehicles with power equipment and winches, between points in Texas, Arkansas, Oklahoma, Louisiana, and Mississippi, on the one hand, and, points in Alabama, Arizona, California, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Missouri, New Mexico, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia on the other. Restriction: Operations are limited to transportation service to be performed under a continuing contract or contracts with Morgan Portable Building Corp., of Dallas, Tex., and its affiliate, Morgan Dallas Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Morgan Portable Building Corp., and Morgan-Dallas Corporation, 19540 N. Central Expressway, Dallas, Tex. 75231. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75202.

No. MC 128246 (Sub-No. 10TA), filed October 14, 1975. Applicant: SOUTHWEST TRUCK SERVICE, P.O. Box AD, Watsonville, Calif. 90270. Applicant's representative: Michael P. Groom, 500 The Swenson Bldg., 777 North First St., San Jose, Calif. 95112. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Processed meats*, in vehicles equipped with mechanical refrigeration, from the plantsite of Made-Rite Sausage, Inc., located at or near Sacramento, Calif., to the distribution center of Made-Rite Sausage, Inc., located at or near Eugene, Oreg. Applicant intends to tack its existing authority with MC 128246 (Sub-No. 6), that portion which authorizes transportation from Sacramento, Calif., to Medford, Oreg., for Made-Rite Sausage, Inc., to enable applicant to stop intransit at Medford for partial unloading on shipments moving to final destination at Eugene, Oreg., under a continuing contract with Made-Rite Sausage, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Made-Rite Sausage, Inc., 3353 Second Ave., Sacramento, Calif. 95817. Send protests to: Claud W. Reeves, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Ave., Box 36004, San Francisco, Calif. 94102.

No. MC 129759 (Sub-No. 11TA), filed October 15, 1975. Applicant: TRIANGLE TRUCKING CO., P.O. Box 490, McKees Rocks, Pa. 15136. Applicant's representative: A. Charles Tell, 100 East Broad St., Columbus, Ohio 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Post tension strand*, from Springfield, Va., to points in South Carolina, restricted to traffic moving under a continuing contract with Atlas Prestressing Corp., Springfield, Va., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Atlas Prestressing Corp., 7954 Cameron Brown Ct., Springfield, Va. 22153. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Bldg., 1000 Liberty Ave., Pittsburgh, Pa. 15222.

No. MC 134477 (Sub-No. 95TA), filed October 15, 1975. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, Minn. 55118. Applicant's representative: Robert P. Sack, P.O. Box 6010, West St. Paul, Minn. 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), from the plantsite and warehouse facilities of Jeno's, Inc., at or near Sodus, Mich., to points in Arkansas, Connecticut, Delaware, the District of Columbia, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Virginia, West Virginia, and Wisconsin, for 180 days. Supporting shipper: Jeno's, Inc., P.O. Box 5609, Duluth, Minn. 55806. Send protests to: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 135221 (Sub-No. 2TA), filed October 20, 1975. Applicant: DICK SIMON TRUCKING, INC., 3700 South 4355 West, Salt Lake City, Utah 84120. Applicant's representative: Irene Warr, 430 Judge Bldg., Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, 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 Fillmore, Utah, to Los Angeles, Calif., and the Los Angeles, Calif., Commercial Zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Utah Beef Packers, Inc., Box 398, Fillmore, Utah. Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Bldg., 125 South State St., Salt Lake City, Utah 84138.

No. MC 135352 (Sub-No. 6 TA), filed October 17, 1975. Applicant: LITTLE DUTCH LINES, INC., 1111 North Prairie St., Pella, Iowa 50219. Applicant's representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, Iowa 50309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles*, distributed by meat packinghouses (except commodities in bulk and hides), from Pella, Iowa, to points in Iowa, Illinois, Kansas, Missouri, Michigan, Nebraska, and Wisconsin, under a continuing contract or contracts with Pella Packing, Inc., for 180 days. Supporting shipper: Pella Packing, Inc., R.R. 2, Pella, Iowa 50219. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 875 Federal Bldg., Des Moines, Iowa 50309.

No. MC 136166 (Sub-No. 20TA), filed October 20, 1975. Applicant: CF TANK LINES, INC., 175 Linfield Drive, Menlo

Park, Calif. 94025. Applicant's representative: Robert M. Bowden, Western Traffic Service, P.O. Box 3062, Portland, Oreg. 97208. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chocolate*, in bulk, in tank vehicles, from Burlingame, Calif., to Chicago, Ill.; Dallas, Tex.; Detroit, Mich.; Indianapolis, Ind.; Omaha, Nebr.; and St. Louis, Mo., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Guittard Chocolate Company, No. 10 Guittard Road, Burlingame, Calif. 94010. Send protests to: Claud W. Reeves, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Ave., Box 36004, San Francisco, Calif. 94102.

No. MC 136343 (Sub-No. 60TA), filed October 20, 1975. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, Pa. 17847. Applicant's representative: George A. Olsen, 69 Tonnele Ave., Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Components for manufactured housing* (except commodities in bulk), between the facilities of ADM Industries, Inc., at Elkhart, Inc., on the one hand, and, on the other, Port Trevorton, Pa., and Hayleville, Ala., for 180 days. Supporting shipper: ADM Industries, Inc., P.O. Box 185, Elkhart, Ind. Send protests to: Robert P. Amerine, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 278 Federal Bldg., P.O. Box 869, Harrisburg, Pa. 17108.

No. MC 136375 (Sub-No. 9TA), filed October 15, 1975. Applicant: DONCO CARRIERS, INC., 641 N. Meridian, P.O. Box 75354, Oklahoma City, Okla. 73107. Applicant's representative: William L. Peterson, 401 N. Hudson, Suite 200, P.O. Box 917, Oklahoma City, Okla. 73101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Toilet preparations, household and industrial cleaning products, insect control products, air fresheners, starches, brooms, brushes, mops, germicides, and promotional materials*, (except commodities in bulk), from Great Bend and Larned, Kans., to Birmingham, Huntsville, Mobile and Montgomery, Ala.; Flagstaff, Phoenix and Tucson, Ariz.; Fort Smith and Little Rock, Ark.; Los Angeles, Sacramento, San Diego and San Francisco, Calif.; Boulder, Denver and Grand Junction, Colo.; Hartford, New Haven and Stamford, Conn.; Wilmington, Del.; the District of Columbia; Jacksonville, Miami, Orlando and Tampa, Fla.; Atlanta and Columbus, Ga.; Boise and Pocatello, Idaho; Chicago, East St. Louis and Peoria, Ill.; Davenport and Des Moines, Iowa; Lexington and Louisville, Ky.; New Orleans and Shreveport, La.; Bangor and Portland, Maine; Baltimore, Md.; Boston and Springfield, Mass.; Duluth, Minneapolis and St. Paul, Minn.; Gulfport and Jackson, Miss.; Kansas City, St. Louis and Springfield, Mo.; Billings and Great Falls, Mont.; Grand Island, Nebr.; Carson City and Las Vegas, Nev.; Manchester, N.H.; Camden, Newark, Paterson and Trenton, N.J.; Alamogordo and Albuquerque, N. Mex.; Albany, Buffalo, New York City and Syracuse, N.Y.; Charlotte and Raleigh, N.C.; Fargo and Minot, N. Dak.; Cleveland, Ohio; Eugene and Portland, Oreg.; Erie, Harrisburg, Philadelphia, Scranton and Pittsburgh, Pa.; Providence, R.I.; Charleston and Columbia, S.C.; Rapid City and Sioux Falls, S. Dak.; Chattanooga, Knoxville, Memphis and Nashville, Tenn.; El Paso and San Antonio, Tex.; Salt Lake City, Utah; Burlington and Rutland, Vt.; Richmond and Roanoke, Va.; Seattle and Spokane, Wash.; Charleston and Wheeling, W. Va.; Eau Claire, Green Bay and Milwaukee, Wis.; and Cheyenne, Wyo.; and

(2) *Equipment, materials and supplies* used or useful in the manufacture, sale and distribution of the commodities in (1) above (except commodities in bulk), from points in Texas, Louisiana, Mississippi, Missouri, Illinois, Michigan, Georgia, Ohio, Pennsylvania, New Jersey, New York, Connecticut, Massachusetts, and Vermont, to Great Bend, Kans., parts (1) and (2) are restricted to the movement of traffic either originating at or destined to the facilities of the Fuller Brush Company, located at Great Bend, Kans., under a continuing contract with Fuller Brush Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Bruce Brown, Manager of Distribution and Traffic, Fuller Brush Company, Niles, Ill. Send protests to: Marie Spillars, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Room 240 Old P.O. Bldg., 215 N.W. Third, Oklahoma City, Okla. 73102.

No. MC 136524 (Sub-No. 3TA), filed October 17, 1975. Applicant: DOWNTOWN STORAGE COMPANY, 812 Live Oak, Houston, Tex. 77003. Applicant's representative: Paul D. Angenend, 904 Lavaca, Austin, Tex. 78701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Telephone equipment, materials, and supplies*, between Houston, Tex., on the one hand, and, on the other, points in Brazoria, Galveston and Matagorda Counties, Tex., under a continuing contract or contracts with Western Electric Company, Inc., of Ballwin, Mo., for 180 days. Supporting shipper: Western Electric Company, Inc., 1111 Woods Mill Road, Ballwin, Mo. 63001. Send protests to: John F. Mensing, District Supervisor, Interstate Commerce Commission, Room 8610 Federal Bldg., 515 Rusk, Houston, Tex. 77002.

No. MC 138274 (Sub-No. 22TA), filed October 14, 1975. Applicant: SHIPPERS BEST EXPRESS, INC., 2151 N. Redwood Road, Salt Lake City, Utah 84116. Applicant's representative: Chester A. Zyblut, 360 Executive Bldg., 1030 15th St., N.W., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and articles* distributed by meat packing houses as described in Section A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk), from the plantsite of Flavorland Industries, Inc., at West Fargo, N. Dak., to Watsonville, Los Angeles, Fresno, Salinas, San Francisco, Oakland, and San Jose, Calif., and respective commercial zones, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Flavorland Industries, Inc., Box 337, West Fargo, N. Dak. 58078. Send protests to: Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Bldg., 125 South State St., Salt Lake City, Utah 84138.

No. MC 139439 (Sub-No. 1TA), filed October 20, 1975. Applicant: WILLIAM EDWARDS, INC., P.O. Box 938, Verona, Va. 24482. Applicant's representative: Frank B. Hand, Jr., P.O. Box 187, Berryville, Va. 22611. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Yarn*, from the plantsite of United Yarn Products, Co., Inc., at Staunton, Va., to Asheboro, Burlington, Eden, Edenton, Gibsonville, Stanfield, Hickory, Kings Mountain and Kinston, N.C., and Spring City, Tenn., and (2) *Beams and pallets*, from Asheboro, Burlington, Stanfield, Eden, Edenton, Gibsonville, Hickory, Kings Mountain and Kinston, N.C., and Spring City, Tenn., to the plantsite of United Yarn Products Co., Inc., at Staunton, Va., under a continuing contract or contracts with United Yarn Products Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: United Yarn Products Co., Inc., P.O. Box 512, Wayne, N.J. 07470. Send protests to: Danny R. Beeler, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 215 Campbell Ave., S.W., Roanoke, Va. 24011.

No. MC 139697 (Sub-No. 2TA), (Correction), filed October 6, 1975, published in the FEDERAL REGISTER issue of October 21, 1975, and republished as corrected this issue. Applicant: EDWARD BRUCE WAGONER, doing business as DELIGHT TRANSPORTATION COMPANY, 1100 Dover Road, West Memphis, Ark. 72301. Applicant's representative: Morton E. Kiel, Suite 5 World Tade Center, New York, N.Y. 10048. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as are dealt in by a manufacturer of garden tractors, and materials, supplies and equipment used in the conduct of such business (except commodities in bulk), between South Bend, Ind., on the one hand, and, on the other, points in Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, the District of Columbia, Virginia, North Carolina, South Carolina, Georgia, West Virginia, Ohio, Kentucky, Tennessee, Illinois, Wisconsin, Missouri, Iowa,

Michigan, Minnesota, Texas, New Mexico, Arizona, California, Alabama, Arkansas, Colorado, Florida, Kansas, Louisiana, Mississippi, and Oklahoma, under a continuing contract with Wheel Horse Products, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Wheel Horse Products, Inc., 515 West Ireland Road, South Bend, Ind. 46614. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, Ark. 72201. The purpose of this republication is to indicate the location of South Bend, Ind.

No. MC 141320 (Sub-No. 1TA), filed October 9, 1975. Applicant: UNITED STATES PRIORITY TRANSPORT CORPORATION, 6 Ray Court, Melville, N.Y. 11746. Applicant's representative: Martin D. Friedman (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vethicle, over irregular routes, transporting: *Radiopharmaceuticals and medical test kits*, between Carlstadt and Newark International Airport, New Jersey and New York City, N.Y., on the one hand, and, on the other, New York City and the Counties of Westchester, Nassau, Suffolk, Sullivan, Rockland, Orange, Saratoga, Jefferson, Chenango, Onondaga, Otsego, Ulster, Cheming, Tioga, Oswego, Herkimer, Oneida, Schoharie, Schenectady, Montgomery, Albany, Clinton, Chautauqua, Dutchess, Putnam, Broome, Madison, Greene and Columbia, N.Y.; New Haven, Hartford, Fairfield, Litchfield, New London, Tolland, and Windham Counties, Conn.; Worchester, Suffolk, Hampden, Barnstable, Berkshire, Middlesex, Plymouth, Norfolk, Essex, and Bristol Counties, Mass.; Washington, Providence and Bristol Counties, R.I., under a continuing contract with Mallinckrodt, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mallinckrodt, Inc., 463 Barrell Ave., Carlstadt, N.J. Send protests to: Wesley J. Green, Transportation Specialist, 26 Federal Plaza, Room 1807, New York, N.Y. 10007.

No. MC 141402 (Sub-No. 1TA), filed October 16, 1975. Applicant: LINCOLN FREIGHT LINES, INC., P.O. Box 322, Lapel, Ind. 46051. Applicant's representative: Walter F. Jones, Jr., 601 Chamber of Commerce Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Empty glass jars, bottles, containers, caps, covers and skids*, from Lapel, Ind., to Fremont, Ohio, Louisville, Ky., Champaign, Chicago Commercial Zone and Plainfield, Ill., under a continuing contract or contracts with Brockway Glass Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Brockway Glass Co., Inc., Lapel, Ind. Send protests to: Frances Sterling, Interstate Commerce Commission, Federal Bldg., & U.S. Courthouse, 46 East Ohio St., Room 429, Indianapolis, Ind. 46204.

No. MC 141406 (Sub-No. 1TA), filed October 15, 1975. Applicant: COAST COUNTIES EXPRESS, INC., 3306 Glendale Blvd., Los Angeles, Calif. 90036. Applicant's representative: David P. Christianson, 825 City National Bank Bldg., 606 South Olive St., Los Angeles, Calif. 90014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except household goods as defined by the Commission, commodities which by reason of size or weight require the use of special equipment, and commodities in bulk), restricted to the transportation of shipments having a prior or subsequent movement by air, between points in Naval Air Station, Alameda, Calif.; Naval Air Station, North Island (San Diego), Calif.; Naval Air Station, Point Mugu, Calif.; McClellan Air Force Base, Sacramento, Calif.; Norton Air Force Base, San Bernardino, Calif.; and Travis Air Force Base, Fairfield, Calif., on the one hand, and, on the other, points in California, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Department of the Air Force, 63rd Aerial Port Squadron/DPZT, Norton AFB, Calif. 92409. Sierra Army Depot, Herlong, Calif. 96113. Rockwell International Corporation, 3370 Miraloma Ave., Anaheim, Calif. 92803. Lockheed Missiles & Space Co., Inc., 1111 Lockheed Way, Sunnyvale, Calif. 94088. Send protests to: Mildred I. Price, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Bldg., 300 North Los Angeles St., Los Angeles, Calif. 90012.

No. MC 141414 TA, filed October 15, 1975. Applicant: TOTO PURCHASING & SUPPLY CO., INC., 275 S. Highland, Las Vegas, Nev. 89106. Applicant's representative: W. Owen Nitz, 516 South Third St., Las Vegas, Nev. 89101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum and gypsum products*, on flat bed equipment, from points in Clark County, Nev., to points in Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura Counties, Calif., for 180 days. Supporting shippers: The Flintkote Company, 1650 S. Alameda St., Los Angels, Calif. 90021. The Flintkote Company, Gypsum Products Division, 2201 E. Washington Blvd., Box 2312, Terminal Annex, Los Angeles, Calif. 90051. Send protests to: Robert G. Harrison, District Supervisor, Interstate Commerce Commission, 203 Federal Bldg., 705 N. Plaza St., Carson City, Nev. 89701.

No. MC 141420 TA, filed October 16, 1975. Applicant: JOHN H. HETZER, 2101 36th St. Parkersburg, W. Va. 26101. Applicant's representative: John M. Friedman, 2930 Putnam Ave., Hurricane, W. Va. 25526. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Machinery parts for contractors, road building, mining and logging equipment*, from Indianapolis, Ind., to Belle and Parkersburg, W. Va., under a continuing contract or contracts with Cecil I. Walker Machinery Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Cecil I. Walker Machinery Co., U.S. Route 60 East, Belle, W. Va. 25015. Send protests to: H. R. White, District Supervisor, 3108 Federal Office Bldg., 500 Quarrier St., Charleston, W. Va. 25301.

No. MC 141421 (Sub-No. 1TA), filed October 20, 1975. Applicant: GOTTLIEB W. BAUMANN, doing business as ACTION CONTRACT CARRIERS, 200 East North St., Prairie City, Iowa 50228. Applicant's representative: James M. Hodge, 1980 Financial Center, Des Moines, Iowa 50309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from Turlock, San Jose, Stockton and Modesto, Calif., to Des Moines, Iowa, under a continuing contract or contracts with Lomar Wholesale Grocery, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lomar Wholesale Grocery, Inc., 106 Jefferson, Des Moines, Iowa 50301. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 875 Federal Bldg., Des Moines, Iowa 50309.

No. MC 141422 TA, filed October 20, 1975. Applicant: FOREST PRODUCTS TRANSPORTATION, INC., Route 2, Hamilton, Ala. 35570. Applicant's representative: John Self, P.O. Box 597, Hamilton, Ala. 35570. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Untreated lumber*, from points in Mississippi south of Interstate 20 to Hamilton, Ala.; (2) *Woodchips*, from Hamilton, Ala., to Counce, Tenn.; and (3) *Lumber*, treated and untreated, from Hamilton, Ala., to points in Florida, Wisconsin, Tennessee, Kentucky, Illinois, Iowa, Michigan, Ohio, Missouri, Indiana, Georgia, Virginia, North Carolina, and South Carolina, under a continuing contract or contracts with W. T. Vick Lumber Company, for 180 days. Supporting shipper: W. T. Vick Lumber Company, Hamilton, Ala. 35570. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Bldg., Birmingham, Ala. 35203.

No. MC 141423 TA, filed October 20, 1975. Applicant: MATERIAL TRANSPORT COMPANY, 7370 N.W. 36th St., Miami, Fla. 33166. Applicant's representative: John W. McWhirter, Jr., 1915 Exchange Bank Bldg., Tampa, Fla. 33602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Cement blocks*, from the plantsites of Lehigh Portland Cement Company, in Medley, Orlando and Riviera Beach, Fla., on the one hand, and, on the other, points in Florida; (b) *Cement including mortar mix and any combination of dry cement*

with either lime and/or sand, gravel, and/or any other aggregate to be transported in bulk, bags, boxes or any other type of containers, from the plantsites of Lehigh Portland Cement Company, in Duval, Orange and Dade Counties, to points in Florida; (c) *Cement including mortar mix and any other combination of dry cement with either lime, and/or sand, gravel, and/or any other aggregate*, to be transported in bulk, bags, boxes or any other type of containers, between points in Brevard and Broward Counties, Fla., on the one hand, and, on the other, points in Florida; (d) *Road building and construction aggregates*, between points in Florida; (2) *Cement blocks, cement including mortar mix* and any combination of dry cement with either lime and/or sand, gravel, and/or any other aggregate to be transported in bulk, bags, boxes or any other type of containers and road building and construction aggregates in interstate commerce, from the plantsites of Lehigh Portland Cement Company in Dade, Orange, Palm Beach and Duval Counties, Fla., to points in the state of Georgia lying on and south of U.S. Highway 82. Also interstate Commerce from the plantsites located in Brevard and Broward Counties, Fla., to points in the state of Georgia lying on and south of U.S. Highway 82, under a continuing or contracts with Lehigh Portland Cement Company, for 180 days. Cement Company, 1200 N.W. 137th Ave., Supporting shipper: Lehigh Portland Miami, Fla. 33144. Send protests to: Joseph B. Teichert, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Monterey Bldg., Suite 101, 8410 N.W. 53rd Terrace, Miami, Fla. 33166.

PASSENGER APPLICATIONS

No. MC 126203 (Sub-No. 4TA), filed October 10, 1975. Applicant: EVERETT CHARTER SYSTEM, INC., 3131 Cedar St., 607 Third Ave., Seattle Wash. 98104. Applicant's representative: Michael D. Duppenthaler, 515 Lyon Bldg. 607 Third Ave., Seattle, Wash. 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in the same vehicle, in charter operations, between points in Snohomish, Island and Skagit Counties, Wash., on the one hand, and, on the other, points in Arizona, California, Colorado, Idaho, Montana, Nevada, Nex Mexico, Oregon, Utah, Washington and Wyoming, through points on the International Boundary line between the United States and Canada, at or near Blaine, Sumas and Lynden, Wash., restricted to traffic originating at or destined to points in British Columbia, Canada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Senior Citizens, 2605 15th, Everett, Wash. Edmonds Community College, 16923 North Road, Bothell, Wash. Everett Community College, 801 Wetmore, Everett, Wash. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 858 Federal Bldg., Seattle, Wash. 98174.

No. MC 141394 (Sub-No. 1TA), filed October 10, 1975. Applicant: ED BRIDGES, doing business as OZARK COACH LINE, P.O. Box 73, Bakersfield, Mo. 65609. Applicant's representative: Ed Bridges (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, newspapers and express*, between West Plains, South Fork, Hocomo, Caulfield, Tescumseh and Bakersfield, Mo., and Mountain Home, Ark., from West Plains, Mo., West over U.S. Highway 160 to its junction with Missouri Highway 101 at Caulfield, Mo., thence south on Missouri Highway 101, to the Missouri-Arkansas state line, thence south over Arkansas Highway 101 to its junction with U.S. Highway 62, thence west over U.S. Highway 62 to Mountain Home, Ark., and return over the same route, and from West Plains, Mo., west over U.S. Highway 160 to its junction with Missouri Highway 201, thence south over Missouri Highway 201 to the Missouri-Arkansas state line, thence south over Arkansas Highway 201 to Mountain Home, Ark., and return over the same route, and; from Caulfield, Mo., south over Missouri Highway 160 to its junction with Missouri-Arkansas state line, thence south over Arkansas Highway 101 to its junction with U.S. Highway 62, thence west over U.S. Highway 62 to Mountain Home, Ark., and return over the same route, service is authorized to all intermediate points, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. SUPPORTING SHIPPERS: There are approximately 114 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Bldg., 101 Walnut St., Kansas City, Mo. 64106.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-29631 Filed 11-3-75;8:45 am]

federal register

TUESDAY, NOVEMBER 4, 1975



PART II:

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

■

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

Revocation, Redesignation and Issuance of Regulations

Title 25—Indians

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

SUBCHAPTER Y—INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT PROGRAMS

CONTRACTS AND GRANTS UNDER INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT; EDUCATION CONTRACTS UNDER JOHNSON-O'MALLEY ACT

Revocation, Redesignation and Issuance of Regulations

OCTOBER 24, 1975.

This notice is published in the exercise of rulemaking authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2. The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

Beginning on page 40982 of the September 4, 1975, FEDERAL REGISTER (40 FR 40982), there was published a notice of proposed rulemaking to amend Chapter I of Title 25 of the Code of Federal Regulations by revoking Part 33 under Subchapter E and by adding new Parts 401 through 407 under a new Subchapter Y. The amendment was proposed under the authority in the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638; 88 Stat. 2203).

I. REDESIGNATION

Parts 401 through 407 are being redesignated upon the request of the Office of the FEDERAL REGISTER because these Parts were incorrectly numbered when published as proposed regulations. The Office of the Federal Register has assigned only Parts 1 through 299 to Chapter I of Title 25 of the Code of Federal Regulations which can be issued by the Bureau of Indian Affairs. The Parts beginning with 300 on up are assigned to other Chapters and other offices. Since the Bureau cannot use Part numbers 401 through 407, these Parts are redesignated as follows:

A. Part 401 is redesignated as Part 271. Sections 401.1 through 401.26 are redesignated as §§ 271.1 through 271.26. A new § 271.27 is added and § 401.27 is redesignated as § 271.28. Remaining §§ 401.31 through 401.84 are redesignated as §§ 271.31 through 271.84.

B. Part 402 is redesignated as Part 272. Sections 402.1 through 402.55 are redesignated as §§ 272.1 through 272.55.

C. Part 403 is redesignated as Part 273. Sections 403.1 through 403.44 are redesignated as §§ 273.1 through 273.44. Section 403.45 is deleted. Sections 403.46 through 403.54 are redesignated as §§ 273.45 through 273.53. Remaining §§ 403.61 through 403.73 are redesignated as §§ 273.61 through 273.73.

D. Part 404 is redesignated as Part 274. Sections 404.1 through 404.53 are redesignated as §§ 274.1 through 274.53.

E. Part 405 is redesignated as Part 275. Sections 405.1 through 405.4 are redesignated as §§ 275.1 through 275.4.

F. Part 406 is redesignated as Part 276. Sections 406.1 through 406.16 are redesignated as §§ 276.1 through 276.16.

G. Part 407 is redesignated as Part 277. Sections 407.1 through 407.53 are redesignated as §§ 277.1 through 277.53.

The purpose of the regulations is to implement the Indian Self-Determination and Education Assistance Act. (Pub. L. 93-638; 88 Stat. 2203). Part 271 (formerly Part 401) contains regulations under which tribal organizations, upon the request of an Indian tribe, can contract for the operation of all or parts of authorized Bureau of Indian Affairs programs for the benefit of Indians and Alaska Natives. Under Part 272 (formerly Part 402), tribal governing bodies may receive grants for strengthening tribal governments; planning, training, evaluation, or other activities to improve a tribe's capacity to contract; acquiring land for those purposes; and planning, designing, monitoring, and evaluating Federal programs serving the tribe or Alaska Native group.

Under Part 273 (formerly Part 403), a State, school district, or Indian corporation may contract for supplemental programs or operational support for education. The regulaitons in Part 273 replace the regulations in Part 33 and reflect the changes made to the Johnson-O'Malley Act (the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49 Stat. 1458, 25 U.S.C. 452-456) by the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638; 88 Stat. 2203). Tribal organizations can contract for supplemental programs or operational support for education under Part 271 upon the request of an Indian tribe.

Part 274 (formerly Part 404) contains regulations under which tribal organizations may receive contracts or services for school construction for previously private schools that are controlled or managed by an Indian tribe or tribal organization.

Part 275 (formerly Part 405) informs the Indian tribes of ways in which they can obtain the use of Government employees in operating all or parts of Bureau of Indian Affairs programs under contract.

Part 276 (formerly Part 406) contains the administrative requirements for grants available under Part 272. These administrative requirements are basically the same as those in Federal Management Circular 74-7 which applies to the administration of grants with States and local governments. Federal Management Circular 74-7 is being revised to also apply to Indian tribes.

Under Part 277 (formerly Part 407), a State education agency or school district may contract for acquiring sites for, or for constructing, acquiring, or renovating, school facilities needed for educating Indians residing on an Indian reservation or other trust land.

The regulations have been developed in consultation with national, regional, tribal, and Alaska Native organizations served by the Bureau of Indian Affairs.

Based on two series of nationwide Indian and Alaska Native consultation sessions, the Bureau of Indian Affairs has attempted to spell out clearly the regulatory requirements necessary to implement Pub. L. 93-638. A concerted effort has been made to incorporate into the regulations three principal perspectives: The intent of Congress and the President as reflected in the legislation; the continuing Federal responsibility and trust relationships toward Indian tribes; and the expressed wishes and desires of tribal and Alaska Native leaders and members. The Bureau of Indian Affairs believes that such a posture has been achieved in these regulations.

Public Law 93-638 is a significant piece of legislation for Indian and Alaska Native people. The implementing regulations buttress the spirit and substance of this legislation by emphasizing the following elements: The role of tribal and Alaska Native governments as the key decision-makers in the self-determination process; the expanded powers and responsibilities of Indian Education Committees in public school assistance programs serving Indian and Alaska Native children; the recognition of the desirability of tribally-controlled and operated schools as an alternative to Federal and public learning systems; the availability of grants to strengthen tribal and Alaska Native governments and to enhance their eventual capability to operate a Bureau program under contract or to redesign a Bureau program for operation by the Bureau; and the use of Federal personnel for expanding the human resource base of tribal and Alaska Native governing bodies.

An important feature of the legislation is the change it makes in the contract relationship by directing the Bureau to contract a program to a tribal organization upon the request of a tribe unless the Bureau can make a finding to support declination in accordance with criteria set out in the Act. Unlike the ordinary relationship between the government and a prospective contractor, under this legislation the burden of proof is on the Bureau to show that the contract should not be entered into. Both the statute and the regulations stipulate, unless substantial evidence in support of a specific declination criteria exists, the Bureau will enter into the proposed contract.

The public was given until October 4, 1975, to submit written comments, suggestions, or objections regarding the proposed amendment. All comments received with respect to the proposed amendment were given due consideration.

II. CHANGES MADE DUE TO COMMENTS RECEIVED

As a result of comments received, the following changes in the regulations are made in addition to language changes for clarification:

A. PART 271:

1. The phrase "Revolving Funds for Loans; Indian Loan Guarantee and In-

surance Funds" is added to § 271.2(d) to make it clear that programs and activities enumerated as line items in the Bureau's budget under those subactivities are considered a "business related function".

2. The definition of "Indian tribe" in § 271.2(i) is changed to make clear the involvement of the United States Government.

3. The definition of "previously private school" in § 271.2(j) is revised to conform to the definition in Part 273.

4. In § 271.2(p), the phrase "tribal governing body" is added for clarification.

5. Section 271.2(q) is changed to make it clear that the subactivity of "minerals, mining, irrigation, and power" is included in the definition of "Tribal governmental function."

6. Section 271.2(r) is revised to make it clear that intertribal organizations are considered "tribal organizations."

7. Section 271.2(s) is revised to clarify what is a "trust resource".

8. Section 271.2(t) is revised to strengthen the definition of "trust responsibility" and limit the definition to the purposes of the regulations.

9. Paragraphs (e) and (f) are added to § 271.3 to insure consultation with cognizant Indian organizations and give tribal groups an opportunity to suggest changes annually or at their own initiative.

10. An additional paragraph (h) is added to § 271.4 to make it clear that the eligibility criteria for services for individuals is not changed by the regulations, but that there is a means by which eligibility criteria may be waived.

11. Section 271.13 is changed to eliminate the need for an application form.

12. An additional paragraph (i)(5) is added to § 271.14 which requires staffing information to be given in the application.

13. An additional paragraph (b)(4) is added to § 271.15 to make it clear that applications for contracts that are not within the purview of § 271.1(a) may be declined.

14. Section 27115(c)(4) is revised to emphasize the positive effect of a tribal governing body's resolution on the matter of community support.

15. Section 271.15(c)(5)(ii) and § 271.15(c)(6)(i)(A) are revised to permit an agreement to develop a personnel system rather than requiring the system to be in place.

16. Sections 271.16(a), 271.20, 271.62, 271.82, 271.83 (a) and (b), and 271.84 are revised to recognize any limitations that a tribal governing body might include in its resolution requesting a contract.

17. A new paragraph (b)(3) is added to § 271.16 to permit Bureau records to be physically located at the contract site when copying such records is not practicable or feasible due to their volume.

18. Paragraph (c)(2)(vii) of § 271.18 is expanded to emphasize the rights of the tribal governing body to set limitations on tribal organizations by resolution.

19. Several changes are made in § 271.20 to permit recontracting applications to go directly to the Area Director, to permit more time to consider such applications and to make it clear that tribes may withdraw from multi-tribal contracts.

20. An additional paragraph (b) is added to § 271.21 which requires applications for contracts to be submitted at least 120 days in advance of the proposed contract starting date when the proposed contract may result in the displacement of Bureau personnel, to give the Bureau sufficient time to comply with appropriate Civil Service Commission requirements.

21. Section 271.22(e)(2) is revised to permit applicants to request additional time to respond to the Superintendent's written recommendations to avoid possible declination.

22. Section 271.23(b)(1) is revised to set a limit on the time the Bureau can take to negotiate a contract.

23. Section 271.23(b)(2) is revised to make both the time and the place of the meeting under that section at the mutual agreement of the parties.

24. Section 271.25(b) is revised to clarify when, how and to whom recommendations are to be furnished.

25. Section 271.25(d)(1) is revised to set a time limitation on negotiating a contract when an Area Director's recommendation to decline is not accepted by the Commissioner.

26. Former § 401.27 is redesignated as § 271.28 and a new § 271.27 is added to provide a mechanism for the Commissioner to extend technical assistance to tribes in the event of declination.

27. Section 271.32 is revised to more clearly delineate what are considered contractable trust resources programs or portions thereof.

28. Paragraphs (a) and (e)(1) of § 271.41 are revised to take into consideration modifications or supplements to Chapter 2000 of the Treasury Fiscal Requirements Manual that might occur and to permit letters of credit to be used when the advance payment requirement is $120,000 rather than $250,000.

29. Section 271.42(b) is revised to make it clear that when equipment is transferred to a contractor it must meet certain standards at the time of transfer.

30. An additional paragraph (d) is added to § 271.44 to make it clear that a tribal governing body can establish its own Indian preference requirements to the extent that such requirements are not inconsistent with the intent of the regulations.

31. Section 271.46 is revised to conform to the requirements of the Federal Records Act and to require that records used or created under the contract are returned to the Bureau for proper disposition.

32. Section 271.47(a) is revised to make it clear that examination of records are restricted to those that are contract-related.

33. Section 271.49(a) and (b) is revised to make reports, required thereunder, contract-related.

34. Section 271.49(a)(3) is revised to permit a tribal organization to submit its report when, in a multi-tribal situation, all of the tribes have not endorsed the report within a certain time.

35. Section 271.54(a) is revised to clarify what is included in the Bureau's direct operational costs and that such costs do not form a basis for reducing a tribal organization's allowable indirect costs.

36. Section 271.55(c) is revised to require savings under a retroceded contract to be carried over to provide services and benefits by the Bureau.

37. A new § 271.56 is added to conform the regulations to the requirements of the Privacy Act (5 U.S.C. 552a).

38. Section 271.65(c) is revised to provide for the appeal under this section to be sent to the Director, Office of Hearings and Appeals.

39. Section 271.72 is revised to permit tribes that so desire to retrocede from a multi-tribal contract, to delineate the conditions under which such retrocession may occur, and to state the rights of both the retroceding and non-retroceding tribes.

40. Section 271.73 is revised to permit a tribal governing body to submit its application to contract for a retroceded program directly to the Area Director or Commissioner, as appropriate.

41. Section 271.74 is revised to make it clear that when reassumption of a program is contemplated because of violation of rights, there must be a pattern or practice of such violation.

42. Section 271.74(b) and (c) are revised to emphasize a tribal organization's right to a hearing and decision and to provide for the Commissioner reviewing an Area Director's decision to reassume a contract before the reassumption can take place.

43. Section 271.75 is revised to require the Bureau to give a tribal organization an opportunity to present a plan to overcome deficiencies in contract performance before action to cancel can be taken and the right to have an Area Director's decision reviewed by the Commissioner before any proposed cancellation action can occur. In addition, paragraph (h) (formerly § 401.75(e)) is revised to clarify the funding level for a program under a contract cancelled for cause.

44. Section 271.76(a) is revised to permit the Bureau to operate the program under a retroceded contract at either the level intended by the contract or as operated previously by the Bureau.

45. Section 271.77(b) is revised to make the position and ceiling reserve applicable only to those contracts initially entered into on or after the effective date of the regulations.

46. Section 271.81 (c) is revised to require the hearing official to issue a decision within 30 days of the hearing.

47. Section 271.83 (a) is changed to provide for an appeal to the Director, Office of Hearings and Appeals, as provided in Subpart G of 43 CFR Part 4.

B. PART 272

1. The definition of "tribal government", "tribal governing body", and "tribal council" is added as paragraph (q) of § 272.2. Existing paragraphs (q) and (r) of former § 402.2 are redesignated as paragraphs (r) and (s) of § 272.2. This change is made for consistency with Part 271.

2. The definitions of "Indian tribe," "resolution," "trust resources," and "trust responsibilities" given in paragraphs (j), (l), (r), and (s) of § 272.2 are revised to be consistent with the definitions in Part 271.

3. Comments were received pertaining to the need for more specific procedures in § 272.4 which provides for revising or amending the regulations in Part 272. As a result, new paragraphs (e) and (f) are added to this section to provide for more extensive and far-reaching consultation with tribes and Indian organizations in this regard.

4. Comments expressing concern about potential but unintentional limitations on the use of grants were received. Accordingly, language changes are made in paragraphs (a), (b), and (d) of § 272.12 providing "sight examples" rather than using phrases such as "this includes but is not limited to".

5. Many comments received expressed concern about § 272.15(b) (2) and (3). The major concern in this regard was the $20,000 maximum limitation on initial planning grants to be used to develop larger grant applications. Accordingly, language is added to clarify the source of funds for these initial planning grants. Also, it should be noted that this $20,000 limitation does not apply to the final grant application itself but rather to the cost of developing such an application. Another change is that the approving officer shall take action on an initial planning grant application within 30 days instead of "with a minimum of delay."

C. PART 273:

1. The definitions of "Indian tribe" and "tribal organization" in paragraphs (g) and (v) of § 273.2 are revised to be consistent with the definitions in Part 271.

2. The definition for "previously private school" in § 273.2(n) is changed by deleting the phrase "early childhood" and substituting "age 3 years" to establish a specific base age that is less ambiguous than the deleted term. Also deleted from this section is the last sentence to clarify that such schools could be other than former sectarian facilities.

3. The definition of "reservation" in § 273.2(o) is revised to give statutory reference for Alaska Native regions and to delete the restrictive words "public domain."

4. A definition of "tribal government," "tribal governing body," and "tribal council" is added as § 273.2(u) to conform to the definitions in Part 271.

5. Paragraphs (d) and (e) are added to § 273.3 to conform to 25 CFR 271.3.

6. The term "early childhood" is also deleted in § 273.12 and the phrase "age 3 years" is substituted to establish a base age. The term "except those who are enrolled in Bureau or sectarian operated schools" is added after "grade(s) 12" to denote that these educational facilities are not included as eligible applicants.

7. Section 273.13(b)(1)(iv) is corrected to read "70%" instead of "75%," due to a misprint. Also, the last sentence of this paragraph, referring to the 51% eligible Indian enrollment, is deleted as the Commissioner has the delegated authority to waive any part(s) of these regulations.

8. A change is made to § 273.13(b)(1) by adding (v), (vi) and (vii) to strengthen the basis for contractor accountability.

9. Sections 273.15(a), 273.16(c) and 273.17(d) are deleted. The deleted paragraphs related to the matter of establishing Indian Education Committees where majority Indian school boards already exist. Since the Act was silent on this issue, i.e. it neither required nor prohibited an Indian Education Committee where a majority Indian school board already existed, the Bureau is not including this element in the regulations. Majority Indian school boards may make provisions for such parental involvement.

10. Section 273.16(a)(4) is changed by inserting "Commissioner through the" before the word "appropriate" and by inserting "or suspension" after the word "cancellation." This change is made to permit suspension of a program as an alternative to cancellation under certain circumstances.

11. Section 273.18(j), which requires that the education plan list special programs which are or will be operated and which gives examples of such programs, is deleted and will be considered for inclusion in the program guidelines to be developed. Subsequent paragraphs are redesignated.

12. Section 273.18(g), which requires certain written information be provided as part of the education plan, is revised to clarify the material that is to be provided as part of the plan.

13. The term "February 1" is substituted in § 273.21 in place of "January 15" to give consideration for election to Pueblo Councils. The same change is made in §§ 273.25(b) and 273.28(b).

14. Section 273.24(b) is amended by deleting the word "promptly" and inserting the phrase "within 20 days" after the word "request" to specify the response time allowed.

15. In § 273.25(a), the phrase "and any additional information requested in § 273.24(b)" is inserted in place of the phrase "except as given in paragraph (b) of this section." This change is made to clarify the change made in § 273.24(b). The same change is made to § 273.28(a).

16. Section 273.31 is completely revised to establish a policy for gradual phase-out of operational support and add a hold-harmless provision for supplemental assistance.

17. The last sentence of § 273.32 is added to provide some flexibility for Indian Education Committees to approve de minimus participation by non-eligible students in programs contracted under Part 273.

18. Section 273.35 is completely revised to provide for meeting the full costs of peripheral dormitory students attending local public schools.

19. Additions are made to § 273.38 to assure equal treatment of Indian children. The additions are at the end of the first sentence and at the end of the section.

20. A new phrase is added at the end of § 273.44(a) and in § 273.44(b) after the word "may" to emphasize the role of tribal governing bodies on their reservations.

21. Former § 403.45 on wage and labor standards is deleted as not being applicable to contracts under this part.

22. A new paragraph (d) is added to § 273.45 on Indian preference to conform to 25 CFR 271.44.

23. Section 273.47 is revised to refer to Federal Records Act requirements.

24. The term "and to the tribe(s)" is added in § 273.50(c) after the phrase "Indian Education Committee(s)" to assure tribal notification.

25. A new § 273.54 is added to include the Privacy Act requirements in the regulations.

D. PART 274:

1. The definition of "average daily membership" in former § 404.3(a) is deleted as the term is not used in the text. Subsequent paragraphs in the section are redesignated.

2. The definitions of "Indian tribe" and "tribal organization" in paragraphs (j) and (r) of § 274.3 are revised to be consistent with the definitions in Part 271.

3. A definition of "tribal government," "tribal governing body," and "tribal council" is added as § 274.3(q) to conform to the definition in Part 271.

4. The definition in § 274.3(n) for "previously private school" is changed by deleting the phrase "early childhood" and substituting "age 3 years" to establish a specific base age that is less ambiguous than the deleted term. Also deleted from this section is the last sentence to clarify that such schools could be other than former sectarian facilities.

5. New paragraphs (d) and (e) are added to § 274.5 to conform to 25 CFR 271.3.

6. Section 274.11(b) is changed by adding new language for this paragraph as a condition of eligibility so Federal monies for construction are used only for facilities on tribal or government land. The term "early childhood" is also deleted in § 274.11(c) for consistency with § 274.3(n).

7. The term "No later than" is inserted to begin the sentence in § 274.22(a) to provide flexibility of operations.

8. Section 274.34 is revised to assure compliance and that funds are used for the purpose of the Act.

9. A new phrase is added at the end of § 274.36(a) and in § 274.36(b) after the word "may" to emphasize the role of tribal governing bodies on their reservations.

10. A new paragraph (d)(4) is added to § 274.36 to allow records to be physi-

cally located at the contract site where copying is not practical or feasible because a large volume is involved.

11. A new paragraph (d) is added to § 274.38 on Indian preference to conform to 25 CFR 271.44.

E. PART 275:

1. The definition of "tribal government" and "tribal council" in paragraph (j) of § 275.2 is changed to include "tribal governing body" to comply with the definition in Part 271.

2. The definitions of "Indian tribe" and "tribal organization" in paragraphs (f) and (k) are revised to be consistent with the definitions in Part 271.

3. In § 275.3(a)(1) (formerly § 405.3 (a)), the word "shall" is changed to "may" in the second sentence to make it clear that the agreement is optional and not required.

4. The paragraphs in § 275.3 are redesignated because the requirements in paragraph (c)(4) relate to more than agreements under the 1834 Act.

5. Section 275.3(b) (formerly § 405.3 (c)(4)) is revised to clarify that the contracts referred to are contracts under Part 271 and that the application must be submitted, instead of notifying the Area Director, at least 120 days in advance.

F. PART 276:

1. The definitions of "Indian tribe" and "tribal organization" in paragraphs (i) and (r) of § 276.2 are revised to be consistent with the definitions in Part 271. The definition of "letter of credit" in paragraph (j) of this section is revised to reflect a memorandum of understanding between the Departments of Interior and Treasury.

2. A definition of "tribal government," "tribal governing body," and "tribal council" is added as § 276.2(q) to conform to the definition in Part 271.

3. A new paragraph (c) is added to § 276.13 to further clarify Indian preference procedures.

4. Section 276.15 is revised by adding procedures for grant rescission as recommended by the Library of Congress.

G. PART 277:

1. The last sentence of § 277.2(b) is amended to clarify the language. In addition, the phrase "designated by the Commissioner" is inserted after "officer" to denote that authority for construction contracts for school facilities will not be delegated to Bureau of Indian Affairs Area Directors but will remain vested in the Commissioner.

2. The definition of "average daily membership" in former § 407.3(a) is deleted as the term does not appear in the text. Subsequent paragraphs in the section are redesignated.

3. The definitions in § 407.3 (h), (k), and (l) are deleted as they presently appear in the Pub. L. 81-815 regulations issued by the Department of Health, Education, and Welfare and are not required here.

4. The definition of "Indian tribe" in § 277.3(g) (formerly § 407.3(j)) is revised to conform to the same definition in Part 271.

5. A definition of "tribal government," "tribal governing body," and "tribal council" is added as § 277.3(o) to conform to the definition in Part 271.

6. New paragraphs (d) and (e) are added to § 277.4 to conform to 25 CFR 271.3.

7. Section 274.11(a) is amended by deleting the term "State education agency or" and that portion of the sentence after the word "Indians." These changes are in conformity with the current regulations for Pub. L. 81-815 issued by the Department of Health, Education, and Welfare.

8. In § 277.12(a), the term "Indian Education Committee" is substituted for the term "public school officials", as stated in the Act. Further, in § 277.12 (c), the term "and the Indian Education Committee" is inserted after the word "officials" to maintain consistency with paragraph (a) of that section.

9. The word "Regional" is deleted in § 277.13(a) in consultation with the Department of Health, Education, and Welfare as is the phrase in § 277.13(b)(1) (i) after the word "purposes".

10. Deletions are made in § 277.22(e). The term "local education agency" is substituted for the phrase "tribe to obtain its approval". Also deleted is the phrase after the word "adequacy". These changes are in conformity with Pub. L. 81-815 regulations issued by the Department of Health, Education, and Welfare.

11. Section 277.24 is revised to assure compliance and that funds are used for the purposes of the Act.

12. A new phrase is added at the end of § 277.26(a) and in § 277.26(b) after the word "may" to emphasize the role of tribal governing bodies on their reservations.

13. A new paragraph (d) is added to § 277.28 on Indian preference to conform to 25 CFR 271.44.

14. The last sentence of § 277.31(e) is deleted and new language inserted upon the advice of the Department of Health, Education, and Welfare regarding public school policies.

III. CHANGES NOT ADOPTED

Certain other comments have been carefully considered but have not been accepted. The following suggestions were not adopted for the reasons given:

A. PART 271

1. Various comments were received regarding the definition of "Indian," "Indian tribe," "tribal organization" and "trust responsibility". Although the definitions contained in the regulations may not resolve each commentator's concern, it is felt that the definitions are consistent with the Act and generally in conformity with what was expressed during the consultation sessions required by the Act.

2. Two commentators expressed the opinion that tribal organizations should be allowed to contract for Bureau programs under other authorities when the tribal governing body does not request a contract. Although the Bureau recognizes that other contracting authorities are available to it, it does not believe that the mandate of the Act would be served if it contracts for Bureau programs under these other authorities because the tribal governing body involved does not request the contract under the regulations promulgated to implement the Act.

3. Comments were received that were critical of the Bureau's restricting contracting under the Act to non-profit cost reimbursable contracts. The Bureau believes that the requirements found in section 106 of the Act concerning the amount of funds to be provided under a contract and how savings under a contract can be utilized, can best be served through non-profit cost reimbursable contracts.

4. One commentator objected to the Bureau's perception of the role of the tribal governing body in the contracting process and felt the role of the Indian people and community was being subverted thereby, citing the language in section 102 of the Act whereby requests for contracts must be submitted by Indian tribes in support of this contention. The Bureau does not agree with this analysis and feels that the Act clearly mandates the role of the tribal governing body in the contracting process.

5. One commentator observed that in certain States only Certified Public Accountants can be licensed under State law and suggested that provision be made in the regulations for the certification of accountants in such States under rules and regulations that would be developed by the Secretary. The Bureau does not believe that such action would be feasible or practical and, therefore, has taken no action on this comment.

6. One commentator felt that the retrocession procedure of the regulations, as they relate to a tribal governing body's right to request retrocession of a contract when the contractor is not the tribal governing body, violates the contractor's right to due process. The Bureau believes that the tribe that requests a contract also has the right to request retrocession of the contract and that the procedures set forth in the regulations concerning the tribal organization's rights in this situation do not violate due process.

7. Several commentators suggested that the regulations should provide for the payment of a tribal organization's legal expenses when a hearing or appeal is involved. The Bureau feels that these suggestions were well made, but does not believe it is authorized to provide for such payments.

8. Several commentators took exception to the requirement for contractors to make a monthly report regarding the contract to the members of the tribe(s) being served under the contract. The Bureau believes that the people receiving contract services should receive this information on a regular basis without having to make a specific request for it.

9. Some concern was expressed over the regulations dealing with appeals. The Bureau is giving this matter further consideration and will utilize the comments submitted in its consideration.

10. Several commentators expressed the opinion that the equal opportunity provisions of the regulations were not not applicable to Indian tribes in view of Title VII of the Civil Rights Act. The Bureau does not believe that the arguments submitted in support of this position are so clear as to require a change in the regulations at this time. Counsel has, however, been sought and the results will be considered when received.

B. PART 272:

1. Many comments pertained to "tribal organizations" and recommended that "tribal organizations" be permitted to apply for or request grants on the same basis as tribal governing bodies as per §§ 272.11 and 272.16. The Bureau's position in this regard is that a tribal governing body should be the prime grantee with all of the authority and responsibility this designation infers. In effect, the Bureau believes that "tribal organizations" should not have equal status with tribal governing bodies in this grant program and that the regulations as written reaffirm the basic authority and responsibility of tribal governing bodies for tribal business affairs. Tribal governing bodies may, of course, subgrant or subcontract with tribal organizations as per § 272.26.

2. Other comments recommended that authority for the approval, execution and administration of grants be extended to the Agency or Superintendent level. The Bureau agrees that input at the the Agency or Superintendent level is and has provided for this input in § 272.15 and § 272.18. However, the Bureau has determined that it is administratively and technically difficult for any given Agency or Superintendent to assume these responsibilities and that the Area or Commissioner levels are better equipped by virtue of available staff and technical expertise to function in this regard. Also, this is consistent with the approval, execution and administration procedures prescribed in Part 271 on contracts.

C. PART 273

1. Several respondents objected to the inclusion of "previously private schools" as participants under this Part. The Bureau of Indian Affairs does not agree with these respondents as the Act requires that such schools be included, as stated in Title II, Section 208.

2. Various comments were also received regarding the composition, scope of duties, powers, and responsibilities of the Indian Education Committee. The Bureau takes the position that the present regulations reflect the legislative intent and statutory provisions of the Act relative to this Committee.

3. Suggestions were made to alter, in one form or another, the allocation and distribution of funds under this Part. The Bureau takes the position that operational support taken off the top will be phased-out, as stated in § 273.31, over a three year period. The allocation of funds for supplementary programs or operational support will be determined so as to assure an equitable distribution for eligible Indian students with the proviso that each State in FY 1977 will receive no less than 75 percent of its FY 1975 supplementary program assistance.

4. Some commentators raised issues regarding the internal operation of tribal governing bodies relating to such matters as Indian preference, the Indian Education Committee, etc. The Bureau of Indian Affairs takes the position that these issues fall within the purview of the governing bodies of tribes to be resolved in their dealings with their constituents.

D. PART 274:

1. Several comments were received regarding the requirement of vesting land title in the tribe or in the United States in order to qualify for construction monies. The Bureau of Indian Affairs declares this requirement is a policy decision to protect the integrity and expenditure of Federal funds.

2. Some commentators raised questions related to the minimum or projected enrollment figure of 25 pupils in elementary grades. The Bureau believes an enrollment figure lower than this number would not prove economically feasible in construction.

E. PART 275:

There were no major suggestions received regarding Part 275 which were not adopted.

F. PART 276:

1. Some comments were received which pertained to Part 276, Uniform Administrative Requirements for Grants. With the exception of changes to §§ 276.13 and 276.15, no significant changes were made in Part 276. This is because the standards and requirements contained in Part 276, including Appendices A and B, conform with Federal Management Circular 74-7, "Uniform administrative requirements for grants-in-aid to State and local governments". These administrative standards and requirements are minimal and are in use government-wide, including grant programs provided to Indians by other Federal agencies.

G. PART 277:

1. Several comments were received regarding language directly affecting either Pub. L. 81-815 or its regulations. The Bureau of Indian Affairs takes the position that the regulations for Pub. L. 93-638 affecting public school construction, i.e. Part 277, in no way modify the procedures, criteria, and regulatory mechanisms inherent in Pub. L. 81-815 as administered by the Department of Health, Educoation and Welfare.

H. GENERAL COMMENTS APPLYING TO ALL PARTS:

1. Several comments were received suggesting that the regulations issued by the Bureau of Indian Affairs, Department of Interior, and by the Indian Health Service, Department of Health, Education and Welfare, to implement Pub. L. 93-638 be the same. Since the early planning stages of the regulations, Bureau of Indian Affairs and Indian Health Service staffs have consulted continually on making both sets of regulations as consistent as possible. We will work further with the Indian Health Service and other Department of Health, Education and Welfare representatives on possible revisions and amendments to the regulations to achieve greater uniformity and consistency. No amendments will be made without appropriate Indian consultation or which would detract from the legislative intent or statutory provisions of the Act.

Accordingly, Chapter I of Title 25 of the Code of Federal Regulations is amended by revoking Part 33 under Subchapter E and by adding new Parts 271 through 277 under a new Subchapter Y as set forth below.

IV. EFFECT ON OTHER DOCUMENTS

A. On the effective date of these regulations, the tribal contracting guidelines published beginning on page 6377 of the February 11, 1975, FEDERAL REGISTER (40 FR 6377) are hereby revoked. These guidelines are no longer needed since all contracting with tribal organizations for the operation of all parts of Bureau programs will be done in accordance with 25 CFR Part 271 and 41 CFR Part 14H-70.

B. On the effective date of these regulations, the All Purpose Tribal Contract issued by memorandum dated May 7, 1974, is hereby revoked.

C. Part 20 of the Bureau of Indian Affairs Manual on Indian involvement programs will be revoked by a release memorandum to be issued in the near future. The revocation will be made effective on the effective date of these regulations.

D. Except for Part 14H-70, Chapter 14H of Title 41 of the Code of Federal Regulations which contains the Bureau of Indian Affairs procurement regulations will be revised as soon as possible after the effective date of the regulations in 25 CFR Parts 271 through 277.

Effective date. The revocation of Part 33 and the addition of Parts 271 through 277 shall become effective on December 4, 1975.

MORRIS THOMPSON,
Commissioner of Indian Affairs.

SUBCHAPTER Y—INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT PROGRAMS

PART 271—CONTRACTS UNDER INDIAN SELF-DETERMINATION ACT

Subpart A—General Provisions

Sec.
271.1 Purpose and scope.
271.2 Definitions.
271.3 Revision or amendment of regulations.
271.4 Statement of policy.

Subpart B—Application Process

271.11 Eligible applicants.
271.12 Contractable functions or programs.
271.13 Application information.
271.14 Content of application.
271.15 Criteria for declining to contract.
271.16 Access to Bureau records.

Sec.
271.17 Pre-application technical assistance.
271.18 Tribal request for initial contracts.
271.19 Status of contracts in effect before effective date of regulations.
271.20 Recontracting.
271.21 Submission of requests to contract.
271.22 Review and action by Superintendent.
271.23 Review and action by Area Director.
271.24 Area Office recommendation to decline.
271.25 Review and action by Commissioner.
271.26 Appeal of Commissioner's decision to decline.
271.27 Technical assistance after declination.
271.28 Failure of Bureau Agency or Area Office officials to act.

Subpart C—Additional Requirements for Trust Responsibilities

271.31 Applicability.
271.32 Contractable functions or programs.
271.33 Content of application.
271.34 Criteria for declining to contract.

Subpart D—General Contract Requirements

271.41 Advance payments.
271.42 Use of government property.
271.43 Wage and labor standards.
271.44 Indian preference.
271.45 Liability and motor vehicle insurance.
271.46 Recordkeeping.
271.47 Records—access to and retention.
271.48 Freedom of information.
271.49 Annual reporting.
271.50 Penalties.
271.51 Federal contracting laws and regulations.
271.52 Term of contract.
271.53 Performing personal services.
271.54 Contract funds.
271.55 Savings under contract.
271.56 Privacy Act requirements.

Subpart E—Contract Revision or Amendment

Sec.
271.61 Requesting revision or amendment.
271.62 Review and action by contracting officer.
271.63 Contracting officer's recommendation to decline.
271.64 Review and action by Area Director or Commissioner.
271.65 Appeal of Area Director's or Commissioner's decision to decline.
271.66 Revisions or amendments proposed by Bureau.

Subpart F—Retrocession and Reassumption

271.71 Retrocession.
271.72 Full retrocession procedures.
271.73 Tribal assumption of retroceded contracts.
271.74 Reassumption.
271.75 Cancellation for cause.
271.76 Bureau operation of retroceded and reassumed contracts.
271.77 Authorized position and end-of-year employment ceiling reserve for Bureau operation of retroceded, reassumed or cancelled contracts.

Subpart G—Hearings and Appeals

271.81 Hearings.
271.82 Appeals from decision or action by Area Director.
271.83 Appeals from decision or action by Commissioner.
271.84 Appeals from Bureau decision to cancel contract for cause.

AUTHORITY: Sec. 102, Public Law 93-638, 88 Stat. 2203, unless otherwise noted.

Subpart A—General Provisions

§ 271.1 Purpose and scope.

(a) The purpose of the regulations in this Part is to give the application and approval process for non-profit contracts with the Bureau under section 102 of Title I of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203). Title I is known as the Indian Self-Determination Act. Contracts under the Act include "tribal governmental functions" as defined in § 271.2(q), "business related functions" as defined in § 271.2(d), and certain contractable trust resources programs or parts of programs as set forth in § 271.32. The nature of contracts with Indian entities which do not fall within the purview of the Act, including contracts which may provide for profit, and the conditions for entering into such contracts, are set forth in the regulations implementing the Act of June 25, 1910 (36 Stat. 861, 25 U.S.C. 47), commonly referred to as the "Buy Indian" Act.

(b) Section 104 of Title I of the Act provides authority for making grants for certain purposes. It is the Bureau's policy to make grants for the purpose specified in Section 104 of the Act in lieu of contracts. Part 272 of this chapter gives the procedures and requirements for obtaining grants under section 104 of the Act.

(c) Nothing in these regulations shall be construed as:

(1) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe;

(2) Authorizing or requiring the termination of any trust responsibility of the United States with respect to the Indian people; or

(3) Permitting significant reduction in services to Indian people as a result of this Part.

(d) Nothing in these regulations shall be construed to mandate a tribe to apply for a contract or contracts with the Bureau to plan, conduct, and administer all or parts of any Bureau program. Such applications under these regulations are strictly voluntary.

§ 271.2 Definitions.

As used in this part: (a) "Act" means the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203).

(b) "Area Director" means the official in charge of a Bureau of Indian Affairs Area Office.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Business related function" means all programs authorized to be administered by the Bureau for the benefit of Indians enumerated as line items in the Bureau's annual budget request under Tribal Resources Development as the Sub-activities of Business Enterprise Development, Credit and Indian Action Teams; Revolving Funds for Loans; Indian Loan Guaranty and Insurance Funds; and also programs or parts of programs connected with construction projects but exclusive of the actual construction of the project.

(e) "Commissioner" means the Commissioner of Indian Affairs.

(f) "Days" means calendar days.

(g) "Economic enterprise" means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(h) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(i) "Indian" means a person who is a member of an Indian tribe.

(j) "Previously private school" means a school (other than a Federal school formerly operated by the Bureau) that is operated primarily for Indian students in any grade or grades from age 3 years through grade(s) 12; and, which at the time of application is controlled, and sanctioned or chartered by the governing body(s) of an Indian tribe(s).

(k) "Recontracting" means the entering into a contract with a tribal organization which holds a contract for the same program.

(l) "Resolution" means the formal manner in which the tribal government expresses its legislative will in accordance with its organic documents. In the absence of such organic document, a written expression adopted pursuant to tribal practices will be acceptable.

(m) "Secretary" means the Secretary of the Interior.

(n) "Superintendent" means the official in charge of a Bureau of Indian Affairs Agency Office.

(o) "Tribal Chairman" means tribal chairman, governor, chief or other person recognized by the tribal government as its chief executive officer.

(p) "Tribal government, "tribal governing body" and "tribal council" means the recognized governing body of an Indian tribe.

(q) "Tribal governmental function" means all programs authorized to be administered by the Bureau for the benefit of Indians enumerated as line items in the Bureau's annual budget requests under the Activities of Education and Indian Services, the Subactivities of Direct Employment and Road Maintenance, and those programs related to Irrigation and Power Operation and Maintenance identified as a part of the subactivity minerals, mining, irrigation and power under the Activity of Tribal Resources Development.

(r) "Tribal organization" means the recognized governing body of any In-

dian tribe; or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; *Provided*, That a request for a contract must be made by the tribe that will receive services under the contract; *Provided further*, That in any case where a contract is let to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting of such contract.

(s) "Trust resources" means natural resources, land, water, minerals, funds or property, asset, or claim, including any intangible right or interest on any of the foregoing, which is held by the United States in trust for any Indian tribe or any Indian individual or which is held by any Indian tribe or Indian individual subject to a restriction on alienation imposed by the United States.

(t) "Trust responsibility" means, for the purposes of this part only, the retect, manage, develop and approve authorized transfers of interests in trust resources held by Indian tribes and Indian individuals to a standard of the highest degree of fiduciary responsibility.

§ 271.3 Revision or amendment of regulations.

In order to make any substantive revisions or amendments to the regulations in this Part, the Secretary shall take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Present the proposed revision or amendment to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(c) Publish the proposed revisions or amendments in the Federal Register as proposed rulemaking to provide adequate notice to, and receive comments from, all interested parties.

(d) After consideration of all comments received, publish the regulations in the FEDERAL REGISTER in final form not less than 30 days before the date they are made effective.

(e) Annually consult with Indian tribes and national and regional Indian organizations about the need for revision or amendment, and consider their views in preparing the revision or amendment.

(f) Nothing in this section shall preclude Indian tribes or national or regional Indian organizations from initiating request for revisions or amendments subject to paragraphs (a), (b), (c) and (d) of this section.

§ 271.4 Statement of policy.

(a) The Congress has recognized the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) The Congress has declared its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibilities to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

(c) It is the policy of the Bureau to facilitate the efforts of Indian tribes to plan, conduct, and administer programs, or portions thereof, which the Bureau is authorized to administer for the benefit of Indians and to facilitate the coordination of all Federal and other programs on Indian reservations.

(d) It is the policy of the Bureau to continually encourage Indian tribes to become increasingly knowledgeable about Bureau programs and the opportunities Indian tribes have regarding them; however, it is the policy of the Bureau to leave to Indian tribes the initiative in making requests for contracts and to regard self-determination as including the decision of an Indian tribe not to request contracts.

(e) It is the policy of the Bureau not to impose sanctions on Indian tribes with regard to contracting or not contracting; however, the special resources made available to facilitate the efforts of those Indian tribes which do wish to contract should be made known to all tribes, as should the current realities of funding and Federal personnel limitations.

(f) Contracting is one of several mechanisms by which Indian tribes can exercise their right to plan, conduct, and administer programs or portions thereof which the Secretary is authorized to administer for the benefit of Indians. Another mechanism afforded Indian tribes is the use of a grant, as provided in Part 272 of this chapter, or other resources, to plan the manner in which it wishes the Bureau to operate a program or portion thereof.

(g) Contracting by its very nature places Bureau officials in the dual position of assisting Indian tribes, in many instances, by furnishing technical assistance in preparation of contract proposals, and of carrying out their fiscal and administrative responsibilities as officials of the Federal Government. It is recognized that very often these two positions are in opposition to each other. The Act and these regulations are designed to address this problem to the degree practicable. The Commissioner, Area Directors and Superintendents, as line officers of the Bureau, are expected to balance these two positions within the framework of the regulations in this Part.

(h) The regulations in this Part are not meant to and do not change the eligibility criteria which individuals must meet to be eligible for any program currently operated by the Bureau. The eligibility criteria for each Bureau program is given in the Part of Chapter I, Title 25 of the Code of Federal Regulations which deals with that program. A contractor shall use the existing Bureau eligibility criteria in operating all or parts of a Bureau program under a contract under this part unless a waiver is obtained from the Commissioner. The Commissioner may not waive eligibility criteria established by statute. The Commissioner may waive eligibility criteria established by regulation in Chapter I, Title 25 of the Code of Federal Regulations.

Subpart B—Application Process

§ 271.11 Eligible applicants.

Any tribal organization is eligible to apply for a contract or contracts with the Bureau to plan, conduct, and administer all or parts of Bureau programs under section 102 of the Act. However, before the Bureau can enter into a contract with a tribal organization, it must be requested to do so by the Indian tribe or tribes to be served by the contract in accordance with § 271.18.

§ 271.12 Contractable Bureau programs.

Tribal organizations are entitled to contract with the Bureau to plan, conduct, and administer all or parts of any program which the Bureau is authorized to administer for the benefit of Indians. All or parts of any program include:

(a) Any part of a Bureau program which is divisible from the remainder of the program so long as the contract does not significantly reduce benefits to Indians served by the non-contracted part(s) of the program. However, to the extent that it is within the Bureau's existing authority and the program or part thereof involves only one tribe and one Bureau Agency or Area Office, the benefits provided to Indians by the non-contracted part(s) of the program may be reduced at the request of the tribe. When the program or part thereof serves more than one tribe, the benefits provided by the non-contracted part(s) of the program may be reduced when all of the tribes served consent to a reduction.

(b) A single employee position only when the functions to be performed provide a direct service to Indians and meets the criteria in paragraph (a) of this section.

(c) Programs or parts of programs or services that are authorized but not currently operated or provided by the Bureau.

(d) Operation of, or services provided by, previously private schools.

(e) All of the foregoing paragraphs of this section apply to trust resources programs or portions thereof. Additional criteria for contractable trust resources programs, or portions thereof, are given in § 271.32.

§ 271.13 Application information.

Application instructions and related materials may be obtained from Superintendents, Area Directors, and the Commissioner.

§ 271.14 Contents of contract application.

Application for a contract under this Part shall contain the following information in sufficient detail to permit evaluation of the application in light of the declination criteria set forth in § 271.15. No further detail is, or shall be, required.

(a) Full name, address and telephone number of the tribal organization which is applying for the contract.

(b) Full name of tribe(s) with which the tribal organization is affiliated.

(c) Full name of tribe(s) directly benefiting or receiving services from the proposed contract.

(d) Documentation of the tribal request to contract as required in § 271.18.

(e) Date of submission to the Bureau and the name of the office where the application was submitted.

(f) Signature by the authorized representative of the tribal organization and the date thereof.

(g) Estimated number of Indian people who will receive benefits or services from the contract, based on available data including tribal records.

(h) Descriptive narrative of what functions, Bureau programs, or portions of programs the tribal organization wants to contract for.

(i) Plan of operations, which shall include but is not limited to:

(1) A statement of tribal goals and objectives to be obtained by the contract.

(2) The organization, methods and procedures to be used to accomplish the tribal goals and objectives.

(3) The means to measure progress and accomplishment.

(4) The budget showing the amount and sources of funding and other resources required for the contract.

(5) Staffing plan, including extent, if any, that Bureau personnel may be utilized. (See Part 275 of this chapter for staffing options the applicant may wish to consider).

(6) The evaluation criteria and control systems the tribal organization will use to assure that the quality and quantity of actual performance conforms to the requirements of the plan.

(j) Statement of tribal organization's substantive knowledge of the program, part of a program or functions to be contracted.

(k) Description of personnel system and position descriptions for key personnel.

(l) Listing of equipment, facilities, and buildings needed to carry out the contract and how the tribal organization intends to obtain them.

(m) Certification by a licensed accountant that the bookkeeping and accounting procedures the tribal organization presently uses meet the standards of Appendix B of Part 276 of this chapter. In place of the certification, the tribal organization may submit a written agreement to establish a bookkeeping and accounting system that meets the standards of Appendix B of Part 276 of this chapter and to have the bookkeeping and accounting system certified before the Bureau disburses any funds under a contract awarded as a result of the application. When a certification has been submitted in connection with a previous application, the applicant may state this fact instead of submitting a new certification.

(n) Proposed system for managing property and keeping records or agreement to establish within 90 days of contract execution, a satisfactory system for managing property and keeping records.

(o) Advance payment required by the tribal organization for contract.

(p) Term of contract requested and proposed starting date of contract.

§ 271.15 Criteria for declining to contract.

(a) The Commissioner may decline to contract only for the specific causes given in paragraph (b) of this section. The burden of proof is on the Commissioner to demonstrate, through substantial evidence, that one of the specific grounds for declination exists and that, therefore, the application must be declined.

(b) The Commissioner may decline to contract when:

(1) The services to be provided to the intended Indian beneficiaries of the particular program or function to be contracted will not be satisfactory.

(i) It will be presumed by the Bureau that the program plan and budget set forth by the tribal organization provides a basis for the delivery of satisfactory services to the Indian people unless it can be demonstrated by the Bureau by substantial evidence that the program will yield results which will be deleterious to the welfare of the Indian people to be served.

(ii) The service to be provided shall be deemed satisfactory if the contract application indicates that the applicant has or will establish procedures to assure that services and assistance shall be provided to the Indians affected by the contract in a fair and uniform manner. Such procedures include eligibility criteria for a tribal member to receive services; recordkeeping adequate to verify the fairness and uniformity of services in case of formal complaints; an adequate complaint procedure available to all Indians affected; and those rights the individual will retain following the complaint.

(2) Adequate protection of trust resources is not assured. Criteria for determining if there is adequate protection of trust resources are given in § 271.34.

(3) The proposed project or function to be contracted cannot be properly completed or maintained by the proposed contract.

(4) The application is not within the purview of § 271.1(a).

(c) In arriving at his finding, the Commissioner shall consider whether the tribal organization would be deficient in performance under the contract with respect to the factors listed in this paragraph.

(1) Equipment, buildings and facilities. No higher standards with regard to buildings, facilities, or equipment shall be applied to tribal organizations than have previously been applied to the Bureau. As provided in § 271.42, the Bureau shall make available the use of all equipment which has been allocated to the operation of the program by the Bureau in the past, unless the Bureau proves the provision of the equipment will seriously interfere with the Bureau's ability to provide services to Indian people in non-contracted programs. Where equipment is shared by the programs to be contracted and other non-contracted programs, equipment-sharing or other suitable arrangements shall be stated in the contract.

(2) Bookkeeping and accounting procedures. It must be clearly demonstrated by the Bureau that the tribal organization which will undertake the contract does not have or cannot set in place, using the contract funds, an accounting and bookkeeping system which will be adequate.

(3) Substantive knowledge of the program to be contracted.

(i) Where the tribal organization proposing to contract is the tribal governing body and the program or function to be contracted is a tribal governmental function, there shall be an absolute presumption that the tribal governing body has substantive knowledge of the program or function to be contracted.

(ii) Where the tribal organization proposing to contract is not the tribal governing body or the program or function to be contracted is not a tribal governmental function, the tribal organization shall be presumed to have substantive knowledge of the program to be contracted if the tribal organization meets one or more of the following conditions:

(A) The tribal organization has adequately managed a similar program before through grant or contract.

(B) The tribal organization which is to manage the project possesses by virtue of its knowledge and/or experience substantive knowledge of the program to be contracted.

(C) The tribal organization has been a consumer of such services in the past and thus has developed an understanding of the issues involved with the program sufficient to enable it to effectively carry out the contract operation; and, the tribal organization can secure through the resources of the contract, Bureau staff or other resources, the training in the particular subject area which will develop its substantive knowledge of the program.

(4) Community support. Before the Bureau can enter into a contract there must be a request made in accordance with § 271.18. The tribal governing body's resolution under § 271.18 shall be presumed to demonstrate that there is community support for the proposed contract. Unless it can be demonstrated by substantial evidence that there is a lack of community support for

the contract and the lack of support will result in unsatisfactory services, inadequate protection of trust resources or impossibility of service maintenance, the tribal governing body's resolution shall be deemed conclusive. Those asserting that there is a lack of community support for a proposed contract must demonstrate that they have exhausted their tribal remedies before the matter is considered by the Bureau. In any event, there will be no finding by the Bureau of a lack of community support that would result in deficiencies in performance under the contract until those asserting it have exhausted all their tribal remedies.

(5) Adequacy of trained personnel. The adequacy of trained personnel available to the tribal organization to carry out the proposed contract will be presumed if any of the following conditions exist:

(i) If the tribal organization has a personnel system that prescribes minimum occupational qualification standards, procedures for the selection of personnel on the basis of such standards, and the personnel to be used under the proposed contract are to be employed under the personnel system.

(ii) If there is no tribal personnel system, it will be assumed that the personnel to be employed under the proposed contract are adequately trained if the tribal organization has established position descriptions for key personnel to be employed under the contract and agrees to establish a personnel system similar to the one described in paragraph (c)(5)(i) of this section.

(6) Other necessary components of contract performance.

(i) All other necessary components of contract performance will be deemed to be met unless a tribal organization:

(A) Does not agree to develop an adequate personnel system that provides selection standards which insure equal access to all qualified tribal members;

(B) Has not agreed to establish and maintain a property management system which will adequately account for and protect government property.

(C) Has not agreed to keep such records as required pursuant to § 271.46, make reports required by § 271.49, or to make such reports and information available to Indian clients as required by § 271.48.

(D) Has not submitted a completed contract application.

(ii) All "other necessary components" have been specifically identified in this section. No other components shall be defined which may serve as a basis for declination unless they are added to these regulations by revision or amendment of the regulations.

(d) Program plans and designs of tribal organizations for contract operation of Bureau programs or parts may be inconsistent with other Parts of this chapter if a waiver is obtained from the Commissioner. Inconsistencies between such plans and designs and Bureau manuals, guidelines or other procedures that are appropriate to programs or parts of programs operated by the Bureau are not grounds for declination.

(e) Tribes may request a waiver from the Commissioner of regulations in this chapter as given in § 1.2 of this chapter.

(f) Bureau officials may not decline to enter into a contract with a tribal organization because of any objection that could be overcome through the contract.

§ 271.16 Access to Bureau records.

(a) Upon the request of a tribal organization, the Superintendent or Area Director shall make available any information requested and such other information as the tribal organization may need to prepare a contract application or carry out a contract. Tribal organizations, other than the governing body of an Indian tribe (except when operating under a contract authorized under the Act), shall seek such information through that tribe's chairman or other official(s) designated by the tribal governing body, unless the tribal resolution under § 271.18(d)(1) or subsequent resolution sets forth another procedure. Requests for information are subject only to the limits of the Freedom of Information Act (5 U.S.C. 552) as amended by the Act of November 21, 1974 (Public Law 93-502, 88 Stat. 1561), the Privacy Act (5 U.S.C. 552a) and other applicable laws. Information to be made available shall include, but not be limited to:

(1) Data on program services to intended beneficiaries;

(2) Reports on Bureau program operations for the past three years;

(3) Present Bureau staffing pattern and grade levels, existing vacancies and position descriptions;

(4) Data on the amount of funds which have been provided for the direct operation of the specific program(s) or portions thereof by the Bureau during the past fiscal year and proposed contract period;

(5) Existing appraisals, inventories, and assessment of trust resources.

(b) The tribal organization shall have access to Bureau records as follows:

(1) The tribal organization shall have access to needed Bureau records at the appropriate Bureau office for review and making copies of selected records.

(2) If the tribal contractor needs a reasonable volume of identifiable Bureau records, the Bureau will furnish the copies to the tribal organization.

(3) Where a large volume of records are needed and copying is not practical or feasible, the records may be physically located at the contract site provided that Bureau official is designated by the Commissioner or Area Director as custodian of the records.

(c) Failure of the Bureau to provide such access may be appealed under the provisions set out in 43 CFR 2.17.

§ 271.17 Pre-application technical assistance.

(a) Upon the request of a tribe, Bureau Agency and Area Offices shall provide technical assistance to a tribal organization to assist them in:

(1) Determining the appropriateness of contracting.

(2) Developing an effective program design and plan of operations.

(3) Preparing technical parts of the contract application.

(4) Such other ways as may be requested.

(b) Upon the request of a tribe, to the extent that funds are available, the Bureau may make technical assistance available to the tribal organizations from sources including, but not limited to:

(1) Technical assistance organizations under contract with the Bureau.

(2) Grants under Part 272 of this chapter.

(3) Other technical assistance resources funded by the Bureau.

(c) Upon the request of a tribe, the Bureau will also assist tribal organizations in obtaining technical assistance from other Federal agencies.

§ 271.18 Tribal request for initial contract.

(a) Before the Bureau can enter into a contract with a tribal organization, it must be requested to do so by the tribe to be served under the contract. The tribe's request shall be in the form of a resolution by the tribal governing body. If the tribal organization is applying for a contract to perform services benefiting more than one tribe, an authorizing resolution from each tribal governing body must be obtained before submitting the application to the Bureau for approval. A tribal governing body may pass a single resolution authorizing a tribal organization to apply for, negotiate, and execute more than one contract if the resolution specifies for each contract the same information required in paragraphs (b) and (c) of this section.

(b) The resolution of the tribal governing body shall authorize the applicant tribal organization to apply for, negotiate and contract with the Bureau, subject to the specific terms, conditions and limitations of the resolution and applicable tribal laws, codes, and regulations. The resolution shall include the results of the vote (the number for and against), the date the resolution was approved, and signature of the person authorized to certify the accuracy of the information contained in the resolution.

(c) The tribal governing body's request (resolution) should include the following:

(1) When the tribal organization is the tribal governing body:

(i) A brief statement of the contract scope.

(ii) The tribal official authorized to negotiate the contract and any amendments thereto.

(iii) The tribal official authorized to execute the contract and any amendments thereof.

(iv) The expiration date of the authorities granted by the resolution.

(v) The extent and procedure, if any, for review of the contract and any amendments thereto by the tribal governing body before execution.

(vi) The proposed date for contract commencement.

(vii) The proposed term of the contract.

(2) When the tribal organization is other than the tribal governing body:

(i) The name of the tribal organization.

(ii) A brief statement of the contract scope.

(iii) The extent and procedure for review by the tribal governing body of the contract and any amendments thereto prior to execution by the tribal organization.

(iv) The tribal office or official to which the Bureau should send copies of contract documents and correspondence.

(v) The proposed term of the contract.

(vi) The proposed date for contract commencement.

(vii) Any limitations on authorities granted the tribal organization, including authorities granted to or vested in the tribal organization and/or tribal governing body in regard to:

(A) Access to Bureau records under § 271.16.

(B) Recontracting under § 271.20.

(C) Appeals of a decision of the Commissioner under § 271.26.

(D) Requests to revise or amend a contract under §§ 271.61 and 271.62.

(E) Requests for contract retrocession under §§ 271.71 and 271.72.

(F) Right to appeal under § 271.82 § 271.83 or § 271.84.

(d) Any procedures given in this section concerning the manner in which a tribal governing body passes a tribal resolution shall apply except where inconsistent with the tribe's organic documents or in the absence of such organic documents the tribal practice.

§ 271.19 Status of contracts in effect before effective date of regulations.

(a) Contracts between the Bureau and tribal organizations, which were entered into before the effective date of these regulations and are still in effect, shall continue until expiration of that Contract. Any revisions or amendments requested during the contract period shall be subject to the provisions of Subpart E of this Part.

(b) Upon completion of contracts in effect before the effective date of the regulations, one of the following will occur:

(1) Where the tribal organization was authorized to enter into its existing contract by a tribal resolution, even if the resolution was passed before the effective date of these regulations, the tribal organization shall have the right to recontract subject to the provisions given in § 271.20.

(2) Where the tribal organization did not have a tribal resolution authorizing it to enter into the existing contract, it shall not be entitled to recontract, but must obtain a tribal request as provided in § 271.18 and submit an application as provided in § 271.14.

§ 271.20 Recontracting.

The Bureau will recontract for the same function(s) or programs as the original contract at the written request of the tribal organization designated in the tribal resolution. Requests for recontracting shall be made as follows unless restricted by the resolution under § 271.18(c)(2) or subsequent resolutions:

(a) If the original contract provided services to only one Indian tribe, written applications to recontract shall be sent by the tribal organization to the Area Office as follows:

(1) Directly, when the tribal organization involved is the governing body of the tribe.

(2) Through the governing body of the tribe for review when the tribal organization is not the governing body of the tribe. Submission shall be made to the governing body at least 120 days before the original contract expires. Copies of the submision shall be sent to the Superintendent and Area Director at the time of submission to the tribal governing body. The tribal organization shall promptly notify the Area Director in writing of the date the tribal governing body received the application. If, within 45 days after receiving the application, the tribal governing body does not provide the Area Director with a formal resolution objecting to the application to recontract, the absence of receipt of such resolution shall constitute the tribe's request to recontract.

(b) If the original contract provided services to more than one Indian tribe, the tribal organization must give a copy of the written application to recontract to each tribal governing body 120 days before the original contract expires. The tribal organization shall promptly notify the Bureau office, where the application is to be submitted under § 271.21, in writing of the date the tribal governing bodies received copies of the application. If, within 45 days after receiving copies of the application, none of the tribal governing bodies provide the appropriate Bureau office with a formal resolution objecting to the application to recontract, the absence of receipt of such resolutions shall constitute the tribe's request to recontract. If one or more of the tribal governing bodies involved object to the contract, they may withdraw from the contract. In such case those withdrawing can stipulate how they wish the previously contracted services to be rendered and the remainder may be recontracted at the option of the tribes involved.

§ 271.21 Submission of requests to contract.

(a) Tribal requests to contract and contract applications shall be submitted to the Bureau, as follows:

(1) To the Superintendent when the tribe(s)' or Indians to be served by the contract are within the jurisdiction of that Agency office.

(2) To the Area Director when the tribe(s) or Indians to be served by the contract are within the jurisdiction of more than one Agency office in the same Bureau Area.

(3) To the Commissioner when the tribe(s) or Indians to be served by the contract are within the jurisdiction of more than one Area Office.

(b) An application for a contract under this Part may be submitted at any time. However, when the proposed contract may result in the displacement of Bureau personnel, the application must be submitted to the appropriate Bureau official at least 120 days before the contract's proposed starting date so the Bureau can comply with all Civil Service Commission requirements which apply to separation and/or reassignment of Federal employees.

§ 271.22 Review and action by Superintendent.

The Superintendent shall take the following actions after receiving the contract application:

(a) Within five days of receipt, the Superintendent shall notify the applicant and the tribal governing body, if different from the applicant, that the application was received.

(b) Within 15 days of receipt, the Superintendent shall review the application for completeness and request any additional information from the applicant or from the requesting tribe that is needed to satisfy the requirements of § 271.14.

(c) Within 30 days of receipt, the Superintendent shall make recommendations in writing to the applicant and the tribal governing body which he feels are needed to avoid possible declination and shall indicate the technical assistance available from the Agency Office to correct any deficiencies.

(d) The Superintendent shall provide the technical assistance offered in the written recommendation as requested by the tribal organization and tribal governing body.

(e) The Superintendent shall forward the application to the Area Office with his comments and recommendations as follows:

(1) Within 30 days after receiving the application when the Superintendent has no recommendations to make to the applicant.

(2) Within 10 days after making written recommendations to the applicant when the applicant does not respond, or request additional time in which to respond or refuses the technical assistance offered.

§ 271.23 Review and action by Area Director.

Upon receipt of the contract application, the Area Director will review the application and the Superintendent's recommendations or, where the application was submitted directly to the Area Director as provided for in § 271.21, obtain the appropriate Superintendents' recommendations within 10 days and then proceed as follows:

(a) Notify the applicant and the tribal governing body, if different from the applicant, that the application was received, within five days of its receipt.

(b) Within 30 days, review the contract application, the recommendations of the Superintendent, any responses from the contract applicant or the tribal governing body and the criteria for declination set forth in § 271.15 to determine if there are any declination issues that must be addressed, and at the completion of the review, take one of the following actions as appropriate:

(1) If there are no declination issues, the Area Director will notify the contract

applicant in writing of this fact, and shall negotiate and award the contract within 30 days of notifying the applicant, unless a later date is requested by the applicant, and furnish a copy of any documents to be used by the Bureau during negotiations.

(2) If it is felt that there are declination issues that must be resolved, the Area Director will notify the applicant and/or tribal governing body of this fact in writing. The notice shall include a list of the declination issues identified by the Area Director, the reason(s) for such identification, a copy of any documents used in arriving at the issues, recommendations for resolving the issues and the technical assistance available for this purpose. The notice shall also request a meeting with the applicant and/or tribal governing body to discuss the issues and seek agreement on a course of action to resolve them. The meeting shall be held within 15 days of the applicant's and/or tribal governing body's receipt of the notice or at a time and place mutually agreed to by the parties.

(i) If the applicant accepts the technical assistance, it shall be provided in accordance with the applicant's request. At such time as the issues are thus resolved, the Area Director will so advise the applicant and offer to enter into negotiations within 15 days of resolution or at the applicant's convenience.

(ii) If the applicant declines the Area Director's offer of technical assistance and the matter is not otherwise resolved, the Area Director shall proceed in accordance with § 271.24.

(iii) If the applicant does not respond within 30 days of receipt of the Area Director's recommendations and offer of assistance, and does not request additional time in which to respond, the Area Director shall proceed in accordance with § 271.24.

(iv) If the applicant does not agree with the Area Director's recommendations and the matter is not resolved within 30 days of the Area Director's receipt of the applicant's response to the Area Director's recommendations, the Area Director shall proceed in accordance with § 271.24.

§ 271.24 Area Director's recommendation to decline.

(a) If the Area Director, the applicant and the tribal governing body fail to resolve the declination issues, the Area Director shall prepare a written recommendation to decline.

(b) This recommendation shall contain, at a minimum, the following information:

(1) Identification of specific objections, categorized under one or more of the declination factors set forth in § 271.15.

(2) Specific recommendations on actions required by the applicant or tribe to overcome objections.

(3) Description of the nature, scope, and source of the technical assistance which has been provided or offered by the Bureau to assist the tribal organization to overcome declination objections.

(4) Copies of all correspondence between the Agency, Area and applicant and/or tribe, and all responses thereto, including any reports of meetings between the parties relative to the application.

(5) Copy of original application.

(c) The Area Director shall send the written recommendation to the Commissioner within 15 days after the time periods provided in § 271.23(b)(2)(iii) and (iv). At the same time, he shall send a copy of the written recommendation to the tribal organization and tribal governing body.

(d) Within 15 days of receipt of the Area Director's recommendation to decline, the applicant may notify the Commissioner and the Area Director that it accepts the offer of technical assistance described in paragraph (b)(3) of this section, thereby staying the declination process. To reconstitute the application process the applicant must notify the Area Director, at which time the Area Director shall proceed in accordance with § 271.23.

§ 271.25 Review and action by Commissioner.

(a) Within five days after receiving a contract application submitted directly under § 271.21 or a contract application and the Area Director's recommendations to decline, the Commissioner shall notify the applicant and the tribal governing body(s) in writing of the receipt of the application.

(b) Within 20 days after an application is received by the Commissioner under § 271.21, the Commissioner shall direct and the appropriate Area Director(s) shall furnish written recommendations to the Commissioner, the tribal governing body(s) and the applicant.

(c) Within 15 days after receiving the Area Directors' recommendations, the Commissioner shall review the application, the Area Directors' recommendations, and the declination criteria in § 271.15.

(d) Within 15 days after receiving the Area Directors' recommendations, the Commissioner shall notify the applicant, the appropriate tribal governing bodies, and the Area Director(s) of one of the following:

(1) When the Commissioner does not accept the Area Director's recommendations to decline, notice shall be given that the recommendations are not accepted and that the Bureau shall negotiate and award the contract within 45 days, unless the applicant requests additional time.

(2) When the Commissioner accepts the Area Directors' recommendations and believes that the Bureau should not contract as requested, notice shall be given that the Commissioner plans to issue a declination notice and that the applicant has the following rights:

(i) The applicant may submit a written rebuttal to the Commissioner's plan to issue a declination notice.

(ii) The applicant may request a meeting with the Commissioner or his representative under paragraph (e) of this section.

(iii) The applicant must use these rights within 30 days after receiving the notice required in paragraph (d)(2) of this section.

(e) If the applicant requests a meeting with the Commissioner under paragraph (d)(2)(ii) of this section, the Commissioner shall:

(1) Select a site for a meeting between the applicant and the Commissioner or his representative from the Bureau's headquarters.

(2) Authorize payment of transportation costs and per diem under terms he may make to allow adequate representation of the applicant and the appropriate tribe(s), if the meeting is more than 50 miles from the office of the applicant.

(3) Notify the applicant and the appropriate tribe(s) of the time, location and other terms of the meetings.

(4) Hold the meeting within 30 days of the request, unless the applicant requests a later date.

(f) (1) If the Commissioner determines the application should be declined, the declination notice shall be issued as follows:

(i) Within 15 days after receiving the applicant's rebuttal submitted under paragraph (d)(2)(i) of this section or

(ii) After the conclusion of the meeting under paragraph (e) of this section.

(iii) Within 45 days after notifying the applicant under paragraph (d)(2) of this section when the applicant has not used the rights under paragraph (d)(2) of this section.

(2) The declination notice shall be in writing and shall contain:

(i) Identification of specific objections, categorized under one or more of the declination criteria set forth in § 271.15.

(ii) Specific recommendations on actions required by the applicant to overcome objections and a description of the nature, scope, and source of the technical assistance which will be available to overcome declination objections.

(iii) Copies of all correspondence between the Bureau, applicant and/or tribe(s), and all responses thereto, including any reports of meetings between the parties relative to the application.

(iv) Copy of original application.

(v) The appeal rights of the applicant and/or the tribal governing body under § 271.83.

§ 271.26 Appeals of Commissioner's decision to decline.

The tribal organization and/or the tribal governing body shall have 60 days to appeal to the Board of Indian Appeals, Department of Interior, Washington, D.C., the decision by the Commissioner to decline to contract. Provided, that the tribal organization is authorized by the tribal governing body in the request under § 271.18(c)(2) or subsequent resolution to make such an appeal. The appeal shall be made as provided in § 271.83.

§ 271.27 Technical assistance after declination.

If the Commissioner's decision to decline to contract is not appealed or is

upheld on appeal, the Commissioner shall immediately offer technical assistance to the tribal governing body for the purpose of overcoming the declination issues. Within 30 days of the tribal governing body's acceptance of this offer, the Commissioner will make technical assistance available to the tribal governing body for the development of a plan for overcoming the objections that resulted in the decision to decline.

§ 271.28 Failure of Bureau Agency or Area Office to act.

Whenever a Bureau Agency or Area Office official fails to take action on a contract application within the time limits established in this Part, the tribal organization that submitted the application, may, at its option, request action by the next higher Bureau official. In such cases, the official that failed to act shall immediately forward the application and all material pertinent thereto to the official to whom the request for action was made.

Subpart C—Additional Requirements for Trust Responsibilities

§ 271.31 Applicability.

This Subpart gives additional requirements applicable to the application and approval process for contracts under this Part which involve the Bureau's trust responsibilities in the area of natural resources, such as assessments, irrigation, real estate, forestry, range management, wildlife and parks, water inventories, and hunting and fishing.

§ 271.32 Contractable functions or programs.

Contractable trust resources programs, or portions thereof, include the following:

(a) Assessments: inventories of existing resources in trust for individuals and for tribes.

(b) Soil and moisture conservation: basic soil and water conservation, watershed protection, flood prevention, cooperative surveys and investigations, and resource conservation and development.

(c) Irrigation: development, construction, recordkeeping, rehabilitation, operations and maintenance.

(d) (1) Real estate: land use planning and zoning, maintenance of land records, preparation of abstracts of title, research programs to determine heirship and inventory of estates, collection of technical data and studies to be used in determinations of tribal claims to real property, collection of data leading to ascertainment of surface and subsurface resources, administration of leases.

(2) Advice and technical assistance provided individual landowners in connection with lease negotiations initially will be made concurrently by the contractor and an appropriately designated Federal official.

(e) Forestry: forest management and planning, including the making of inventories, management plans and maintenance, tribal or individual Indian consultation services, administration of timber sales and Indian permit cutting, conduct of timber stand improvement projects, protection of the forest against wildfire, trespass, disease, or insect infestation, and participation in cooperative programs with other Federal, State, or tribal organizations related to programs of the Bureau. Activities which already are provided Indian forests from non-Bureau sources, as part of the management of a forested area larger than the reservation, are not contractable under provisions of this Part. Advice and technical assistance provided individual landowners in connection with forestry programs will be made concurrently by the contractor and an appropriately designated Federal official.

(f) Range management: development of contract stipulations for agricultural leases/permits (land use stipulations or conservation standards necessary to define each use shall be incorporated in and made a part of such lease or permit); supervision of compliance, fee collection, watershed management, game and fish management, outdoor recreation, wildfire prevention and control.

(g) Wildlife and parks: conservation, use, and development of wildlife (including fisheries resources), and preservation of natural beauty, historical sites, and archeological remains.

(h) Water inventories and other appropriate programs for protection of water rights.

(i) Hunting and fishing: programs to regulate and enforce on- and off-reservation hunting and fishing and programs to provide data supporting litigation concerning hunting and fishing issues.

§ 271.33 Content of application.

In addition to the information required in § 271.14, the following additional information shall be included in the contract application when a trust resource or responsibility is involved:

(a) A statement of the impact of proposed activity on trust resources related to:

(1) Maintenance of inventory levels and values to tribes and to individuals; and,

(2) Income to individuals and tribe. The statement must also demonstrate a thorough assessment of the trust resources issues, positive steps to protect the trust resources, provisions that limit or eliminate potential for conflicts-of-interest, and that no delegation of trust responsibility is requested.

(b) A statement of the special skills and qualifications required of personnel attached to program activity impacting on trust resources and trust responsibility.

§ 271.34 Criteria for declining to contract.

If a contract application includes a project or function which is related to the Bureau's performance of a trust responsibility in the area of natural resources as given in § 271.32, the Commissioner shall decline to contract if he finds that:

(a) The contract application provides for or would necessarily require the delegation to the tribal organization of a trust responsibility vested by law in the Secretary or the Commissioner.

(b) The contract application provides for the termination of a trust responsibility.

(c) The contract application provides for completion or maintenance of the project or function to a lesser standard than under Bureau administration. However, a tribal proposal to raise performance standards shall not be used as a reason for declination.

(d) The proposed activity requires special skills for its performance and the proposed key staff does not meet Civil Service Commission or excepted qualification standards, other accepted professional standards appropriate to the discipline involved, or are not otherwise recognized as technically qualified.

Subpart D—General Contract Requirements

§ 271.41 Advance payments.

(a) At the request of a tribal contractor, the Bureau contracting officer shall make advance payments under contracts as provided in this section. The requirements given in this section and in Chapter 2000 of the Treasury Fiscal Requirements Manual, as modified or supplemented, apply to making the advance payments.

(b) Any request for advance payment by a tribal contractor shall specify the amount(s) required and the dates such advance(s) will be required and shall be supported by a schedule of estimated expenditures.

(c) An initial advance will be limited to the amount of estimated expenditures for a sufficient period of time required to effect payment, based on experience in the locality. The initial advance may be made in amounts and at times determined suitable to satisfy the minimum essential needs of the contractor.

(d) Later advances may be made at times and in amounts determined necessary to insure availability of funds for timely payment of the tribal contractor's obligations and to minimize the time between withdrawal from the Treasury and expenditure. Requests for advances after an initial advance shall be accompanied and supported by a report of expenditures to date and the amount of funds on hand.

(e) Advance payments shall be made as follows:

(1) When the annual advance to a tribal contractor is expected to exceed $120,000 in the aggregate and the contract term is for at least one year, the letter-of-credit method normally shall be used. The requirements contained in Chapter 2000 of the Treasury Fiscal Requirements Manual, as modified or supplemented, shall apply to making these advance payments.

(2) Except as provided in paragraph (e) (1) of this section, advance payments shall be made by check made payable to the tribal contractor and handled as follows:

(i) Advance payments may be made directly to the tribal contractor when the contractor is a tribal governing body, a non-profit Indian organization serving as a governmental instrumentality of an

Indian tribe or an intertribal council. However, when the contractor is *not* one of the above, the advance payment may be made directly if all of the following conditions exist:

(A) The advance payment does not exceed $2500.

(B) It is the only advance payment involved in the contract.

(C) The performance time is less than 90 days.

(D) The advance payment does not exceed 85% of the amount of the contract.

(ii) Checks for advance payments which cannot be made directly to the tribal contractor, as given in paragraph (e) (2) (i) of this section, shall be marked for deposit in a special bank account established for the contract. No part of the funds deposited in the special bank account shall be mingled with other funds of the tribal contractor before the funds are withdrawn to meet obligations under the contract.

(f) Tribal contractors shall not be held accountable for interest earned on funds advanced pending disbursement. However, bank balances must be maintained at the minimum level consistent with program requirements. Requests for advances shall be reviewed to insure that excess funds are not advanced.

(g) Sub-advances may be made when predetermined as a part of contracted programs or when specifically authorized in writing by the contracting officer. Sub-advances will not be made to individuals except for approved travel. In such cases, the sub-advances shall not exceed the minimum required for one trip and shall be settled by voucher or repayment within 30 days.

§ 271.42 Use of Government property.

(a) In carrying out a contract made under this Part, the Superintendent, Area Director or Commissioner shall, wherever possible, permit a tribal contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau within his jurisdiction. To the extent possible, arrangements on the use of Bureau property shall be provided for in the contract agreement. In determining whether real or personal property can be provided, the Bureau shall determine whether it can provide comparable services for any of the uncontracted part(s) of the program.

(b) Requests for the use of Bureau property which arise after signing of the contract shall be submitted to the relevant Bureau official by the tribal organization. Such requests should be granted and the contract appropriately amended unless such use will seriously interfere with the administration of existing Bureau programs. The property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

§ 271.43 Wage and labor standards.

(a) All laborers and mechanics employed by tribal contractors or subcontractors in the construction, alteration, or repair of buildings or other facilities in connection with contracts under this Part shall be paid wages not less than those on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended. However, this requirement does not apply where the tribal contractor is the recognized governing body of the tribe or a non-profit Indian organization serving as a governmental instrumentality of an Indian tribe and the construction, alteration, or repair work is being performed by the tribal organization or the tribe with its own employees.

§ 271.44 Indian preference.

(a) Any contract made by the Bureau with a tribal organization shall provide that the tribal contractor shall, to the greatest extent feasible, give preference in and opportunities for employment and training to Indians.

(b) Any contract made by the Bureau with a tribal organization shall provide that the tribal contractor shall, to the greatest extent feasible, give preference in the award of subcontracts to Indian organizations and to Indian-owned economic enterprises.

(c) All subcontractors employed by the tribal organization shall, to the extent possible, give preference to Indians for employment and training and shall be required to include in their bid submission a plan to achieve maximum use of Indian personnel.

(d) In the performance of contracts under this Part 271 and subject to the provisions of Part 14 H–70 of Title 41, a tribal governing body may develop its own Indian preference requirements to the extent that such requirements are not inconsistent with the purpose and intent of paragraphs (a), (b), and (c) of this section.

§ 271.45 Liability and motor vehicle insurance.

(a) Tribal organizations shall obtain public liability insurance under contracts entered with the Bureau under this Part. However, where the contracting officer determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk, the contract may be exempted from this requirement.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the tribal organization to provide liability insurance, regardless of how small the risk.

§ 271.46 Recordkeeping.

A tribal contractor will be required to maintain a record-keeping system which will allow the Bureau to meet its legal records program requirements under the Federal Records Act (44 U.S.C. 3101 et seq.) and to facilitate contract retrocession or reassumption under Subpart F of this part. Such a record system shall:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner which will provide accurate, current and complete disclosure of financial status; correlation with budget or allowable cost schedules; and clear audit facilitating data.

(b) Reflect the amounts and sources of funds other than contract funds which may be included in the operation of a program.

(c) Provide for the creation, maintenance and safeguarding of records of lasting value, including those involving individual rights, such as permanent student records and transcripts.

(d) Provide for orderly retirement of records used or created under the contract. Such records shall be returned to the Bureau for disposition according to the General Records Schedules and the Bureau Records Control Schedules.

§ 271.47 Records—access to and retention.

(a) During the term of a contract under this Part and for three years after the project or undertaking is completed, the Comptroller General, the Secretary and the Commissioner or any of their duly authorized representatives shall have access, for audit and examination purposes, to any of the tribal contractor's books, documents, papers, and records which, are related or pertinent to the contract or any subcontract, with the following exceptions:

(1) The records shall be retained beyond the three year period if audit findings have not been resolved.

(2) When records are transferred to or maintained by the Bureau, the three year retention requirement does not pertain to the contractor for those records.

(b) The tribal contractor will be responsible for maintaining all documents such as invoices, purchase orders, cancelled checks, balance sheets and all other records relating to financial transactions in a manner which will facilitate auditing. The tribal contractor will be responsible for maintaining files of correspondence and other documents relating to the administration of the program or project properly separated from general records or cross-referenced to general files.

§ 271.48 Freedom of information.

(a) Unless otherwise required by law, the Bureau shall not place restrictions on tribal contractors which will limit public access to the tribal contractors' records except when records must remain confidential.

(b) A tribal contractor under this Part shall make all reports and information concerning the contract, including the report required under § 271.49, available to the Indian people which the contractor serves or represents. Reports and information may be withheld from disclosure only when both of the following conditions exist:

(1) The reports and information fall within one of the following exempt categories:

(i) Specifically required by statute or Executive Order to be kept secret.

(ii) Related solely to internal personnel rules and practices of the Bureau.
(iii) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.
(iv) Memoranda or letters between agencies of the Federal Government which would not be available by law to a party other than the Federal Government in litigation with the Federal Government.
(v) Personnel, medical, and similar files where disclosure would be a clearly unwarranted invasion of personal privacy.
(vi) Investigatory records compiled for law enforcement purposes when production of the records would:
(A) Interfere with enforcement proceedings;
(B) Deprive a person of a right to a fair trial;
(C) Be an unwarranted invasion of personal privacy;
(D) Disclose the identity of a confidential source and confidential information furnished only by the confidential source;
(E) Disclose investigative techniques and procedures; or
(F) Endanger the life or physical safety of law enforcement personnel.
(vii) Contained in or related to examination, operating, or condition reports prepared for the use of an agency of the Federal Government responsible for the regulation or supervision of financial institutions.
(viii) Geological and geophysical information and data concerning wells.

(2) Disclosure is prohibited by statute or Executive Order or sound grounds exist for using the exemption given in paragraph (b)(1) of this section.

(c) A request to inspect or copy reports and information shall be in writing and must reasonably describe the reports and information requested. The request may be delivered or mailed to the tribal contractor. Within ten working days after receiving the request, the tribal contractor shall determine whether to grant or deny the request. The requester shall be notified immediately of the determination.

(d) The time limit for making a determination may be extended up to an additional ten working days for good reason. The requester shall be notified in writing of the extension, reasons for the extension, and date on which the determination is expected to be made.

§ 271.49 Annual reporting.

(a) For each fiscal year during which a tribal organization receives or expends funds pursuant to a contract under this Part, the tribe which requested the contract must submit a report to the Commissioner. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended, the tribe's evaluation of the contract performance using the criteria submitted in the contract application, and information on the conduct of the program or services involved. The report shall include any other contract-related information requested by the Commissioner and may be submitted as follows:

(1) When the contract is with the governing body of an Indian tribe, the tribe shall submit the report to the Area Director.

(2) When the contract is with a tribal organization other than the governing body of the tribe, the tribe has the option of having the tribal organization prepare the report and submit it to the tribe for review and approval before the tribe submits it to the Area Director or Commissioner as appropriate.

(3) When the contract benefits more than one tribe, the tribal organization shall prepare and submit the report to each of the tribes benefiting under the contract. Each tribe shall endorse the report before submitting it to the Area Director or Commissioner as appropriate. Should any of the tribes fail to endorse the report within 75 days of its receipt, the tribal organization may submit the report with the endorsements that have been received.

(b) The annual report shall be submitted to the Area Director or Commissioner as appropriate within 90 days after the end of the fiscal year in which the contract was performed. However, upon receipt of a written request, the period for submitting the report may be extended by the Area Director or the Commissioner if there is just cause for such extension.

(c) In addition to the yearly reporting requirement given in paragraphs (a) and (b) of this section, the contract shall provide that the tribal contractor will make available monthly, to members of the tribe(s) affected, an accounting of the amounts and the purposes for which the contract funds were expended during the previous monthly period in the following manner:

(1) By posting a notice containing such information on or before the tenth of each month, at a conspicuous place readily accessible to members of the tribe(s) affected; or,

(2) By such other means as is mutually agreed to by the tribal contractor and the Bureau.

(d) In addition to the requirements contained in paragraphs (a), (b) and (c) of this section, the tribal contractor shall furnish other contract-related reports when and as required by the Area Director or Commissioner.

§ 271.50 Penalties.

If any officer, director, agent, or employee of, or connected with, any contractor or subcontractor under this Part embezzles, willfully misapplies, steals, or obtains by fraud any of the funds or property connected with the contract or subcontract, he shall be subject to the following penalties:

(a) If the amount involved does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) If the amount involved exceeds $100, he shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

§ 271.51 Federal contracting laws and regulations.

(a) Contracts with a tribal organization under this Part shall comply with the Bureau procurement regulations contained in 41 CFR Part 14H–70, except as provided in paragraph (b) of this section.

(b) The Commissioner may waive any Federal contracting laws, executive orders, regulations, rules and other administrative requirements which he determines are not appropriate for the purposes of the contract involved or are inconsistent with the Act. Regulations and clauses which are deemed inconsistent or inappropriate for inclusion in contracts entered into under the Act may be waived, modified or supplemented in 41 CFR Part 14H–70 of the Bureau's procurement regulations. Requests for waivers may be made as follows:

(1) Tribal organizations may submit written requests for a waiver or modification of contract regulations on specific contracts to the Commissioner through, or jointly with, the contracting officer. The contracting officer will promptly transmit the request and his recommendations on it to the Commissioner, who shall issue a ruling within 15 days after receipt of the request.

(2) When the waiver or modification requested is determined by the Commissioner to apply in general, it will be made a part of 41 CFR Part 14H–70. When the Commissioner determines that the request for modification or waiver should not apply in general but is warranted for the contract to which the request pertains, the tribal organization and the contracting officer will be so advised in writing.

(3) If the request for waiver or modification is determined by the Commissioner not to be appropriate, the tribal organization will be notified in writing.

(c) Contracts will be negotiated on a non-competitive basis without advertising when the contracts are requested by a tribal governing body in accordance with § 271.18.

(d) A tribal organization is not required to furnish performance and payment bonds before carrying out a contract under this Part for the construction of public buildings or works as required by the Miller Act of August 24, 1935 (49 Stat. 793), as amended. However, the tribal organization shall require each of its subcontractors to furnish both performance and payment bonds as follows:

(1) A performance bond with a surety or sureties satisfactory to the approving official, and in an amount he deems adequate, for the protection of the United States.

(2) A payment bond with a surety or sureties satisfactory to the approving official for the protection of all persons supplying labor and material in carrying out the contract. Whenever the total amount payable by the terms of the contract is not more than $1,000,000, the payment bond shall be one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more

than $1,000,000 but not more than $5,000,000, the payment bond shall be 40 percent of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more than $5,000,000, the payment bond shall be $2,500,000.

§ 271.52 Term of contract.

(a) The term of contracts under this Part shall not exceed one year except that contracts may be made for a longer term up to three years, subject to availability of funds under the following circumstances:

(1) The services provided under the contract can reasonably be expected to be continuing in nature and, as a result, a longer contract term would be advantageous.

(2) The Indian tribe(s) to be served by the contract request that the term be more than one year. The tribal organization will indicate the desired term of the contract on the application form. When the Indian tribe(s) request that the contract be approved as provided in § 271.18, that will also be deemed a request for the longer term indicated in the application.

(b) Contracts made for a term of more than one year may be renegotiated annually to reflect factors, including, but not limited to, cost increases beyond the control of the tribal contractor. Proposed changes in the services provided under the contract which reflect changes in program emphasis may be considered during the annual renegotiation if the changes fall within the general scope of the contract. Such changes may be initiated by either the tribal contractor or the Bureau but must be agreed to by both.

§ 271.53 Performing personal services.

Any contract made under this Part may include provisions for the performance of personal services which would otherwise be performed by Federal employees. Such services include, but are not limited to, performing the following functions in accordance with the contract and applicable rules and regulations:

(a) Determining the eligibility of applicants for assistance, benefits, or services.

(b) Determining the extent or amount of assistance, benefits, or services to be provided.

(c) Determining the provisions of such assistance, benefits, or services.

§ 271.54 Contract funds.

The tribal organization shall be entitled to be funded for direct and indirect costs under the contract as follows:

(a) Direct costs under contracts for operations of programs or parts shall not be less than the Bureau would have provided if the Bureau operated the program or part during the contract. Direct costs shall include the Bureau's direct costs for planning, administering, and evaluating the program or part and shall not be used to reduce indirect costs otherwise allowable to the tribal organization.

(b) Direct costs under contracts for operation of programs or parts operated by the Bureau before contract operations shall be not less than the funds that are programmed and available for the program or part at the time of the contract application, except as limited in paragraph (g) of this section.

(c) Direct costs under contracts for the operation of programs or parts authorized to be operated by the Bureau, but not operated by the Bureau, for the benefit of the Indians to be served under the contract shall be determined by mutual agreement based on a comparison of similar programs operated by the applicant, the requesting tribe, other tribes, the Bureau, other governmental, public or private organizations.

(d) Direct costs for programs or parts to be contracted at the Agency Office level shall be based on the funds available at that level.

(e) Direct costs for programs or parts to be contracted at the Area Office level shall be based on funds available at that level.

(f) Allowability of costs under contracts shall be determined under Appendix A of Part 276 of this chapter.

(g) Funds provided under contract for direct or indirect costs shall not cause a reduction in funds provided for other programs or parts not under contract, except as agreed to by the affected tribe(s) and within the existing authorities of the Bureau.

§ 271.55 Savings under contract.

(a) If it becomes apparent during the contract term that the estimated amount of a contract under this Part will be in excess of actual expenditures under the contract, the identified savings shall be used to provide additional services or benefits under the contract.

(b) When both the tribal organization and the Bureau agree that it is not practicable to spend the savings during the contract term and the contract funds were appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208), the savings may be carried over into the succeeding fiscal year contract, except as otherwise specifically provided in appropriation acts. Savings carried over into a succeeding fiscal year shall be added to the contract amount for that fiscal year. The savings shall not reduce the amount that would have been made available if there had been no savings.

(c) If there are savings under a contract that is retroceded as provided in § 271.71, the savings shall be used by the Bureau to operate the program or part of a program covered by the retroceded contract. The savings shall be carried over and used for such operations during the succeeding fiscal year, except as otherwise specifically provided in appropriation acts.

§ 271.56 Privacy Act requirements.

(a) When a tribal contractor operates a system of records to accomplish a Bureau function, the contractor shall comply with Subpart D of 43 CFR Part 2 which implements the Privacy Act (5 U.S.C. 552a). Examples of the tribal contractor's responsibilities are:

(1) To continue maintaining those systems of records declared by the Bureau to be subject to the Privacy Act as published in the FEDERAL REGISTER.

(2) To make such records available to individuals involved.

(3) To disclose an individual's record to third parties only after receiving permission from the individual to whom the record pertains. 43 CFR 2.56 lists exceptions to this procedure.

(4) To establish a procedure to account for access, disclosures, denials, and amendments to records.

(5) To provide safeguards for the protection of the records.

(b) The tribal contractor may not:

(1) Discontinue or alter any established systems of records without prior approval of the appropriate Bureau systems manager.

(2) Deny requests for notification or access of records without prior approval of the appropriate Bureau systems manager.

(3) Approve or deny requests for amendments of records without prior approval of the appropriate Bureau systems manager.

(4) Establish a new system of records without prior approval of the Department of Interior and the Office of Management and Budget.

(5) Collect information about an individual unless it is relevant or necessary to accomplish a purpose of the Bureau as required by statute or Executive Order.

(c) The tribal contractor is subject to the penalties provided in subsection (i) of 5 U.S.C. 552a.

Subpart E—Contract Revision or Amendment

§ 271.61 Requesting revision or amendment.

(a) Any contract made under this Part may be revised or amended as deemed necessary to carry out the purposes of the program, project or function being contracted.

(b) The contractor shall submit proposed revisions and amendments to the Bureau as follows:

(1) To the contracting officer in the Area Office when the tribe(s) or Indians served by the contract are within the jurisdiction of that Area Office.

(2) To the contracting officer in the Bureau's headquarters in Washington, D.C. when the tribe(s) or Indians served are within the jurisdiction of more than one Area Office.

(c) The contractor shall send copies of all requests for revisions or amendments to the designated representative of the tribal governing body at the same time as they are sent to the appropriate contracting officer.

§ 271.62 Review and action by contracting officer.

Upon receipt of the proposed revision or amendment from the contractor, the contracting officer shall, unless the tribal resolution under § 271.18(c)(2) or any

subsequent amendment restricts such action, proceed as follows:

(a) Within five days, notify in writing the contractor and the tribal governing body(s) if different from the contractor, of receipt of the proposed revision or amendment and that the tribal governing body(s) shall have 15 days from receipt of the notice to send any written objections to the contracting officer. If the tribal governing body(s) object to the proposed revision or amendment, the contracting officer shall so notify the contractor and the proceedings under this subpart shall cease.

(b) Within 30 days after the tribal governing body(s) received the notice, if no objections are received, review the proposed revision or amendment and the criteria for declination given in § 271.15. At the completion of the review, the following action will be taken as appropriate:

(1) If there are no declination issues, the contracting officer will notify the contractor and the tribal governing body(s) in writing of this fact and revise or amend the contract within 30 days of issuing the notice or at their convenience.

(2) If it is felt that there are declination issues that must be resolved, the contracting officer will notify the contractor and the tribal governing body(s) of this fact and the extent of the issues, recommend a course of action to resolve the issues and offer technical assistance to resolve the issues within 30 days after issuing the notice.

(i) If the contractor and the tribal governing body(s) accept the technical assistance, it shall continue in accordance with their request. At such time as the issues are thus resolved the contracting officer will so advise the contractor and the tribal governing body(s) and revise or amend the contract within 15 days of resolution or at their convenience.

(ii) If the contractor and the tribal governing body(s) decline the contracting officer's offer of technical assistance and the matter is not otherwise resolved, the contracting officer shall proceed in accordance with § 271.63.

(iii) If the contractor and the tribal governing body(s) do not respond within 30 days of receipt of the contracting officer's recommendations and offer of assistance and do not request additional time in which to respond the contracting officer shall proceed in accordance with § 271.63.

(iv) If the contractor and the tribal governing body(s) do not agree with the contracting officer's recommendations and the matter is not resolved within 30 days of the contracting officer's receipt of their response to the contracting officer's recommendations, the contracting officer shall proceed in accordance with § 271.63.

§ 271.63 Contracting officer's recommendation to decline.

(a) If the contracting officer, the contractor, and the tribal governing body fail to resolve the declination issues, the contracting officer shall prepare a written recommendation to decline.

(b) This recommendation shall contain, at a minimum, the following information:

(1) Identification of specific objections, categorized under one or more of the declination factors set forth in § 271.15.

(2) Specific recommendations on actions required by the contractor or tribe(s) to overcome objections.

(3) Description of the nature, scope, and source of the technical assistance which has been provided or offered by the Bureau to assist the contractor and the tribal governing body(s) to overcome the declination objections.

(4) Copies of all correspondence between the contracting officer and contractor and tribal governing body(s) and all responses thereto, including any reports of meetings between the parties relative to the proposed revision or amendment.

(5) Copy of original proposed revision or amendment.

(c) The contracting officer shall make written recommendations to:

(1) The Area Director when the tribe(s) or Indians served by the contract are within the jurisdiction of that Area Office.

(2) The Commissioner when the tribes or Indians served are within the jurisdiction of more than one Area Office.

§ 271.64 Review and action by Area Director or Commissioner.

(a) Within five days after receiving a proposed revision or amendment and the contracting officer's recommendations to decline, the Area Director or Commissioner as given in § 271.61 shall notify the contractor and the tribal governing body(s) in writing of the receipt of the proposed revision or amendment.

(b) Within 15 days after receiving the contracting officer's recommendations, the Area Director or Commissioner shall review the application, the contracting officer's recommendations, and the declination criteria in § 271.15.

(c) Within 15 days after receiving the contracting officer's recommendations, the Area Director or Commissioner shall notify the contractor, the appropriate tribal governing body(s), and the contracting office of one of the following:

(1) When the Area Director or Commissioner does not accept the contracting officer's recommendations to decline, notice shall be given that the recommendations are not accepted and that the Bureau shall revise or amend the contract as requested by the contractor and the tribal governing body(s).

(2) When the Area Director or Commissioner accepts the contracting officer's recommendations and believes the Bureau should not revise or amend the contract as requested, notice shall be given that the Area Director or Commissioner plans to issue a declination notice and that the contractor and the tribal governing body(s) have the following rights:

(i) The contractor and the tribal governing body(s) may submit a written rebuttal to the Area Director's or Commissioner's plan to issue a declination notice.

(ii) The contractor and the tribal governing body(s) may request to appear before the Area Director or Commissioner or their representatives under paragraph (d) of this section.

(iii) The contractor and the tribal governing body(s) must exercise these rights within 30 days after receiving the notice required in paragraph (c)(2) of this section.

(d) If the contractor and the tribal governing body(s) request to appear before the Area Director or Commissioner under paragraph (c)(2)(ii) of this section, the Area Director or Commissioner shall:

(1) Select a site for a meeting between the contractor, the tribal governing body(s), and the Area Director or Commissioner. The Area Director or Commissioner may designate a representative from his office to attend the meeting.

(2) Authorize payment of transportation costs and per diem under terms he may make to allow adequate representation of the contractor and the appropriate tribe(s), if the meeting is more than 50 miles from the office of the contractor.

(3) Notify the contractor and the appropriate tribe(s) of the time, location and other terms of the meeting.

(4) Hold the meeting within 30 days of the request, unless the contractor and the tribal governing body(s) request a later day.

(e) (1) The Area Director or Commissioner shall issue a declination notice as follows:

(i) Within 15 days after receiving the contractor's and tribal governing body(s)' rebuttal submitted under paragraph (c)(2)(i) of this section or after the conclusion of the meeting under paragraph (d) of this section.

(ii) Within 45 days after issuing the notice under paragraph (c)(2) of this section when the contractor and tribal governing body(s) have not used the rights under paragraph (c)(2) of this section.

(2) The declination notice shall be in writing and shall contain:

(i) Identification of specific objections, categorized under one or more of the declination criteria set forth in § 271.15.

(ii) Specific recommendations on actions required by the contractor or tribe to overcome the objections.

(iii) Description of the nature, scope, and source of the technical assistance which has been provided or offered by the Bureau to assist the contractor and the tribal governing body(s) to overcome declination objections.

(iv) Copies of all correspondence between the Bureau, the contractor and/or tribe, and all responses thereto, including any reports or meetings between the parties relative to the application.

(v) Copy of original proposed revision or amendment.

(vi) The appeal of rights of the contractor and the tribal governing body(s)

under § 271.82 or § 271.83 as given in § 271.65.

§ 271.65 Appeal of Area Director's or Commissioner's decision to decline.

(a) The contractor and/or the tribal governing body(s) shall have 60 days to appeal the decision by the Area Director or Commissioner to decline to amend the contract.

(b) An appeal from an Area Director's decision to decline to amend the contract shall be made to the Commissioner as provided in § 271.82.

(c) An appeal from the Commissioner's decision to decline to amend the contract shall be made to Director, Office of Hearings and Appeals, Department of Interior, Washington, D.C., as provided in § 271.83.

§ 271.66 Revisions or amendments proposed by Bureau.

(a) Where the Bureau proposes a revision or amendment to a specific contract, it shall notify the contractor and the tribal governing body(s) in writing of the following:

(1) The specific revision or amendment which is proposed.

(2) The rationale for the proposal.

(b) All amendments proposed by the Bureau must be agreed to, in writing, by the contractor, the tribal governing body(s) and the Bureau. If such agreement cannot be obtained, the proposed amendment shall not be adopted by the Bureau.

Subpart F—Retrocession and Reassumption

§ 271.71 Retrocession.

(a) Tribal governing bodies not only have a right to contract for Bureau programs or portions thereof, as they choose, but also have a right to return responsibility for the operation of a contracted program or portion thereof to the Bureau for any reason they deem appropriate. Retrocession specifically recognizes the Federal Government's unique and continuing relationship with and responsibility to Indian people.

(b) When a tribal organization experiences specific problems with the operation of a contract and is considering the possibility of retrocession, it may request the Bureau to assist it to avoid retrocession. In the event of such a request, the Bureau will:

(1) Meet with appropriate officials of the tribal organization and the tribe, where the tribal governing body is not the contractor, to develop a plan to avoid retrocession.

(2) Provide, to the extent possible, special technical assistance to assist the tribal organization to satisfactorily operate the program and enable it to avoid retrocession.

§ 271.72 Full retrocession procedures.

(a) Whenever an Indian tribe requests retrocession of a contract, retrocession shall be effective upon a date specified by the Commissioner or Area Director as appropriate but no later than 120 days after the date of the request from the tribe(s), except when the tribe(s) and the Commissioner mutually agree on a later date.

(b) When the contract is with a tribal organization other than the tribal governing body and the tribal resolution required under § 271.18(c)(2) does not vest in the tribal governing body the sole right to request retrocession, the tribal governing body shall consult with the tribal organization and, if so requested, offer it an opportunity to be heard in accordance with tribal procedures before requesting retrocession of the contract.

(c) When the contract is with a tribal organization which is performing services benefiting more than one Indian tribe, all or any of the tribes may request a retrocession in accordance with the procedures provided for in the tribal resolution required for the initial contract § 271.18(c)(2). When all of the tribes request retrocession, the retrocession shall be accomplished as provided for in this section. When one or more, but not all of the tribes request retrocession, the contract will continue until the end of the contract term or the fiscal year, whichever comes first. In such case the Bureau shall assess its available resources and capabilities to provide such services independently of and in addition to that being provided under the contract and inform the tribes requesting retrocession of the level of services that will be available to them upon retrocession. The fact that these services may necessarily be at a reduced level will not constitute cause to cancel the existing contract providing services to tribes not retroceding. The existing contract will be modified as appropriate to reflect the nonparticipation to the tribes no longer being served. The Bureau will, however, provide sufficient resources to maintain the existing level of services under the contract to the tribes that did not request retrocession.

(d) Within 15 days after receipt by the Commissioner or Area Director of a request for retrocession, representatives of the tribe(s), the tribal organization when appropriate, and the Commissioner or Area Director as appropriate shall meet and take the following actions:

(1) Mutually agree on a plan for orderly transfer of responsibilities.

(2) Mutually agree on a plan for inventorying and accounting for materials and supplies on hand, equipment, facilities and real property.

(3) Establish an accounting of funds, current and anticipated obligations, and costs of operation until the retrocession date.

(4) Identify all records relating to the contract and to the contracted function.

(e) On the date of retrocession, the tribal contractor will deliver to the Bureau all property that was acquired with contract funds and all materials, supplies and records of whatever nature which have been identified as necessary for the continuation of the program, project or function.

(f) Within 60 days after retrocession, the tribe(s) and the Bureau will jointly develop a report to the Commissioner outlining the reasons why retrocession was requested.

(g) Retrocession of a contract by an Indian tribe shall be without prejudice to:

(1) Any other contract to which it is a party.

(2) Any other contracts it may request.

(3) Any future request to contract for the programs or services covered by the retroceded contract, insofar as the conditions which led to retrocession are no longer a factor and the tribal organization is the same one that held the retroceded contract.

§ 271.73 Tribal assumption of retroceded contracts.

Wherever an Indian tribe chooses to retrocede a contract operated by a tribal organization other than the tribal governing body, the tribal governing body pursuant to § 271.18 may contract for the program. In such a case, the tribal governing body shall submit a contract application pursuant to § 271.14; *Provided*, That the tribal governing body may submit the contract application directly to the Area Director or Commissioner, as appropriate.

§ 271.74 Reassumption.

(a) A contract made under this Part may be terminated, and control or operation of the program or function assumed by the Commissfoner or Area Director as appropriate, in whole or in part, when the Commissioner or Area Director determines that the tribal organization's performance under the contract involves:

(1) The violation of the rights of any persons can be identified as a pattern or practice, or

(2) The endangerment of the health, safety and welfare of any persons, or

(3) Gross negligence or mismanagement in the handling or misuse of funds provided under the contract.

(b) If the Commissioner or Area Director as appropriate finds there is an immediate threat to safety, he may, upon written notice to the tribal organization, immediately suspend the contract and resume control or operation of the program. In such an event, the Commissioner or Area Director will hold a hearing within 10 days. The hearing shall be conducted as provided in § 271.81. The decision issued pursuant to § 271.81(c) shall include a statement of the corrective action needed to be taken by the tribal organization before it can assume operation of the contract.

(c)(1) If there is no immediate threat to safety, the Commissioner or Area Director as appropriate shall provide written notice to the tribal organization of intent to terminate the contract. The notice shall give the reasons for the proposed termination, the corrective measures necessary, and a reasonable time period in which corrective action must be taken. The Commissioner or Area Director shall also hold a hearing in accordance with § 271.81 within 10 days of issuance of the notice.

(2) When the decision resulting from the hearing held pursuant to § 271.81 is

adverse to the tribal organization, the decision shall as a minimum state the corrective action that must be taken, state the technical assistance the Bureau will provide the tribal organization and give the tribal organization at least 60 days in which to take corrective action. Within 30 days of the tribal organization's receipt of an Area Director's decision, it may request the Commissioner to review the decision. If the Commissioner determines that staying the Area Director's decision will not result in an immediate threat to safety, he may provide additional time for taking corrective action. If the Commissioner determines the Area Director's decision is not correct, he may advise the Area Director to rescind the hearing decision.

(d) A decision to terminate the contract and reassume control or operation may be appealed as provided in § 271.82 or §271.83, as appropriate.

(e) The Commissioner may decline to enter into a new contract and may retain control of the program or function until he is satisfied that the conditions which caused the contract to be terminated have been corrected.

§ 271.75 Cancellation of contract for cause.

(a) Any contract with a tribal organization entered into under this Part may be cancelled for cause when the tribal organization fails to perform within the terms and conditions of the contract.

(b) Before cancellation of the contract, the Area Director or Commissioner shall advise the tribal organization and the tribal governing body(s) if different than the tribal organization in writing of the following:

(1) The reasons why the Area Director or Commissioner is considering cancelling the contract.

(2) That the tribal organization will be given at least 45 days to present an acceptable plan to overcome the deficiencies in its contract performance.

(3) That the Bureau will furnish technical advice an assistance to help overcome the deficiencies in the contract performance, when requested.

(c) When the contract is with other than the governing body of the Indian tribe, the tribe(s) receiving services or benefits under the contract will be notified when a cancellation for cause is contemplated. The notice shall include the reasons why a cancellation for cause is contemplated and any supporting documents used by the Area Director to reach his conclusions. The notice shall also offer to hold a meeting with the tribe(s) to discuss the issues and explore any options available to the tribe(s). The Area Director and the tribe(s) will mutually consider the relevant issues before the Area Director proceeds with any cancellation action.

(d) If the tribal organization does not present an acceptable plan to overcome the deficiencies in its contract performance within 45 days of its receipt of the notice of deficiencies or does not request the Commissioner to review the Area Director's decision as provided in paragraphs (e) and (f) of this section, the Area Director will cancel the contract for cause. The contracting officer will notify the tribal organization, in writing, of the cancellation. The notice shall give the reasons for the cancellation and the right of the tribal organization to appeal under § 271.84.

(e) When the Area Director determines the contract should be cancelled for cause the decision shall state as a minimum: The reasons for the decision; the actions that must be taken to achieve satisfactory performance; the technical assistance the Bureau will provide 60 days to correct its performance deficiencies; and the tribal organization's right of appeal under § 271.84. The decision shall also advise the tribal organization that it may request the Commissioner to review the decision and that such request must be made within 30 days of receipt of the decision.

(f) The Commissioner's review will be conducted and the tribal organization advised of the results within 30 days of receiving the request. If the Commissioner concurs in the Area Director's decision, the tribal organization will be so advised in writing and of its right to appeal the Area Director's decision pursuant to § 271.84. If the Commissioner decides that the Area Director's decision is not supported by the record, he will so advise both the Area Director and the tribal organization and the cancellation action will cease. In no case shall an Area Director cancel a contract until the review requested by a tribal organization has been completed by the Commissioner and results thereof have been received.

(g) When a contract is cancelled for cause, the Bureau will either perform the work with its own forces or by another contract, as appropriate. When the Bureau does not have sufficient forces on hand to immediately perform the work, it may, for temporary periods of the shortest duration possible, contract with a contractor that is not a tribal organization. However, in such cases, the advice of the tribe(s) will be obtained to determine how they desire the services to be rendered.

(h) Excess costs resulting from a cancellation that are required to operate the program will be provided by the Bureau to the extent that funds are available for that fiscal year. However, if current funds are not sufficient to maintain the program at its planned level, the program may be reduced until funds become available for the remainder of the fiscal year, at which time the program will be resumed at its planned level.

(i) Any tribal organization that has a contract cancelled for cause must demonstrate that the causes which led to the cancellation have been cured before it will be considered for another contract. In addition, there must be a new resolution and a new request from the Indian tribe(s) that will receive services or benefits under the contract.

§ 271.76 Bureau operation of retroceded, reassumed or cancelled for cause contracts.

(a) The Bureau shall provide to the tribe(s) and Indians served by a contract which is retroceded, reassumed, or cancelled for cause not less than the same quantity and quality of service that would have been provided at the level intended by the contract or operated previously by the Bureau.

(b) The Bureau shall provide to the tribe(s) and Indians served by a contract which is retroceded, reassumed, or cancelled for cause not less than the same quantity and quality of permanent and temporary personnel that meet the U.S. Civil Service qualifications that would have been provided at the level intended by the contract or previously operated by the Bureau. The procedures in § 271.77 will be followed to obtain personnel to operate programs or parts of programs previously under contract with a tribal organization but returned for operation by the Bureau because the contract was either retroceded, reassumed or cancelled for cause.

(c) This section shall apply to all contracts for the operation of Bureau programs or parts of programs in effect at the time of the effective date of these regulations entered into under the authority of the Buy Indian Act (25 U.S.C. 47), and any contracts under this Part.

(d) Actions under this section shall not cause a reduction in the quality and quantity of services to tribe(s) or Indians not served by contracts which are retroceded, reassumed or cancelled for cause.

§ 271.77 Authorized position and end-of-year employment ceiling reserve for Bureau operation of retroceded, reassumed or cancelled contracts.

(a) When authorized permanent and other positions and permanent and other end-of-year employment ceiling are not required for the operation of all or parts of a Bureau program because the program or parts of a program are under contract with a tribal organization under this Part, the positions and ceilings shall be reserved. The positions and ceiling reserved shall be available only for the same program or parts of a program at the same locations if the Bureau must operate the program or parts of a program because a tribe has retroceded the contract or because the Bureau has reassumed or cancelled the contract for cause.

(b) The Bureau shall establish a position and ceiling reserve for all contracts for the operation of all or parts of Bureau programs initially entered into on or after the effective date of these regulations.

Subpart G—Hearings and Appeals

§ 271.81 Hearings.

Hearings required by § 271.74 shall be conducted as follows:

(a) The tribal organization and the Indian tribe(s) shall be notified, in writing, of the hearing. The notice shall give

the date, time, place, and purpose of the hearing.

(b) A written record of the hearing shall be made. The record shall include written statements submitted at the hearing or within five days following the hearing.

(c) Within 30 days of the hearing, the Commissioner or Area Director as appropriate shall issue a written decision on the issues considered during the hearing.

§ 271.82 Appeals from decision or action by Area Director.

A tribal organization (unless restricted by the tribal resolution under § 271.18 (c) (2) or subsequent resolutions) or tribal governing body may appeal any decision made or action taken by an Area Director under this Part. Such appeal shall be made to the Commissioner as provided in Part 2 of this chapter.

§ 271.83 Appeals from decision or action by Commissioner.

(a) A tribal organization (unless restricted by the tribal resolution under § 271.18(c) (2) or subsequent resolutions) or tribal governing body may appeal the Commissioner's decision to decline to contract or to decline to amend a contract under §§ 271.25 or 271.64 to the Director, Office of Hearings and Appeals, Department of the Interior, as provided in Subpart G of 43 CFR Part 4.

(b) A tribal organization (unless restricted by the tribal resolution under § 271.18(c) (2) or subsequent resolutions) or tribal governing body may appeal any other decision made, action taken, or action not taken within the time limits required by this Part, by the Commissioner if authorized and as provided in Part 2 of this chapter. A decision by the Commissioner concerning funding levels for a program or part of a program to be contracted is considered to be an exercise of the Commissioner's discretionary authority and, therefore, is final for the Secretary.

§ 271.84 Appeals from Bureau decision to cancel contract for cause.

A tribal organization (unless restricted by the tribal resolution under § 271.18 (c) (2) or subsequent resolutions) may appeal the Bureau's decision to cancel for cause any contract made under this Part. Such appeal shall be made to the Director of the Office of Hearings and Appeals as provided in Subpart G of 43 CFR Part 4.

PART 272—GRANTS UNDER INDIAN SELF-DETERMINATION ACT

Subpart A—General Provisions

Sec.
272.1 Purpose and scope.
272.2 Definitions.
272.3 Effect on existing Indian rights.
272.4 Revision or amendment of regulations.
272.5 Statement of policy.

Subpart B—Application Process

272.11 Eligibility requirements.
272.12 Purpose of grants.
272.13 Obtaining application instructions and materials.
272.14 Content of application.
272.15 Assistance in completing form.
272.16 Request from tribal governing body.
272.17 Grant approval limitations.
272.18 Submitting application to Agency.
272.19 Agency Office review and recommendation.
272.20 Deadline for Agency Office action.
272.21 Area Office review and action.
272.22 Deadline for Area Office action.
272.23 Central Office review and decision.
272.24 Deadline for Central Office action.
272.25 Grant execution and administration.
272.26 Subgrants and subcontracts.
272.27 Acceptance of tribal plans for the operation of Bureau programs.

Subpart C—General Grant Requirements

272.31 Applicability.
272.32 Reports and availability of information to Indians.
272.33 Matching share.
272.34 Performng personal services.
273.35 Fair and uniform services.
272.36 Penalties.

Subpart D—Grant Revision, Cancellation, or Assumption

272.41 Revisions or amendments of grants.
272.42 Assumption.

Subpart E—Hearings and Appeals

272.51 Hearings.
272.52 Appeals from decision or action by Superintendent.
272.53 Appeals from decision or action by Area Director.
272.54 Appeals from decision or action by Commissioner.
272.55 Failure of Agency or Area Office to act.

AUTHORITY: Sec. 104, Pub. L. 93-638, 88 Stat. 2203, unless otherwise noted.

Subpart A—General Provisions

§ 272.1 Purpose and scope.

The purpose of the regulations in this Part is to provide the application and approval procedures for the award by the Bureau of grants under section 104(a) of Title I of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203). Title I is known as the Indian Self-Determination Act.

§ 272.2 Definitions.

As used in this Part:

(a) "Act" means the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203).

(b) "Applicant" means a tribal governing body applying for a grant under this Part.

(c) "Area Director" means the official in charge of a Bureau of Indian Affairs Area Office.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Commissioner" means the Commissioner of Indian Affairs.

(f) "Days" means calendar days.

(g) "Economic enterprise" means any commercial, industrial, agricultural or business activity that is at least 51 per cent Indian owned, established or organized for the purpose of profit.

(h) "Grant" means a written agreement between the Bureau and a tribal governing body where the Bureau provides funds to carry out specified programs, services or activities and where the administrative and programmatic provisions are specified.

(i) "Grantee" means the tribal governing body which is responsible for administration of the grant.

(j) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(k) "Indian" means a person who is a member of an Indian tribe.

(l) "Resolution" means the formal manner in which the tribal government expresses its legislative will pursuant to its organic documents. In the absence of such organic documents a written expression adopted pursuant to tribal (current) practices will be acceptable.

(m) "Secretary" means the Secretary of the Interior.

(n) "Superintendent" means the official in charge of a Bureau of Indian Affairs Agency Office.

(o) "Subcontracts" means contracts undertaking some of the obligations of primary grants.

(p) "Subgrants" means secondary grants undertaking some of the obligations of primary grants.

(q) "Tribal government", "tribal governing body" and "tribal council" means the recognized governing body of an Indian tribe.

(r) "Trust resources" means natural resources, land, water, minerals, funds or property, asset, or claim, including any intangible right or interest in any of the foregoing, which is held by the United States in trust for any Indian tribe or Indian individual subject to a restriction on alienation imposed by the United States.

(s) "Trust responsibility" means for the purposes of this Part only the responsibility assumed by the United States Government, by virtue of treaties, statutes and other means, legally associated with the role of trustee, to protect, manage, develop and approve authorized transfers of interest in trust resources held by Indian tribes and Indian individuals to a standard of the highest degree of fiduciary responsibility.

§ 272.3 Effect on existing Indian rights.

The regulations in this Part are not meant to and do not:

(a) Affect, modify, diminish, or otherwise impair the sovereign immunity from suit enjoyed by an Indian tribe; or

(b) Authorize, require or permit the termination of any existing trust responsibility of the United States with respect to the Indian people.

§ 272.4 Revision or amendment of regulations.

Before making any substantive revisions or amendments to the regulations

in this part, the Secretary shall take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Present the proposed revision or amendment to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(c) Publish any proposed revisions or amendments in the FEDERAL REGISTER as proposed rulemaking to provide adequate notice to, and receive comments from all interested parties.

(d) After consideration of all comments received, publish the regulations in the FEDERAL REGISTER in final form not less than 30 days before the date they are made effective.

(e) Annually consult with Indian tribes and national and regional Indian organizations about the need for revision or amendment, and consider their views in preparing the revision or amendment.

(f) Nothing in this section shall preclude Indian tribes or national or regional organizations from initiating requests for revisions or amendments, subject to paragraphs (a), (b), (c) and (d) of this section.

§ 272.5 Statement of policy.

(a) The Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) is intended to facilitate increased self-determination for American Indians by providing a means through which they may plan, conduct and administer programs and services to Indian people. These programs and services are essentially those authorized by the Act of April 16, 1934 (Johnson-O'Malley Act); the Act of November 2, 1921 (Snyder Act) and other subsequent Acts.

(b) A most important aid available to assist Indians in achieving this objective of increased self-determination is the grant authority provided in section 104 of the Act. This grant authority will assist Indian tribes in improving their governing capabilities, increase their ability to effectively administer programs under contract, and enable them to provide direction to the Federal programs intended to serve Indian people.

(c) Under this grant authority the Bureau of Indian Affairs will administer a program of Indian self-determination grants which shall be subject to Parts 272 and 276 of this chapter. In the administration of this grant program, it shall be the Bureau's policy that approval of applications for these grants shall include a determination that there is a direct and reasonable relationship between the applicant's proposal and the provisions of section 104a of the Act and of § 272.12.

(d) In accordance with this policy, it shall be the responsibility of the applicant to establish that such a grant will improve the tribe's governing capabilities, enhance the tribe's ability to administer Federal programs under contract, or enable the tribe to provide direction to Bureau programs and to other Federal programs serving it.

(e) Emphasis on planning and training in relation to the purposes of a grant given in paragraph (d) of this section is considered in keeping with the intent of section 104(a) of the Act. Applications which include these elements are encouraged.

Subpart B—Application Process

§ 272.11 Eligibility requirements.

The governing body of any Indian tribe or tribes may apply for a grant under this Part.

§ 272.12 Purposes of grants.

Grants are for the purpose of: (a) Strengthening and improving administration of tribal government. Examples in this specific regard are as follows:

(1) Developing the capability of the executive, legislative, and judicial branches of tribal government in such areas as administration of planning, financial management, or merit personnel systems.

(2) Improvement of tribally funded programs or activities.

(3) Development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources.

(4) Training of tribal officials and employees in areas relating to the planning, conduct and administration of tribal programs.

(5) Design and implementation of new tribal government operations.

(6) Development of policy-making, legislative and judicial skills.

(b) Planning, training, evaluation or other activities designed to improve the capacity of an Indian tribe to enter into a contract or contracts pursuant to section 102 of the Act and the additional costs associated with the initial years of operation under such a contract or contracts. Examples of use of grants by Indian tribes, as indicated in this paragraph, are as follows:

(1) Evaluation of programs and services currently being provided directly by the Bureau in order to determine:

(i) Whether it is appropriate for the Indian tribe to enter into a contract pursuant to section 102 of the Act for a program or a portion of a program.

(ii) Whether the Indian tribe can improve the quality or quantity of the service now available.

(iii) Whether certain components should be redesigned but the program should continue to be operated by the Bureau.

(iv) Whether the program as currently administered by the Bureau is adequate to meet tribal needs and, therefore, the Indian tribal organization does not wish to contract or modify the program.

(2) Planning or redesigning a Bureau program before the Indian tribe contracts for it, and development of an operational plan for carrying out the anticipated contract in order to facilitate the transition of the program from Bureau to tribal operation.

(3) Training of tribal officials and employees in areas related to the conduct and administration of programs of the Bureau which the Indian tribe may wish to operate under contract.

(4) Costs associated with contracting to enable tribal contracting. Examples of such costs include curriculum development in support of tribal contracting of schools, in-service training programs to develop the skills of employees of the Indian tribe on a continuing basis, special on-the-job training activities in support of tribal members being prepared to assume program responsibilities.

(c) Acquisition of land in connection with paragraphs (a) and (b) of this section. Procedures for acquisition of land are prescribed in § 276.11 of this chapter.

(d) Planning, designing, monitoring, and evaluating Federal programs serving the Indian tribe. An example of this regard is assisting the tribal government to influence Federal programs presently offered or those that could be offered to the tribe to assure that they are responsive to the needs of Indian tribes. A tribal government may monitor and evaluate the operations of such programs which now serve tribal members and replan and redesign those programs to better respond to their needs. Bureau programs which are planned, replanned, designed or redesigned in accordance with this paragraph shall be implemented by the Bureau as prescribed in § 272.27.

(e) Funds made available for grants for the purposes described above may be applied as matching shares for other Federal or non-Federal grant programs as prescribed in § 272.33.

§ 272.13 Obtaining application instructions and materials.

Application instructions and related application materials may be obtained from Superintendents, Area Directors, and the Commissioner.

§ 272.14 Content of application.

Application for a grant under this Part shall include:

(a) Name and address of Indian tribal governing body(s) applying for a grant.

(b) Descriptive name of project.

(c) Federal funding needed.

(d) Population directly benefiting from the project.

(e) Length of project.

(f) Beginning date.

(g) Project budget categories or items.

(h) Program narrative statement.

(i) Certification or evidence of request by Indian tribe.

(j) Name and address of Bureau office to which application is submitted.

(k) Date application is submitted to Bureau.

(l) Additional information pertaining to grant applications for funds to be used as matching shares will be requested as prescribed in § 272.33.

§ 272.15 Assistance in developing and completing grant applications.

(a) Technical assistance and support necessary to develop and complete grant applications under this Part shall be provided by the Superintendents, Area Di-

rectors and their designated representatives upon request of the applicant.

(b) Applicants may apply for initial planning grants to cover the costs of developing and completing larger grant applications. Such initial planning grants will be made from funds which may be budgeted for grants under this part for tribal governing bodies. Applications for these initial planning grants shall be made as follows:

(1) An application for an initial planning grant may be accomplished by submission of a tribal request as prescribed in § 272.16, together with an accompanying letter from the tribal governing body requesting an initial planning grant in a specific amount. This letter shall include a brief description of the proposed initial planning project, its purpose or objective as related to development or completion of a larger grant application, and the initial planning project budget categories or items.

(2) This initial planning grant shall be no more than 10% of total grant funds which may be budgeted for grants under this part for the tribal governing body, up to a maximum of $20,000.

(3) An application for an initial planning grant shall be submitted directly to the appropriate officer having grant approval authority as prescribed in § 272.17(a) or (b) and shall be acted upon by that officer within 30 days.

§ 272.16 Request from tribal governing body.

The Bureau shall not make a grant under this Part unless specifically and officially requested to do so by a tribal governing body. This request may be in the form of a tribal resolution, an endorsement included in the grant application or such other forms as the tribal constitution or current practice requires.

§ 272.17 Grant approval limitations.

(a) Area Office approval. Authority for approval of a grant application under this Part shall be with the Area Director when the intent, purpose and scope of the grant proposal pertains solely to an Indian tribe or tribes located within that Area Director's administrative jurisdiction.

(b) Central Office approval. Authority for approval of a grant application under this Part shall be with the Commissioner when the intent, purpose and scope of the grant proposal pertains to Indian tribes representing different Area Office administrative jurisdictions but located within the Commissioner's overall administrative jurisdiction.

(c) Grant approvals under this section shall be subject to availability of funds. These funds will include those which are:

(1) Directly appropriated for implementation of this Act.

(2) Appropriated under other Acts for Bureau programs which are related to the purposes prescribed in § 272.12. However, this does not include funds appropriated for Indian Business Development Fund grants which are administered under Part 80 of this chapter.

§ 272.18 Submitting application to Agency Office.

An application for a grant under this Part shall be initially submitted to the appropriate Superintendent for review and recommendation as prescribed in § 272.19. This does not include applications for initial planning grants to develop and complete larger grant applications. Such initial planning grant applications are submitted and acted upon as prescribed in § 272.15(b).

§ 272.19 Agency Office review and recommendation.

(a) Recommendation for approval or disapproval of a grant under this Part shall be made by the Superintendent when the intent, purpose and scope of the grant proposal pertains to or involves an Indian tribe or tribes located within that Superintendent's administrative jurisdiction.

(b) Upon receipt of an application for a grant under this Part, the Superintendent shall:

(1) Acknowledge in writing receipt of the application within 10 days of its arrival at the Agency Office.

(2) Review the application for completeness of information and promptly request any additional information which may be required to make a recommendation.

(3) Assess the completed application for appropriateness of purpose as prescribed in § 272.12, and for overall feasibility.

(4) Inform the applicant, in writing and before any final recommendation, of any special problems or impediments which may result in a recommendation for disapproval; offer any available technical assistance required to overcome such problems or impediments; and solicit the applicant's written response.

(5) Recommend approval or disapproval following full assessment of the completed application and forward the application and recommendation to the Area Director for further action.

(6) Promptly notify the applicant in writing as to the final recommendation. If the recommendation is for disapproval, the Superintendent will include in the written notice to the applicant the specific reasons therefor.

(7) In instances where a joint application is made by tribes representing more than one Agency Office administrative jurisdiction, copies of the application shall be provided by the applicants to each involved Superintendent for review and recommendation as prescribed in this section.

§ 272.20 Deadline for Agency Office action.

Within 30 days of receipt of an application for a grant under this Part, the Superintendent shall take action as prescribed in § 272.19. Extension of this deadline will require consultation with and written consent of the applicant.

§ 272.21 Area Office review and action.

(a) Upon receipt of an application for a grant requiring Area Office approval, the Area Director shall:

(1) Review the application following the applicable review procedure prescribed in § 272.19.

(2) Review the Superintendent's recommendation as pertains to the application.

(3) Approve or disapprove the application.

(b) In instances where a joint application is made by tribes representing more than one Area Office administrative jurisdiction, the Area Director shall add his recommendation for approval or disapproval to that of the Superintendent and shall forward the application and recommendations to the Commissioner for further action.

(c) Upon taking action as prescribed in paragraph (a) or (b) of this section, the Area Director shall promptly notify the applicant in writing as to the action taken. If the action taken is disapproval or recommendation for disapproval of the application, the Area Director will include in the written notice the specific reasons therefor.

§ 272.22 Deadline for Area Office action.

Within 30 days of receipt of an application for a grant under this Part, the Area Director shall take action as prescribed in § 272.21. Extension of this deadline will require consultation with and written consent of the applicant.

§ 272.23 Central Office review and decision.

Upon receipt of an application for a grant requiring Central Office approval, the Commissioner shall:

(a) Review the application following the applicable review procedures prescribed in § 272.19.

(b) Review Agency and Area Office recommendations as pertain to the application.

(c) Approve or disapprove the application.

(d) Promptly notify the applicant in writing as to the approval or disapproval of the application. If the application is disapproved, the Commissioner will include in the written notice the specific reasons therefor.

§ 272.24 Deadline for Central Office action.

Within 30 days of receipt of an application for a grant under this Part the Commissioner shall take action as prescribed in § 272.23. Extension of this deadline will require consultation with and written consent of the applicant.

§ 272.25 Grant execution and administration.

(a) Grants approved pursuant to § 272.17(a) shall be executed and administered at the Area Office level.

(b) Grants approved pursuant to § 272.17(b) shall be executed and administered at the Central Office level provided that the Commissioner may designate an Area Office to execute or administer such a grant.

§ 272.26 Subgrants and subcontracts.

The grantee may make subgrants or subcontracts under this part provided

that such subgrants or subcontracts are for the purpose for which the grant was made and that the grantee retains administrative and financial responsibility over the activity and the funds.

§ 272.27 Acceptance of tribal plans for the operation of Bureau programs.

Any Bureau program, excluding any trust resources program, which is planned, replanned, designed or redesigned by a tribe under a grant provided under this part, or from any other resource, shall be implemented by the Bureau if requested by the tribe through resolution. However, before implementation the program shall meet the following requirements:

(a) Funding, staffing and other resources are available to implement the plan.

(b) The implementation of the plan would not cause a reduction in the quality or quantity of services to Indians.

(c) The plan meets the administrative planning requirements of the Bureau. However, the plan need not meet the planning requirements for the particular program.

(d) The plan provides a basis for the delivery of satisfactory services to Indian people, unless it can be demonstrated by the Bureau by substantial evidence that the plan will yield results which will be deleterious to the welfare of the Indian people to be served.

(e) The Commissioner may waive any regulatory requirements given elsewhere in this chapter or any other requirements not inconsistent with law. Inconsistencies between tribal plans and Bureau manual, guidelines, or other non-regulatory procedures are not constraints on the tribal plans.

Subpart C—General Grant Requirements

§ 272.31 Applicability.

The general requirements for grant administration in this Subpart are applicable to all Bureau grants provided to tribal governing bodies under this Part, except to the extent inconsistent with an applicable Federal statute or regulation.

§ 272.32 Reports and availability of information to Indians.

Any tribal governing body receiving a grant under this Part shall make information and reports concerning that grant available to the Indian people which it serves or represents. Access to these data shall be requested in writing and shall be made available by the tribe within 10 days of receipt of that request, subject to any exceptions provided for in the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (P.L. 93-502; 88 Stat. 1561).

§ 272.33 Matching share.

(a) Specific Federal laws notwithstanding, grant funds provided to tribal governing bodies under this Part may be used as matching shares for any other Federal or non-Federal grant programs which contribute to the purposes specified in § 272.12.

(b) Superintendents, Area Directors, and their designated representatives will, upon tribal request, assist tribes in obtaining information concerning other Federal grantor agencies with matching fund programs and will, upon tribal request, provide technical assistance to tribes in developing applications for submission to those Federal grantor agencies.

§ 272.34 Performing personal services.

Any grant provided under this Part may include provisions for the performance of personal services which would otherwise be performed by Federal employees.

§ 272.35 Fair and uniform services.

Any grant provided under this Part shall include provisions to assure the fair and uniform provision by the grantee of services and assistance to all Indians included within or affected by the intent, purpose and scope of that grant.

§ 272.36 Penalties.

If any officer, director, agent, or employee of, or connected with, any recipient of a grant, subgrant, contract or subcontract under this Part, embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, he shall be subject to the following penalties:

(a) If the amount involved does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) If the amount involved exceeds $100, he shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

Subpart D—Grant Revision, Cancellation, or Assumption

§ 272.41 Revisions or amendments of grants.

(a) Requests for budget revisions or amendments to grants awarded under this Part shall be made as provided in § 276.14 of this chapter.

(b) Requests for revisions or amendments to grants provided under this Part, other than budget revisions referred to in paragraph (a) of this section, shall be made to the Bureau officer responsible for approving the grant in its original form. Upon receipt of a request for revisions or amendments to grants, the responsible Bureau officer shall follow precisely the same review procedures and time specified in § 272.19.

§ 272.42 Assumption.

(a) When the Bureau cancels a grant for cause as specified in § 276.15 of this chapter, the Bureau may assume control or operation of the grant program, activity or service. However, the bureau shall not assume a grant program, activity or service that it did not administer before tribal grantee control unless the tribal grantee and the Bureau agree to the assumption.

(b) When the Bureau assumes control or operation of a grant program cancelled for cause, the Bureau may decline to enter into a new grant agreement until satisfied that the cause for cancellation has been corrected.

Subpart E—Hearings and Appeals

§ 272.51 Hearings.

Hearings referred to in § 276.15 of this chapter shall be conducted as follows:

(a) The grantee and the Indian tribe(s) affected shall be notified, in writing, at least 10 days before the hearing. The notice should give the date, time, place, and purpose of the hearing.

(b) A written record of the hearing shall be made. The record shall include written statements submitted at the hearing or within 5 days following the hearing.

(c) The hearing will be conducted on as informal a basis as possible.

§ 272.52 Appeals from decision or action by Superintendent.

(a) A grantee may appeal any decision made or action taken by a Superintendent under this Part. Such appeal shall be made to the Area Director as provided in Part 2 of this chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 272.53 Appeals from decision or action by Area Director.

(a) A grantee may appeal any decision made or action taken by an Area Director under this Part. Such appeal shall be made to the Commissioner as provided in Part 2 of this chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 272.54 Appeals from decision or action by Commissioner.

(a) A grantee may appeal any decision made or action taken by the Commissioner under this Part only as provided in Part 2 of this chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 272.55 Failure of Agency or Area Office to act.

Whenever a Superintendent or Area Director fails to take action on a grant application within the time limits established in this Part, the applicant may at its option, request action by the next higher Bureau official who has grant approval authority as prescribed in this Part. In such instances, the Superintendent or Area Director who failed to act shall immediately forward the application and all related materials to that next higher Bureau official.

PART 273—EDUCATION CONTRACTS UNDER JOHNSON-O'MALLEY ACT

Subpart A—General Provisions

Sec.

273.1 Purpose and scope.
273.2 Definitions.
273.3 Revision or amendment of regulations.
273.4 Policy of maximum Indian participation.

Subpart B—Application Process

Sec.
273.11 Eligible applicants.
273.12 Eligible students.
273.13 Proposals eligible for contracts.
273.14 Preparing the education plan.
273.15 Establishment of Indian Education Committee.
273.16 Powers and duties of Indian Education Committee.
273.17 Programs approved by Indian Education Committee.
273.18 Additional requirements for education plan.
273.19 Obtaining application forms.
273.20 Content of application to contract.
273.21 Tribal request for contract.
273.22 Application approval officials.
273.23 Submitting application to Area Office.
273.24 Area Office review and decision.
273.25 Deadline for Area Office action.
273.26 Submitting application to Central Office.
273.27 Central Office review and decision.
273.28 Deadline for Central Office action.
273.29 Negotiating the contract.

Subpart C—Funding Provisions

273.31 Distribution formula.
273.32 Pro rata requirement.
273.33 Use of funds for operational support.
273.34 Use of other Federal, State and local funds.
273.35 Capital outlay or debt retirement.
273.36 Eligible subcontractors.
273.37 Use of funds outside of schools.
273.38 Equal quality and standard of education.

Subpart D—General Contract Requirements

273.41 Special program provisions to be included in contract.
273.42 Civil Rights Act violations.
273.43 Advance payments.
273.44 Use and transfer of Government property.
273.45 Indian preference.
273.46 Liability and motor vehicle insurance.
273.47 Recordkeeping.
273.48 Audit and inspection.
273.49 Freedom of information.
273.50 Annual reporting.
273.51 Penalties.
273.52 State school laws.
273.53 Applicable procurement regulations.
273.54 Privacy Act requirements.

Subpart E—Contract Revision or Cancellation

273.61 Contract revision or amendment.
273.62 Cancelling a contract for cause.

Subpart F—Appeals

273.71 Contract appeal.
273.72 Appeal from decision to cancel contract for cause.
273.73 Other appeals.

AUTHORITY: 25 U.S.C. 452–456; sec. 202, Pub. L. 93–638, 88 Stat. 2203, unless otherwise noted.

Subpart A—General Provisions

§ 273.1 Purpose and scope.

(a) The purpose of the regulations in this Part is to set forth the application and approval process for education contracts under the Johnson-O'Malley Act. Such contracts shall be for the purpose of financially assisting those efforts designed to meet the specialized and unique educational needs of eligible Indian students, including programs supplemental to the regular school program and school operational support, where such support is necessary to maintain established State educational standards.

(b) The application and approval process in this part applies specifically to contracts with a State, school district, or Indian corporation.

(c) Contracts with tribal organizations for supplemental and operational support will be entered into only upon the request of an Indian tribe(s), and shall be subject to the provisions of Part 271 of this chapter and 41 CFR Part 14H–70, except as provided in § 273.11.

(d) Nothing in these regulations shall be construed as:

(1) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe;

(2) Authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people; or,

(3) Permitting significant reduction in services to Indian people as a result of this Part.

(e) Nothing in these regulations shall be construed to mandate an Indian tribe to request a contract or contracts. Such requests are strictly voluntary.

§ 273.2 Definitions.

As used in this Part:

(a) "Area Director" means the official in charge of a Bureau of Indian Affairs Area Office.

(b) "Bureau" means the Bureau of Indian Affairs.

(c) "Commissioner" means the Commissioner of Indian Affairs.

(d) "Days" means calendar days.

(e) "Economic enterprise" means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(f) "Education plan" means a comprehensive plan for the programmatic and fiscal services of and accountability by a contractor for the education of eligible Indian students under this Part.

(g) "Indian tribe" means any Indian Tribe, Band, Nation Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(h) "Indian corporation" means a legally established organization of Indians chartered under State or Federal law and which is not included within the definition of "tribal organization" given in paragraph (u) of this section.

(i) "Indian Education Committee" means one of the entities specified by § 273.15.

(j) "Indian" means a person who is a member of an Indian tribe.

(k) "Johnson-O'Malley Act" means the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49 Stat. 1458, 25 U.S.C. 452–456), and further amended by the Act of January 4, 1975 (88 Stat. 2203).

(l) "Operational support" means those expenditures for school operational costs in order to meet established State educational standards or State-wide requirements.

(m) "Pub. L. 93–638" means the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638; 88 Stat. 2203).

(n) "Previously private school" means a school (other than a Federal school formerly operated by the Bureau) that is operated primarily for Indian students from age 3 years through grades 12; and, which at the time of application is controlled, sanctioned, or chartered by the government body(s) of an Indian tribe(s).

(o) "Reservation" or "Indian Reservation" means any Indian tribe's reservation, Pueblo, Colony, or Rancheria, including former reservations in Oklahoma, Alaska Natives regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

(p) "School district" or "local education agency" means that subdivision of the State which contains the public elementary and secondary educational institutions providing educational services and is controlled by a duly elected board, commission, or similarly constituted assembly.

(q) "Secretary" means the Secretary of the Interior.

(r) "State" means a State of the United States of America or any political subdivision of a State.

(s) "Superintendent" means the official in charge of a Bureau of Indian Affairs Agency Office.

(t) "Supplemental programs" means those programs designed to meet the specialized and unique educational needs of eligible Indian students which may have resulted from socio-economic conditions of the parents, from cultural or language differences or other factors, and as provided by § 273.34(b).

(u) "Tribal government", "tribal governing body" and "tribal Council" means the recognized governing body of an Indian tribe.

(v) "Tribal organization," means the recognized governing body of any Indian tribe or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided*, That a request for a contract must be made by the Indian tribe that will receive services under the contract; *Provided further*, That in any case where a contract is let to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting of such contract.

§ 273.3 Revision or amendment of regulations.

In order to make any substantive revision or amendments to regulations in this part, the Secretary shall take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Publish the proposed revisions or amendments in the Federal Register as proposed rulemaking to provide adequate notice to, and receive comments from, all interested parties.

(c) After consideration of all comments received, publish the regulations in the Federal Register in final form not less than 30 days before the date they are made effective.

(d) Annually consult with Indian tribes and national and regional Indian organizations about the need for revision or amendment, and consider their views in preparing the revision or amendment.

(e) Nothing in this section shall preclude Indian tribes or national or regional Indian organizations from initiating request for revisions or amendments subject to paragraphs (a), (b), and (c) of this section.

§ 273.4 Policy of maximum Indian participation.

The meaningful participation in all aspects of educational program development and implementation by those affected by such programs is an essential requisite for success. Such participation not only enhances program responsiveness to the needs of those served, but also provides them with the opportunity to determine and affect the desired level of educational achievement and satisfaction which education can and should provide. Consistent with this concept, maximum Indian participation in the development, approval and implementation of all programs contracted under this Part shall be required.

Subpart B—Application Process

§ 273.11 Eligible applicants.

(a) Any State, school district, tribal organization or Indian corporation is eligible to apply for contracts for supplemental or operational support programs. For the purposes of this Part, previously private schools as defined in § 273.2(n) are considered tribal organizations.

(b) States, school districts, or Indian corporations shall apply for contracts for supplemental or operational support programs as required in this Part.

(c) Tribal organizations must comply with the following requirements to obtain contracts for supplemental programs or operational support:

(1) The application submitted by the tribal organization shall meet the requirements in § 273.20 in addition to those in § 271.14 of this chapter.

(2) The requirements in §§ 271.1 through 271.27, 271.41 through 271.52, 271.54, 271.61 through 271.66, and 271.81 through 271.84 shall apply to such contracts with tribal organizations.

(3) The provisions in §§ 271.71 through 271.77 of this chapter concerning retrocession and reassumption of programs do not apply to a tribal organization retroceding a contract for supplemental programs or operational support as the Bureau does not operate education programs authorized to be contracted under the Johnson-O'Malley Act. However, the tribal organization may retrocede such a contract and the Bureau will then contract with a State, school district, or Indian corporation under this Part for the supplemental programs or operational support.

(4) The requirements in §§ 273.12 through 273.18, 273.20, 273.21, 273.31 through 273.39, 273.41, 273.51 and 273.52 shall apply to such contracts with tribal organizations.

(5) The requirements in 41 CFR Part 14H–70 shall apply to such contracts with tribal organizations.

§ 273.12 Eligible students.

Indian students, from age 3 years through grade(s) 12, except those who are enrolled in Bureau or sectarian operated schools, shall be eligible for benefits provided by a contract pursuant to this Part if they are ¼ or more degree Indian blood and recognized by the Secretary as being eligible for Bureau services. Priority shall be given to contracts (a) which would serve Indian students on or near reservations and (b) where a majority of such Indian students will be members of the tribe(s) of such reservations (as defined in § 273.2(o)).

§ 273.13 Proposals eligible for contracts.

(a) Any proposal to contract for funding a program which meets the definition of a supplemental program given in § 273.2(t) will be considered an eligible proposal under this Part.

(b)(1) To contract for operational support, a public school district shall be required to establish as part of the proposal that:

(i) It cannot meet the applicable minimum State standards or requirements without such funds.

(ii) It has made a reasonable tax effort with a mill levy at least equal to the State average in support of educational programs.

(iii) It has fully utilized all other sources of financial aid, including all forms of State aid and Pub. L. 874 payments. The State aid contribution per pupil must be at least equal to the State average.

(iv) There is at least 70 percent eligible Indian enrollment within the school district.

(v) It shall clearly identify the educational needs of the students intended to benefit from the contract.

(vi) It has made a good faith effort in computing State and local contributions without regard to contract funds pursuant to this part.

(vii) It shall not budget or project a deficit by using contract funds pursuant to this Part.

(2) The requirements given in paragraph (b)(1) of this section do not apply to previously private schools.

(c) At his discretion, the Commissioner may consider as eligible a proposal to contract under which a school district will be reimbursed for the full per capita costs of educating Indian students who meet all of the following:

(1) Are members of recognized Indian tribes.

(2) Do not normally reside in the State in which the school district is located.

(3) Are residing in Federal boarding facilities for the purpose of attending public schools within the school district.

§ 273.14 Preparing the education plan.

A prospective contractor in consultation with its Indian Education Committee(s) shall formulate an education plan and submit it to the appropriate Area Director as a part of the application to contract required by § 273.20. Such plan shall become a part of any contract awarded. The education plan shall contain:

(a) The education programs approved by the Indian Education Committee(s) as required in § 273.17.

(b) Other requirements for the education plan given in § 273.18.

§ 273.15 Establishment of Indian Education Committee.

(a) When a school district to be affected by a contract(s) for the education of Indians pursuant to this Part has a local school board not composed of a majority of Indians, the tribal governing body(s) of the Indian tribe(s) affected by the contract(s) under this Part shall specify one of the following entities to serve as the Indian Education Committee for the purpose of this Part:

(1) An Indian Education Committee to be elected from among the parents (including persons acting *in loco parentis* except school administrators or officials) of eligible Indian students enrolled in the school(s) affected by a contract(s) under this Part; or

(2) A local Indian committee established pursuant to section 305(b)(2)(B)(ii) of the Act of January 23, 1972 (86 Stat. 235) and existing prior to January 4, 1975; or

(3) An Indian advisory school board or Indian Education Committee established pursuant to the Johnson-O'Malley Act and existing prior to January 4, 1975.

(b) When the local school board is not composed of a majority of Indians and the tribal governing body(s) of the Indian tribe(s) affected by a contract(s) under this Part determine which of the entities provided for in paragraph (a) of this section is to serve as the Indian Education Committee for the purpose of this Part, it shall notify the Area Director of

such determination by January 15 preceding the school year for which the contract will be let.

(c) The Indian Education Committee established under paragraph (a) of this section and its members shall establish procedures under which the Committee shall serve. Such procedures shall be set forth in the Committee's organizational documents and by-laws. Each Committee shall file a copy of its organizational documents and by-laws with the appropriate Area Director, together with a list of its officers and members as soon as practicable after the Committee is organized.

(d) The existence of an Indian Education Committee shall not limit the continuing participation of the rest of the Indian community in all aspects of programs contracted under this part.

§ 273.16 Powers and duties of Indian Education Committee.

(a) Consistent with the purpose of the Indian Education Committee, each such Committee shall be vested with the authority to:

(1) Participate fully in the planning, development, implementation, and evaluation of all programs, including both supplemental and operational support, conducted under a contract or contracts pursuant to this Part. Such participation shall include further authority to:

(i) Recommend curricula, including texts, materials, and teaching methods to be used in the contracted program or programs.

(ii) Approve budget preparation and execution.

(iii) Recommend criteria for employment in the program.

(iv) Nominate a reasonable number of qualified prospective educational programmatic staff members from which the contractor would be required to select.

(v) Evaluate staff performance and program results and recommend appropriate action to the contractor.

(2) Approve and disapprove all programs to be contracted under this Part. All programs contracted pursuant to this Part shall require the prior approval of the appropriate Indian Education Committee.

(3) Secure a copy of the negotiated contract(s) which include the program(s) approved by the Indian Education Committee.

(4) Recommend to the Commissioner through the appropriate Bureau contracting officer cancellation or suspension of a contract(s) which contains the program(s) approved by the Indian Education Committee if the contractor fails to permit such Committee to exercise its powers and duties as specified by this section.

(b) The organizational papers and by-laws of the Indian Education Committee may include additional powers and duties which would permit the Committee to:

(1) Participate in negotiations concerning all contracts under this Part.

(2) Make an annual assessment of the learning needs of Indian children in the community affected.

(3) Have access to all reports, evaluations, surveys, and other program and budget related documents determined necessary by the Committee to carry out its responsibilities, subject only to the provisions of § 273.49.

(4) Request periodic reports and evaluations regarding the Indian education program.

(5) Hear grievances related to programs in the education plan.

(6) Meet regularly with the professional staff serving Indian children and with the local education agency.

(7) Hold committee meetings on a regular basis which are open to the public.

(8) Have such additional powers as are consistent with these regulations.

§ 273.17 Programs approved by Indian Education Committee.

(a) All programs contracted under this Part shall:

(1) Be developed and approved in full compliance with the powers and duties of the Indian Education Committee as set out in § 273.16 and as may be contained in the Committee's organizational documents and by-laws.

(2) Be included as a part of the education plan provided for in § 273.14.

(b) No program contracted pursuant to this Part shall be changed from the time of its original approval by the Indian Education Committee to the end of the contract period without the prior approval, in writing, of the Committee.

(c) Programs developed or approved by the Indian Education Committee pursuant to this Part may, at the option of such Committee, include funds for the performance of Committee duties, including the following:

(1) Members' attendance at regular and special meetings, workshops and training sessions, as the Committee deems appropriate.

(2) Such other reasonable expenses incurred by the Committee in performing its primary duties, including the planning, development, implementation and evaluation of the program.

§ 273.18 Additional requirements for education plan.

In addition to incorporating the programs approved by the Indian Education Committee(s) as required by § 273.14(a), the education plan prepared by the prospective contractor shall:

(a) Contain educational goals and objectives which adequately address the educational needs of the Indian students to be served by the contract.

(b) Incorporate the program or programs developed and approved by the Indian Education Committee(s). As provided in § 273.17(b), changes in such programs must have prior written approval of the Indian Education Committee(s).

(c) Contain procedures for hearing grievances from Indian students, parents, community members, and tribal representatives relating to the program(s) contracted under this Part. Such procedures shall provide for adequate advance notice of the hearing.

(d) Identify established State standards and requirements which shall be maintained in operating programs and services contracted under this Part.

(e) Describe how the State standards and requirements will be maintained.

(f) Provide that the contractor shall comply in full with the requirements concerning meaningful participation by the Indian Education Committee as required by § 273.4.

(g) Provide that education facilities receiving funds shall be open to visits and consultations by the Indian Education Committee(s), tribal representatives, Indian parents in the community, and by duly authorized representatives of the Federal and State governments.

(h) Outline procedures of administrative and fiscal management to be used by the contractor.

(i) Contain justification for requesting funds for operational support. The public school district must establish in its justification that it meets the requirements given in § 273.13(b). The information given should include records of receipt of local, State, and Federal funds.

(j) Include budget estimates and financial information needed to determine program costs to contract for services. This includes, but is not limited to, the following:

(1) State and district average operational cost per pupil.

(2) Other sources of Federal funding the applicant is receiving, the amount received from each, the programs being funded, and the number of eligible Indian students served by such funding.

(3) Administrative costs involved, total number of employees, and total number of Indian employees.

(4) Costs which parents normally are expected to pay for each school.

(5) Supplemental and operational funds outlined in a separate budget, by line item, to facilitate accountability.

(6) Total number of employees for each special program and number of Indian employees for that program.

(k) State the total enrollment of school or district, by age and grade level.

(l) State the eligible Indian enrollment—total and classification by tribal affiliation(s) and by age and grade level.

(m) State the total number of school board members and number of Indian school board members.

(n) List Government equipment needed to carry out the contract.

(o) State the period of contract term requested.

(p) Include the signature of the authorized representative of applicant.

(q) Provide written information regarding:

(1) Program goals and objectives related to the learning needs of potential target students.

(2) Procedures and methods to be used in achieving program objectives, including ways whereby parents, students and communities have been involved in determining needs and priorities.

(3) Overall program implementation including staffing practices, parental and community involvement, evaluation of

program results, and dissemination thereof.

(4) Determination of staff and program effectiveness in meeting the stated needs of target students.

§ 273.19 Obtaining application forms.

Application forms, instructions, and related application materials are available from Agency Superintendents, Area Directors and the Commissioner. Use of standard application forms will facilitate processing of applications. However, they are not required if the information required by § 273.20 is given in the application to contract.

§ 273.20 Content of application to contract.

An application for a contract under this Part shall be in writing and shall contain the following:

(a) Name, address, and telephone number of the proposed contractor.

(b) Name, address, and telephone number of the tribe(s) to be served by the contract.

(c) Descriptive narrative of the contract proposal.

(d) The education plan required by § 273.14.

(e) A separate budget outlining the Johnson-O'Malley funds for operational support and/or supplemental programs, by line item, to facilitate accountability.

(f) A clear identification of what educational needs the Johnson-O'Malley funds requested for operational support will address.

(g) Documentation of the requirements for operational support in § 273.13 (b)(1).

§ 273.21 Tribal request for contract.

(a) An Indian tribal governing body(s) that desires that a contract be entered into with a tribal organization must so notify the Area Director no later than February 1 preceding the school year for which the contract will be let.

(b) If the tribal governing body's notice is not received by the date given in paragraph (a) of this section, the Area Director may contract with the State, school district, or Indian corporation under this Part.

§ 273.22 Application approval officials.

(a) Each Area Director is authorized to approve the contract(s) submitted by the State, school district, or Indian corporation under this Part which will provide services to Indian children within the jurisdiction of that Area Office.

(b) When a proposed contract(s) will provide services to Indian children within the jurisdiction of more than one Area Office, the contract must be approved by the Commissioner.

§ 273.23 Submitting application to Area Office.

When services under the proposed contract will be provided to Indian children within the jurisdiction of a single Area Office, the completed application shall be submitted to the Area Director of that Area Office.

§ 273.24 Area Office review and decision.

Upon receiving a contract application, the Area Director shall:

(a) Notify the applicant in writing that the application has been received. This notice shall be made within fourteen (14) days after the Area Office receives the application.

(b) Review the application for completeness and request within 20 days any additional information from the applicant which will be needed to reach a decision.

(c) On receiving an application for operational support, make formal written determination and findings supporting the need for such funds. In arriving at such a determination, the Area Director must be assured that each local education agency has made a good faith effort in computing State and local contributions without regard to funds requested pursuant to this Part.

(d) Assess the completed application to determine if the contract proposal is feasible and if the proposal and the application comply with the appropriate requirements of the Johnson-O'Malley Act and of the regulations in this Part.

(e) Approve or disapprove the application after fully reviewing and assessing the application and any additional information submitted by the applicant.

(f) Promptly notify the applicant in writing of the decision to approve or disapprove the application. If the application is disapproved, the notice will give the reasons for disapproval and the applicant's right to appeal pursuant to Part 2 of this chapter.

§ 273.25 Deadline for Area Office action.

(a) The Area Director shall approve or disapprove an application for a contract within sixty (60) days after the Area Office receives the application and any additional information requested in § 273.24(b). The sixty (60) day deadline can be extended after obtaining the written consent of the applicant.

(b) An application under this Part cannot be approved before February 1 preceding the school year for which the contract will be let.

§ 273.26 Submitting application to Central Office.

When services under the proposed contract will be provided to Indian children within the jurisdiction of two or more Area Offices, the completed application shall be submitted to the Commissioner through the respective Area Offices.

§ 273.27 Central office review and decision.

Upon receiving a contract application, the Commissioner shall:

(a) Notify the applicant in writing that the application has been received. This notice shall be made within fourteen (14) days after the Central Office receives the application.

(b) Review the application for completeness and request within 20 days any additional information from the applicant which will be needed to reach a decision.

(c) On receiving an application for operational support, make formal written determination and findings supporting the need for such funds. In arriving at such a determination, the Commissioner must be assured that each local education agency has made a good faith effort in computing State and local contributions without regard to funds requested pursuant to this Part.

(d) Assess the completed application to determine if the contract proposal is feasible and if the proposal and the application comply with the appropriate requirements of the Johnson-O'Malley Act and of the regulations in this Part.

(e) Approve or disapprove the application after fully reviewing and assessing the application and any additional information submitted by the applicant.

(f) Promptly notify the applicant in writing of the decision to approve or disapprove the application. If the application is disapproved, the notice will give the reasons for disapproval and the applicant's right to appeal pursuant to Part 2 of this chapter.

§ 273.28 Deadline for Central Office action.

(a) The Commissioner shall approve or disapprove an application for a contract within sixty (60) days after the Central Office receives the application, and any additional information requested in § 273.27(b). The sixty (60) day deadline can be extended after obtaining the written consent of the applicant.

(b) An application under this Part cannot be approved before February 1 preceding the school year for which the contract will be let.

§ 273.29 Negotiating the contract.

After the proposal for a contract has been approved by the Area Director or Commissioner as provided in § 273.22, the contract will be negotiated by a Bureau contracting officer assisted by Bureau education personnel.

Subpart C—Funding Provisions

§ 273.31 Distribution formula.

(a) Funds for both supplemental programs and operational support shall be apportioned among the States on a substantially equal basis, based upon the number of eligible Indian students for whom funds are sought, with allowances being made for the actual cost of delivering educational services in each State; except that, any State or contractor who meets criteria in this Part and received operational support in FY 1976 may continue to receive such funds in FY 1977 and FY 1978 in addition to those described above. However, the amount of such assistance each year will be equal to that State or contractor's prior year operational support allocation reduced by one-third of its FY 1976 operational support allocation. Further, in FY 1977 no State shall receive less than 75% of the supplemental program assistance they received in FY 1975.

(b) Except as described in paragraph (a) of this section, all other funds shall

be distributed among the contractors within each State so that each contractor will receive approximately the same amount for each eligible Indian student to be served under the contract.

(c) The Commissioner may make exceptions to the provisions of paragraphs (a) and (b) of this section based upon the special cultural, linquistic, social or educational needs of the communities involved, including the actual cost of education in the community.

§ 273.32 Pro rata requirement.

All monies provided by a contract pursuant to this Part, shall be expended only for the benefit of eligible Indian students. Where students other than eligible Indian students participate in programs contracted under this part, money expended under such contract shall be prorated to cover the participation of only the eligible Indian students, except where the participation of non-eligible students is so incidental as to be de minimus. Such de minimus participation must be approved by the Indian Education Committee.

§ 273.33 Use of funds for operational support.

All funds for school operational support shall be used to meet established State educational standards or Statewide requirements.

§ 273.34 Use of other Federal, State and local funds.

(a) Contract funds under this part shall supplement, and not supplant, Federal, State and local funds. Each contract shall require that the use of these contract funds will not result in a decrease in State, local, or Federal funds which would be made available for Indian students if there were no funds under this Part.

(b) State, local and other Federal funds must be used to provide comparable services to non-Indian and Indian students prior to the use of Johnson-O'Malley funds for the provision of supplementary program services to Indian children.

(c) Funds for operational support shall be used only as prescribed in § 273.33.

§ 273.35 Capital outlay or debt retirement.

In no instance shall contract funds provided under this part be used as payment for capital outlay or debt retirement expenses; except that, such costs are allowable if they are considered to be a part of the full per capita cost of educating eligible Indian students who reside in Federal boarding facilities for the purpose of attending public schools.

§ 273.36 Eligible subcontractors.

No contract funds under the Johnson-O'Malley Act shall be made available by the Bureau directly to other than tribal organizations, States, school districts and Indian corporations. However, tribal organizations, States, school districts, and Indian corporations receiving funds under this part may use the funds to subcontract for necessary services with any appropriate individual, organization or corporation.

§ 273.37 Use of funds outside of schools.

Nothing in these regulations shall prevent the Commissioner from contracting with Indian corporations who will expend all or part of the funds in places other than the public or private schools in the community affected.

§ 273.38 Equal quality and standard of education.

Contracts with State education agencies or school districts receiving funds under the provisions of this part shall provide educational opportunities to all Indian children within that school district on the same terms and under the same conditions that apply to all other students provided that it will not affect the rights of eligible Indian children to receive benefits from the supplemental programs as provided for in this part. School districts receiving funds under this part must insure that Indian children receive all aid from the State, and other proper sources other than this contract, which other schools in the district and other school districts similarly situated in the State are entitled to receive. In no instance shall there be discrimination against Indians or schools enrolling such Indians.

Subpart D—General Contract Requirements

§ 273.41 Special program provisions to be included in contract.

All contracts under this Part shall contain the following:

(a) The education plan required by §§ 273.14 and 273.18 and, as part of the education plan, the education programs approved by the Indian Education Committee(s) under § 273.17.

(b) Any formal written determination and findings made by the Area Director or Commissioner supporting the need for operational support as required by §§ 273.24(c) and 273.27(c).

(c) The provision that State, local, and other Federal funds shall be used to provide comparable services to non-Indian and Indian students prior to the use of Johnson-O'Malley funds for the provision of supplementary program services to Indian children, as required in § 273.34(b).

§ 273.42 Civil Rights Act violations.

In no instance shall there be discrimination against Indians or schools enrolling such Indians. When informed by a complainant or through its own discovery that possible violation of Title VI of the Civil Rights Act of 1964 exists within a State school district receiving funds under this Part, the Department of the Interior shall, in accordance with Federal requirements, notify the Department of Health, Education, and Welfare of the possible violation of Title VI. The Department of Health, Education, and Welfare will conduct an investigation into the matters alleged, pursuant to a Memorandum of Understanding between the Department of the Interior and the Department of Health, Education, and Welfare. If the report of the investigation conducted by the Department of Health, Education, and Welfare discloses a failure or threatened failure to comply with this Part, and if the noncompliance cannot be corrected by informal means, compliance with this Part may be effected by the suspension or termination of or refusal to contract or to continue financial assistance under the Johnson-O'Malley Act or by any other means authorized by law. As delineated in 43 CFR 17.1, 17.8, and 17.9, such other means may include reference to the Department of Justice with a recommendation that appropriate legal proceedings be brought by the United States to secure compliance or by formal hearing before the Commissioner or, at his discretion, before an administrative law judge designated in accordance with section 11 of the Administrative Procedure Act. The Secretary, may, by agreement with one or more other Federal departments, provide for the conduct of consolidated or joint hearings as prescribed in 43 CFR 17.8(e).

§ 273.43 Advance payments.

Advance payments to States, school districts and Indian corporations will be made in accordance with the applicable provisions of 41 CFR 1 as supplemented by 41 CFR 14 and 41 CFR 14H except 41 CFR Part 14H–70.

§ 273.44 Use and transfer of Government property.

(a) The use of Government-owned facilities for school purposes may be authorized when not needed for Government activities. Transfer of title to such facilities (except land) may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41) subject to the approval of the tribal government if such property is located on a reservation.

(b) In carrying out a contract made under this Part, the Area Director or Commissioner may, with the approval of the tribal government, permit a contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau within his jurisdiction under terms and conditions agreed upon for their use and maintenance. The property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651). Use of Government property is subject to the following conditions:

(1) When nonexpendable Government property is turned over to public school authorities or Indian corporations under a use permit, the permittee shall insure such property against damage by flood, fire, rain, windstorm, vandalism, snow, and tornado in amounts and with companies satisfactory to the Federal officer in charge of the property. In case of damage or destruction of the property by flood, fire, rain, windstorm, vandalism, snow or tornado, the insurance money collected shall be expended only for repair or replacement of property. Other-

wise, insurance proceeds shall be paid to the Bureau.

(2) If the public school authority is self-insured and can present evidence of that fact to the Area Director or Commissioner, insurance for lost or damaged property will not be required. However, the public school authority will be responsible for replacement of such lost or damaged property at no cost to the Government or for paying the Government enough to replace the property.

(3) The permittee shall maintain the property in a reasonable state of repair consistent with the intended use and educational purposes.

(c) The contractor may have access to existing Bureau records needed to carry out a contract under this Part, as follows:

(1) The Bureau will make the records available subject to the provisions of the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93-502, 88 Stat. 1561).

(2) The contractor may have access to needed Bureau records at the appropriate Bureau office for review and making copies of selected records.

(3) If the contractor needs a small volume of identifiable Bureau records, the Bureau will furnish the copies to the contractor.

§ 273.45 Indian preference.

(a) Any contract made by the Bureau with a State, school district or Indian corporation shall provide that the contractor shall, to the greatest extent feasible, give preference in and opportunities for employment and training to Indians.

(b) Any contract made by the Bureau with a State, school district or Indian corporation shall provide that the contractor shall, to the greatest extent feasible, give preference in the award of subcontracts to Indian organizations and Indian-owned economic enterprises.

(c) All subcontractors employed by the contractor shall, to the extent possible, give preference to Indians for employment and training and shall be required to include in their bid submission a plan to achieve maximum use of Indian personnel.

(d) In the performance of contracts under this Part 273 and subject to the provisions of Part 14H of Title 41, a tribal governing body may develop its own Indian preference requirements to the extent that such requirements are not inconsistent with the purpose and intent of paragraphs (a), (b) and (c) of this section.

§ 273.46 Liability and motor vehicle insurance.

(a) States, school districts and Indian corporations shall obtain public liability insurance under contracts entered into with the Bureau under this Part. However, where the Bureau contracting officer determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk, the contractor may be exempted from this requirement.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the State, school district, or Indian corporation to provide liability insurance, regardless of how small the risk.

(c) If the public school authority is self-insured and can present evidence of that fact to the Area Director or Commissioner, liability and motor vehicle insurance will not be required.

§ 273.47 Recordkeeping.

A contractor will be required to maintain a recordkeeping system which will allow the Bureau to meet its legal records program requirements under the Federal Records Act (44 U.S.C. 3101 et seq.). Such a record system shall:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner which will provide accurate, current and complete disclosure of financial status; correlation with budget or allowable cost schedules; and clear audit facilitating data.

(b) Reflect the amounts and sources of funds other than Bureau contract funds which may be included in the operation of the contract.

(c) Provide for the creation, maintenance and safe guarding of records of lasting value, including those involving individual rights, such as permanent records and transcripts.

(d) Provide for orderly retirement of permanent records in accordance with General Records Schedules and the Bureau Records Control Schedule, when there is no established system set up by the State, school district, or Indian corporation.

§ 273.48 Audit and inspection.

(a) During the term of a contract under this Part and for three years after the project or undertaking is completed, the Comptroller General and the Secretary, or any of their duly authorized representatives, shall have access, for audit and examination purposes, to any of the contractor's books, documents, papers, and records which, in their opinion, may be related or pertinent to the contract or any subcontract.

(b) The contractor will be responsible for maintaining all documents such as invoices, purchase orders, cancelled checks, balance sheets and all other records relating to financial transactions in a manner which will facilitate auditing. The contractor will be responsible for maintaining files of correspondence and other documents relating to the administration of the contract properly separated from general records or cross-referenced to general files.

(c) The contractor receiving funds under this Part shall be responsible for contract compliance.

(d) The records involved in any claim or expenditure that has been questioned shall be further maintained until final determination has been made on the questioned expenditures.

(e) All contracts, non-confidential records concerning all students served by the program, reports, budgets, budget estimates, plans, and other documents pertaining to preceding and current year administration of the contract program shall be made available by the contractor and local school officials to each member of the Indian Education Committee and to members of the public upon request. The contractor or local school official shall provide, free of charge, single copies of such documents upon request.

§ 273.49 Freedom of information.

(a) Unless otherwise required by law, the Bureau shall not place restrictions on contractors which will limit public access to the contractor's records except when records must remain confidential.

(b) A contractor under this Part shall make all reports and information concerning the contract available to the Indian people which the contract affects. Reports and information may be withheld from disclosure only when both of the following conditions exist:

(1) The reports and information fall within one of the following exempt categories:

(i) Specifically required by statute or Executive Order to be kept secret.

(ii) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.

(iii) Personnel, medical, social, psychological, academic achievement and similar files where disclosure would be a clearly unwarranted invasion of personal privacy.

(2) Disclosure is prohibited by statute or Executive Order or sound grounds exist for using the exemption given in paragraph (b)(1) of this section.

(c) A request to inspect or copy reports and information shall be in writing and must reasonably describe the reports and information requested. The request may be delivered or mailed to the contractor. Within ten (10) working days after receiving the request, the contractor shall determine whether to grant or deny the request. The requester shall be notified immediately of the determination.

(d) The time limit for making a determination may be extended up to an additional ten (10) working days for good reason. The requester shall be notified in writing of the extension, reasons for the extension, and date on which the determination is expected to be made.

§ 273.50 Annual reporting.

(a) A contractor under this Part shall make a detailed annual report to the approving official before September 15 of each year and covering the previous school year. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended, information on the conduct of the program, a quantitative evaluation of the effectiveness of the contract program in meeting the

stated objectives contained in the applicant's educational plans, and a complete accounting of actual receipts at the end of the contract period.

(b) In addition to the yearly reporting requirement given in paragraph (a) of this section, the contractor shall furnish other contract-related reports when and as required by the Area Director or Commissioner.

(c) A contractor under this Part shall send copies of the reports required by paragraphs (a) and (b) of this section to the Indian Education Committee(s) and to the tribe(s) under the contract at the same time as the reports are sent to the Bureau.

§ 273.51 Penalties.

If any officer, director, agent, or employee of, or connected with, any contractor or subcontractor under this Part embezzles, willfully misapplies, steals, or obtains by fraud any of the funds or property connected with the contract or subcontract, he shall be subject to the following penalties:

(a) If the amount involved does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) If the amount involved exceeds $100, he shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

§ 273.52 State school laws.

In those States where Public Law 83–280, 18 U.S.C. 1162 and 28 U.S.C. 1360 do not confer civil jurisdiction, State employees may be permitted to enter upon Indian tribal lands, reservations, or allotments if the duly-constituted governing body of the tribe adopts a resolution of consent for the following purposes:

(a) Inspecting school conditions in the public schools located on Indian tribal lands, reservations, or allotments.

(b) Enforcing State compulsory school attendance laws against Indian children, parents or persons standing in loco parentis.

§ 273.53 Applicable procurement regulations.

States, school districts, or Indian corporations wanting to contract with the Bureau under this part must comply with the applicable requirements in the Federal Procurement Regulations (41 CFR Part 1), as supplemented by the Interior Procurement Regulations (41 CFR Part 14), and the Bureau of Indian Affairs Procurement Regulations (41 CFR Part 14H), except 41 CFR Part 14H–70.

§ 273.54 Privacy Act requirements.

(a) When a contractor operates a system of records to accomplish a Bureau fucntion, the contractor shall comply with Subpart D of 43 CFR Part 2 which implements the Privacy Act (5 U.S.C. 552a). Examples of the contractor's responsibilities are:

(1) To continue maintaining those systems of records declared by the Bureau to be subject to the Privacy Act as published in the FEDERAL REGISTER.

(2) To make such records available to individuals involved.

(3) To disclose an individual's record to third parties only after receiving permission from the individual to whom the record pertains. 43 CFR 2.56 lists exceptions to this procedure.

(4) To establish a procedure to account for access, disclosures, denials, and amendments to records.

(5) To provide safeguards for the protection of the records.

(b) The contractor may not:

(1) Discontinue or alter any established systems of records without prior approval of the appropriate Bureau systems manager.

(2) Deny requests for notification or access of records without prior approval of the appropriate Bureau systems manager.

(3) Approve or deny requests for amendments of records without prior approval of the appropriate Bureau systems manager.

(4) Establish a new system of records without prior approval of the Department of Interior and the Office of Management and Budget.

(5) Collect information about an individual unless it is relevant or necessary to accomplish a purpose of the Bureau as required by statute or Executive Order.

(c) The contractor is subject to the penalties provided in subsection (i) of 5 U.S.C. 552a.

Subpart E—Contract Revision or Cancellation

§ 273.61 Contract revision or amendment.

Any contract made under this Part may be revised or amended as deemed necessary to carry out the purposes of the program being contracted. A contractor may make a written request for a revision or amendment of a contract to the Bureau contracting officer. However, no program approved by the Indian Education Committee shall be altered from the time of its original approval to the end of the contract period without the written approval of the Committee.

§ 273.62 Cancelling a contract for cause.

(a) Any contract entered into under this Part may be cancelled for cause when the contractor fails to perform the work called for under the contract or fails to permit an Indian Education Committee to perform its duties pursuant to this Part.

(b) Before cancelling the contract, the Bureau will advise the contractor in writing of the following:

(1) The reasons why the Bureau is considering cancelling the contract.

(2) The contractor will be given an opportunity to bring its work up to an acceptable level.

(c) If the contractor does not overcome the deficiencies in its contract performance, the Bureau shall cancel the contract for cause. The Bureau will notify the contractor, in writing, of the cancellation. The notice shall give the reasons for the cancellation and the right of the contractor to appeal under Subpart C of 43 CFR Part 4.

(d) When a contract is cancelled for cause, the Bureau will attempt to perform the work by another contract.

(e) Any contractor that has a contract cancelled for cause must demonstate that the cause(s) which led to the cancellation have been remedied before it will be considered for another contract.

Subpart F—Appeals

§ 273.71 Contract appeal.

A contractor may appeal an adverse decision or action of a Bureau contracting officer regarding a contract under this Part as provided in Subpart C of 43 CFR Part 4.

§ 273.72 Appeal from decision to cancel contract for cause.

A contractor may appeal the decision of a Bureau official to cancel a contract under this Part for cause. The appeal shall be made as provided in Subpart C of 43 CFR Part 4.

§ 273.73 Other appeals.

Any decision or action taken by a Bureau official under this Part, other than those given in §§ 273.71 and 273.72, may be appealed as provided in Part 2 of this chapter.

PART 274—SCHOOL CONSTRUCTION CONTRACTS OR SERVICES FOR TRIBALLY OPERATED PREVIOUSLY PRIVATE SCHOOLS

Subpart A—General Provisions

Sec.

274.1 Purpose.
274.2 Scope.
274.3 Definitions.
274.4 Effect on existing Indian rights.
274.5 Revision or amendment of regulations.

Subpart B—Application Process

274.11 Eligible applicants.
274.12 Obtaining Application forms.
274.13 Contents of application.
274.14 Assistance in completing applications.
274.15 Tribal request.
274.16 Where to submit application.
274.17 When to submit application.
274.18 Agency Office review and action.
274.19 Area Office review and action.
274.20 Priorities for providing construction contracts or services.
274.21 Central Office review and action.
274.22 On-site inspection and cost estimate.
274.23 Preparing a commitment-to-fund listing.
274.24 Performing construction work.
274.25 Reapplication.
274.26 Funding provisions.

Subpart C—General Contract Requirements

274.31 Applicability.
274.32 Architectural design.
274.33 Facilities construction.
274.34 Selecting initial equipment.
274.35 Payment to contractors.
274.36 Use and transfer of Government property.
274.37 Wage and labor standards.
274.38 Indian preference.
274.39 Liability and motor vehicle insurance.
274.40 Recordkeeping.
274.41 Audit and inspection.
274.42 Freedom of information.
274.43 Reporting.

Sec.
274.44 Repayment of funds.
274.45 Penalties.
274.46 Applicable procurement regulations.
274.47 Contract revision or amendment.
274.48 Cancelling a contract for cause.
274.49 Privacy Act requirements.

Subpart D—Appeals

274.51 Contract appeal.
274.52 Appeal from decision to cancel contract for cause.
274.53 Other appeals.

AUTHORITY: Sec. 204 and 208, Pub. L. 93-638, 88 Stat. 2203, unless otherwise noted.

Subpart A—General Provisions

§ 274.1 Purpose.

The purpose of the regulations in this Part is to give the application and approval process for obtaining a contract or services from the Bureau for school construction for previously private schools now controlled and operated by tribes or tribally approved Indian organizations under sections 204 and 208 of Title II of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, 88 Stat. 2203).

§ 274.2 Scope.

The Act authorizes the expenditure of funds authorized and appropriated under Part B of the Act to contract or provide services for school construction for tribally operated previously private schools. After an application has been completed and approved by the tribe, the application is forwarded through Bureau channels to the Commissioner for ranking by priority. If a project is within the funding priority, the Bureau contracting officer offers to negotiate a contract with the applicant subject to approval by the requesting tribe(s) for architectural-engineering design, facilities construction and purchase of equipment to provide educational facilities meeting Bureau space standards and construction code regulations. Subject to approval by the requesting tribe(s), the applicant then has the following options:

(a) Enter into a contract with the Bureau under which the applicant performs all or part of the necessary work with the Bureau performing the rest.

(b) Request that the Bureau perform or arrange for the performance of all the necessary work.

§ 274.3 Definitions.

As used in this Part:

(a) "Act" means the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203).

(b) "Area Director" means the official in charge of a Bureau of Indian Affairs Area Office.

(c) "Attendance area" means, in relation to a particular school, the area in which the children who are normally served by that school reside.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Commissioner" means the Commissioner of Indian Affairs.

(f) "Contractor" means an applicant who has been awarded a contract under this Part.

(g) "Days" means calendar days.

(h) "Economic enterprise" means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(i) "Existing school facilities" means all facilities constructed as school buildings and used continuously for classroom purposes. Excluded are basement rooms, hallways, or other space, the use of which for school purposes (in view of the character, inaccessibility or other equally cogent reasons) seriously restricts the educational objective, or has impaired or will impair the health or safety of the school children.

(j) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(k) "Indian" means a person who is a member of an Indian tribe.

(l) "Initial equipment" means any movable equipment necessary and appropriate to equip minimum school facilities. Such term does not include equipment purchased to replace any equipment which is obsolete or worn out and which was purchased with funds under the Act.

(m) "Minimum school facilities" means classroom and auxiliary rooms and initial equipment necessary to operate an approved educational program for the membership of the school at normal capacity in accordance with criteria established by the Bureau.

(n) "Previously private school" means a school (other than a Federal school formerly operated by the Bureau), that is operated primarily for Indian students from age 3 years through grade(s) 12; and, which at the time of application is controlled, sanctioned, or chartered by the governing body(s) of an Indian tribe(s).

(o) "Secretary" means the Secretary of the Interior.

(p) "Superintendent" means the official in charge of a Bureau of Indian Affairs Agency Office.

(q) "Tribal government", "tribal governing body", and "tribal council" means the recognized governing body of an Indian tribe.

(r) "Tribal organization" means the recognized governing body of any Indian tribe; or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided*, That a request for a contract or services must be made by the Indian tribe that will receive services under the contract or from the Bureau by other means; *Provided further*, That in any case where a contract or services will affect more than one Indian tribe, the approval of each such Indian tribe shall be prerequisite to the approval of the application for the contract or services.

§ 274.4 Effect on existing Indian rights.

Nothing in these regulations shall be construed as:

(a) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe;

(b) Authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people; or

(c) Permitting significant reduction in services to Indian people as a result of this Part.

§ 274.5 Revision or amendment of regulations.

In order to make any substantive revisions or amendments to regulations in this Part, the Secretary shall take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Publish the proposed revisions or amendments in the Federal Register as proposed rulemaking to provide adequate notice to, and receive comments from, all interested parties.

(c) After consideration of all comments received, publish the regulations in the FEDERAL REGISTER in final form not less than 30 days before the date they are made effective.

(d) Annually consult with Indian tribes and national and regional Indian organizations about the need for revision or amendment, and consider their views in preparing the revision or amendment.

(e) Nothing in this section shall preclude Indian tribes or national or regional Indian organizations from initiating request for revisions or amendments subject to paragraph (a), (b), and (c), of this section.

Subpart B—Application Process

§ 274.11 Eligible applicants.

Any tribal organization which meets all of the following criteria is eligible to apply for a contract with or services from the Bureau for school construction:

(a) The tribal organization must control and manage the previously private school for which the organization is applying for a contract or services under this Part.

(b) Title to the land on which the construction for the previously private school is located must be vested in the tribe or the United States; or, a lease for the useful life of the improvement must be entered into with the tribe or the United States for the ground on which it is located.

(c) The previously private school controlled and managed by the tribal organization must have a minimum current enrollment or projection of 25 students through grade(s) 8 and/or 50 students in grades 9 through 12.

§ 274.12 Obtaining application forms.

Application forms, instructions and related application materials are available from Agency Superintendents, Area Directors and the Commissioner. Use of standard application forms will facilitate processing of applications. However, they are not required if the information contained in § 274.13 is stated in the applicant tribe's request for a contract or services.

§ 274.13 Contents of application.

An application for funding under this Part shall be in writing and shall contain the following information:

(a) Full name, address and telephone number of the tribal organization which is applying for the contract or services.

(b) Full name of tribe(s) with which the tribal organization is affiliated.

(c) Full name of tribe(s) directly benefiting or receiving services from the proposed contract or from the Bureau by other means.

(d) Documentation of the tribal request in the form of a resolution as outlined in § 274.15.

(e) Date of submission to the Bureau and the name of the office where the application was submitted.

(f) Signature by the authorized representative of the tribal organization and the date thereof.

(g) Outline of the educational program including:

(1) Narrative description of elementary programs with educational philosophy.

(2) Narrative description of secondary programs with educational philosophy. If application is for secondary facility, include course offering with each course outlining enrollment, class size, class meetings per week, minutes per class and fraction of year taught.

(3) What will happen to the education of the students now, in 1 to 3 years and in 4 to 10 years if the proposed facilities are not constructed? Discuss all available options, including but not limited to:

(i) Off-reservation boarding schools.

(ii) On-reservation boarding schools.

(iii) Public, Bureau or other day schools.

(iv) Temporary facilities.

(h) Outline geographic attendance boundaries and include:

(1) Map of attendance area with description.

(2) Description of other Federal, public and/or private schools within the above attendance boundary.

(3) Discussion of impact the project will have on the schools listed in paragraph (h)(2) of this section and on feeder schools.

(4) Bus routes and/or change in bus routes caused by construction of facilities.

(i) Outline school enrollment characteristics and data including:

(1) Present total enrollment and enrollment by grade.

(2) Enrollment for the past six years by total and by grade.

(3) Estimate of enrollment by year for the next five years by total and by grade.

(4) Source and/or reasons for any student population growths.

(5) Number of students residing in attendance area but enrolled in other schools, number of students attending school but residing outside attendance area, and number of people by age group residing in attendance area between one and twenty-five. The data should be current as of the time of application.

(j) Outline project description and justification data including:

(1) Function of proposed new facility, i.e., kitchen dining building for 300 students grades K–8, etc.

(2) Data such as capacity, date constructed, square footage and condition of existing facility described in paragraph (j)(1) of this section which needs to be replaced.

(3) Problems which may be encountered such as lack of adequate construction site, disputed jurisdiction, flood plain, soil conditions, archeological clearance, lack of electric power or water.

(4) Justification for project (Choose one and explain):

(i) The facility has been destroyed by a natural disaster.

(ii) The facility is unsafe or unsanitary. Documentation in the form of an engineering and/or safety report must be included for facilities that are unsafe or unsanitary. Also, there are no local educational facilities available that can provide seats for the unhoused students.

(iii) The same conditions exist as given in paragraph (j)(4)(ii) of this section for unsafe or unsanitary facilities except that other facilities can be used to seat the unhoused students temporarily.

(iv) Unhoused pupils due to enrollment and population changes.

(v) The facility is functionally obsolete. It will not meet the education program or other requirements for such reasons as poor arrangtment of rooms, inadequate spaces and need for structural and utility changes.

(vi) The facility is functionally obsolete due to age. Operation and maintenance is costly and the facility is impractical to maintain.

(vii) The facility will make it possible for children to attend school nearer their home.

(5) A current overall plan for constructing Bureau facilities, prepared by the Bureau and approved by the tribes affected.

(6) Attendance area school construction plans and memoranda of agreement. Attach any school construction plans for the applicable attendance area for all Federal, public or private schools and any memoranda of agreement concerning such plans. If there are none, a current status report shall be submitted.

§ 274.14 Assistance in completing applications.

An applicant may obtain assistance in completing the application forms from the Agency or Area Offices. The Superintendent, Area Director, or Commissioner shall make any information available to the applicant needed to prepare the application except as restricted from disclosure by the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93–502; 88 Stat. 1561).

§ 274.15 Tribal request.

(a) Before the Bureau can approve a tribal organization's application for a contract or services, it must be requested to do so by the Indian tribe to be affected by the contract or services. The Indian tribe's request shall be in the form of a resolution by the tribal governing body. If the tribal organization is applying for a contract or services which will affect more than one tribe, an authorizing resolution from each tribal governing body must be obtained before submitting the application to the Bureau for approval.

(b) The resolution of the tribal governing body shall also specify the tribal organization which is to operate the school. The resolution shall include the results of the vote (the number for and against), the date the resolution was approved, and signature of the person authorized to certify the accuracy of the information contained in the resolution.

(c) The tribal governing body's request (resolution) should include the following:

(1) When the tribal organization is the tribal governing body, the expiration date of the authorities granted by the resolution.

(2) When the tribal organization is other than the tribal governing body:

(i) The name of the tribal organization.

(ii) The tribal office or official to which the Bureau should send copies of documents and correspondence.

(iii) Any limitations on authorities granted the tribal organization.

(3) The tribal governing body's approval or disapproval of the Bureau's current overall educational facilities construction plan which includes the new construction proposed by this project to ensure:

(i) Coordination of facility construction with public school projects.

(ii) Coordination of facility construction with other agencies.

(iii) Approval and support of the proposed project.

(d) Any procedures given in this section concerning the manner in which a tribal governing body passes a tribal constitution, law, code, ordinance, or other written document. In such cases, the tribal law or procedures shall be cited in the resolution and shall take precedence.

§ 274.16 Where to submit application.

(a) The completed application with documentation of the tribal request(s) shall be delivered or mailed to the Super-

intendent having jurisdiction over the tribe(s) requesting the contract or services.

(b) When the contract or services requested in the application will benefit more than one tribe under the jurisdiction of more than one Agency Office within one Area, the application and documentation of the tribal requests shall be delivered or mailed to the Area Director involved.

(c) When the contract or services requested in the application will benefit more than one tribe under the jurisdiction of more than one Area Office, the application and documentation of the tribal requests shall be delivered or mailed to the Commissioner.

§ 274.17 When to submit application.

Applications may be submitted by a tribal organization to the Bureau at any time to be placed on the Bureau's priority listing.

§ 274.18 Agency Office review and action.

(a) The Superintendent has 30 days from receipt of an application to notify the applicant in writing of its receipt, review the application for completeness, and request any needed information from the applicant.

(b) When the Superintendent has determined that the application is complete, he will forward the completed application with documentation of the tribal request(s) to the Area Director having jurisdiction over that Agency Office with a written statement that the application is complete.

§ 274.19 Area Office review and action.

Within 30 days after receiving an application directly or from the Superintendent, the Area Director will take the following actions:

(a) Notify the applicant in writing that the application was received in the Area Office.

(b) Review each application submitted directly to the Area Office as provided in § 274.16(b) for completeness and obtain any needed information from the applicant.

(c) Assign each proposed project an Area Office priority. The Area Office will include an updated priority index with each application or group of applications transmitted to the Commissioner for appropriate action.

(d) Forward each application and documentation of tribal request(s) to the Commissioner.

§ 274.20 Priorities for funding construction.

As prescribed in §§ 274.19(c) and 274.21(b), the Area Director and Commissioner shall evaluate and assign priorities on the basis of the application data submitted as required by § 274.13 including:

(a) Education program required by § 274.13(g).

(b) Geographic attendance boundaries given in § 274.13(h).

(c) Enrollment characteristics given in § 274.13(i).

(d) Project description and justification required by § 274.13(j).

§ 274.21 Central Office review and action.

Within 30 days after receiving an application directly or from the Area Director, the Commissioner will take the following actions:

(a) Notify the applicant in writing that the application was received in the Central Office.

(b) Review each application submitted directly to the Commissioner as given in § 274.16(c) for completeness, request any needed information from the applicant, and assign the proposed project a priority.

(c) Update the Bureauwide priority listing of all approved projects in order of priority with the project with the highest priority listed first. As new applications are received, they will be added to the priority listing according to their ranking.

(d) Notify each applicant in writing of the project's priority ranking on the Bureauwide list. The applicant will be notified of any subsequent changes to that ranking if new applications were received with a higher ranking.

§ 274.22 On-site inspection and cost estimate.

(a) No later than three months before the new fiscal year begins, the Commissioner or his representative shall conduct an on-site inspection for projects high on the priority listing, beginning with the project ranked highest on the Bureauwide priority listing. The on-site inspection is to determine which buildings are to be retained, demolished or remodeled and to gather initial information required for development of the planning document.

(b) From this information, a tentative cost estimate for design, construction and equipment will be made for budget purposes in cooperation with the tribal organization.

§ 274.23 Preparing a commitment-to-fund listing.

As each high priority project is given an on-site inspection and a tentative cost estimate is made, the project will be placed on a commitment-to-fund listing. Projects will be added as long as the total of the tentative cost estimates is less than the amount of funds appropriated for previously private school construction for the new fiscal year. Each applicant will be notified in writing when the project has been placed on the commitment-to-fund listing.

§ 274.24 Performing construction work.

When a project has been placed on the commitment-to-fund listing, the applicant will be given the following options, subject to approval by the requesting tribe(s):

(a) To negotiate a contract with the Bureau to perform all of the work or part of the work needed for the project with the Bureau performing the rest. Such contracts shall comply with the requirements in Subpart C of this Part and with 41 CFR Part 14H–70.

(b) To have the Bureau perform or arrange for the performance of all the work needed.

§ 274.25 Reapplication.

Once an applicant has applied for a contract or services and the project has been placed on the Bureauwide priority listing, there is no need to reapply. The project will be carried on the priority listing until placed on the commitment-to-fund list. However, if changes occur which would affect the project's rank and, thus, its priority, the applicant must submit a new application.

§ 274.26 Funding provisions.

(a) No funds from any contract under this Part shall be made available by the Bureau directly to other than Indian tribes and tribal organizations. However, Indian tribes and tribal organizations assisted under this Part may use funds provided to subcontract for necessary services.

(b) Twenty-five (25) per cent of all funds appropriated under Title II, Part B, section 204 of the Act shall be expended for construction of previously private schools controlled and managed by a tribal organization. Any unobligated funds will be retained until completion of the project and unexpended funds returned to the Bureau. Projects which are partially funded shall be given first consideration for the additional funding necessary to complete such projects.

Subpart C—General Contract Requirements

§ 274.31 Applicability.

This Subpart applies only when the applicant exercises the option of contracting with the Bureau to perform all or part of the construction work.

§ 274.32 Architectural design.

(a) Plans and specifications for a project shall comply with such Federal, State and local laws, ordinances and regulations pertaining to standards or construction and safety requirements as may be applicable.

(b) An Architect/Engineer shall be selected by the contractor subject to the advice and assistance of the Commissioner who shall counsel the contractor with respect to professional qualifications and performance history of firms so the best qualified firm for the work is selected. No Architect/Engineer agreement shall be entered into by the contractor until the Commissioner has reviewed the agreement and consented in writing to its provisions.

(c) Plans and specifications must conform to the project description, with approved revisions. Such plans and specifications must be forwarded for the approval of the Commissioner including schematic design, design development, and final construction document.

§ 274.33 Facilities construction.

(a) The Commissioner may assist in preconstruction and construction activi-

ties to assure conformity with the requirements of the Act. Approval of all proposed preconstruction documents will be obtained from the Commissioner. Assistance prior to the preparation of these and similar documents will be provided, upon request, by the Commissioner or his representative. A preliminary conference may be suggested with the project architect and others if that seems desirable. The Commissioner will provide sufficient copies of all forms used to prepare the documents required for the project.

(b) The Commissioner will provide, upon request, technical supervision and services to the contractor in connection with the construction of school facilities. When appropriate, such services will provide assistance with periodic inspection of construction progress and determine the propriety of making partial payments as construction progresses.

§ 274.34 Selecting initial equipment.

Equipment procured with payments under this Part must be approved by the Commissioner before invitations for bids or requests for proposals as to the acquisition of such equipment are issued. In order to obtain such approval, a list of equipment to be procured (indicating quantities, costs, and specifications) shall be provided to the Commissioner for prior approval.

§ 274.35 Payment to contractors.

(a) At the request of a contractor, the Bureau contracting officer may make advance payments under contracts made under this Part. The requirements given in this section and in Chapter 2000 of the Treasury Fiscal Requirements Manual apply to making the advance payments.

(b) Any request for advance payment by a contractor shall specify the amount(s) required and the dates such advance(s) will be required and shall be supported by a schedule of estimated expenditures.

(c) An initial advance shall be limited to the amount of estimated expenditures for a period of time required to effect payment, based on experience in the locality. The initial advance shall be made in amounts and at times determined suitable to satisfy the minimum essential needs of the contractor.

(d) Later advances shall be made at times and in amounts determined necessary to insure availability of funds for timely payment of the contractor's obligations and to minimize the time between withdrawal from the Treasury and expenditure. Requests for advances after an initial advance shall be accompanied and supported by a report of expenditures to date and the amount of funds on hand.

§ 274.36 Use and transfer of Government property.

(a) The use of Government-owned facilities for tribal purposes may be authorized when not needed for Government activities. Transfer of title to such facilities may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41), subject to the approval of the tribal government if property is located on a reservation.

(b) In carrying out a contract made under this Part, the Commissioner may, with the approval of the tribal government, permit a contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau within his jurisdiction under terms and conditions agreed upon for their use and maintenance. The property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

(c) Use of Government property is subject to the following conditions:

(1) When nonexpendable Government property is turned over to the tribal organization under a use permit, the permittee shall insure the property against damage by flood, fire, rain, windstorm, vandalism, snow and tornado in amounts and with companies satisfactory to the Federal officer in charge of the property. In case of damage or destruction of the property by flood, fire, rain, windstorm, vandalism, snow or tornado, the insurance money collected shall be expended only for repair or replacement of the property. Otherwise, insurance proceeds shall be paid to the Bureau.

(2) If the tribal organization is self-insured and can present evidence of that fact to the Commissioner, insurance for lost or damaged property will not be required. However, the tribal organization will be responsible for replacement of such lost or damaged property at no cost to the Government or for paying the Government enough to replace the property.

(3) The permittee shall maintain the property in a reasonable state of repair consistent with the intended use and educational purposes.

(d) The contractor may have access to existing Bureau records needed to carry out a contract under this Part, as follows:

(1) The Bureau will make the records available subject to the provisions of the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93-502, 88 Stat. 1561).

(2) The contractors may have access to needed Bureau records at the appropriate Bureau office for review and making copies of selected records.

(3) If the contractor needs a small volume of identifiable Bureau records, the Bureau will furnish the copies to the contractor.

(4) Where a large volume of records are needed and copying is not practical or feasible, the records may be physically located at the contract site provided that a Bureau official is designated by the Commissioner or Area Director as custodian of the records.

§ 274.37 Wage and labor standards.

All laborers and mechanics employed by contractors or subcontractors in constructing, altering, or repairing buildings or other facilities in connection with contracts under this Part shall be paid wages not less than those on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended. However, this requirement does not apply where the contractor is the recognized governing body of the tribe and the construction, alteration or repair work is being performed by the tribal organization or the tribe with its own employees.

§ 274.38 Indian preference.

(a) Any contract made by the Bureau with a tribal organization shall provide that the contractor shall, to the greatest extent feasible, give preference in and opportunities for employment and training to Indians.

(b) Any contract made by the Bureau with a tribal organization shall provide that the contractor shall, to the greatest extent feasible, give preference in the award of subcontracts to Indian organizations and Indian-owned economic enterprises.

(c) All subcontractors employed by the contractor shall, to the extent possible, give preference to Indians for employment and training and shall be required to include in their bid submission a plan to achieve maximum use of Indian personnel.

(d) In the performance of contracts under this Part 274 and subject to the provisions of Part 14H-70 of Title 41, a tribal governing body may develop its own Indian preference requirements that are not inconsistent with the purpose and intent of paragraph (a), (b), and (c) of this section.

§ 274.39 Liability and motor vehicle insurance.

(a) Tribal organizations shall obtain public liability insurance under contracts entered into with the Bureau under this Part. However, where the Bureau contracting officer determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk, the contract may be exempted from this requirement.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the tribal organization to provide liability insurance, regardless of how small the risk.

§ 274.40 Recordkeeping.

A contractor will be required to develop and maintain a record-keeping system which will:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner which will provide accurate, current and complete disclosure of financial status; correlation with budget or allowable cost schedules; and clear audit facilitating data.

(b) Reflect the amounts and sources of funds other than Bureau contract funds which may be included in the construction project.

(c) Provide for the creation, maintenance and safeguarding of records of lasting value.

§ 274.41 Audit and inspection.

(a) During the term of a contract under this Part and for three years after the project or undertaking is completed, the Comptroller General and the Secretary, or any of their duly authorized representatives, shall have access for audit and examination purposes to any of the contractor's books, documents, papers, and records which, in their opinion, may be related or pertinent to the contract or any subcontract.

(b) The contractor will be responsible for maintaining all documents such as invoices, purchase orders, cancelled checks, balance sheets and all other records relating to financial transactions in a manner which will facilitate auditing. The contractor will be responsible for maintaining files of correspondence and other documents relating to the administration of the program under the contract properly separated from general records or cross-referenced to general files.

(c) The contractor receiving funds under this Part shall be primarily responsible for contract compliance.

(d) The records involved in any claim or expenditure that has been questioned shall be further maintained until final determination has been made on the questioned expenditure.

(e) All contracts, reports, budgets, budget estimates, plans, and other documents pertaining to administration of the contract shall be made available by the contractor. The contractor shall provide, free of charge, single copies of such documents upon request.

§ 274.42 Freedom of information.

(a) Unless otherwise required by law, the Bureau shall not place restrictions on contractors which will limit public access to the contractor's records except when records must remain confidential.

(b) A contractor under this Part shall make all reports and information concerning the contract available to the Indian people which the contractor serves or represents. Reports and information may be withheld from disclosure only when both of the following conditions exist:

(1) The reports and information fall within one of the following exempt categories:

(i) Specifically required by statute or Executive Order to be kept secret.

(ii) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.

(iii) Personnel, medical, and similar files where disclosure would be a clearly unwarranted invasion of personal privacy.

(iv) Geological and geophysical information and data concerning wells.

(2) Disclosure is prohibited by statute or Executive Order or sound grounds exist for using the exemption given in paragraph (b)(1) of this section.

(c) A request to inspect or copy reports and information shall be in writing and must reasonably describe the reports and information requested. The request may be delivered or mailed to the contractor. Within ten (10) working days after receiving the request, the contractor shall determine whether to grant or deny the request. The requester shall be notified immediately of the determination.

(d) The time limit for making a determination may be extended up to an additional ten (10) working days for good reason. The requester shall be notified in writing of the extension, reasons for the extension, and the date on which the determination is expected to be made.

§ 274.43 Reporting.

(a) A contractor under this Part shall make a detailed report to the Commissioner after construction is completed. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended.

(b) The contractor shall furnish other contract-related reports when and as required by the Commissioner.

(c) A contractor under this Part shall send copies of the reports required by paragraphs (a) and (b) of this section to the tribal governing body(s) who requested the contract at the same time as the reports are sent to the Bureau.

§ 274.44 Repayment of funds.

Any funds paid under a contract entered into under this Part which are not expended, obligated or used for the purposes of the contract during its term shall be returned to the Bureau.

§ 274.45 Penalties.

If any officer, director, agent, or employee of, or connected with, any contractor or subcontractor under this Part embezzles, willfully misapplies, steals, or obtains by fraud any of the funds or property connected with the contract or subcontract, he shall be subject to the following penalties:

(a) If the amount involved does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) If the amount involved exceeds $100, he shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

§ 274.46 Applicable procurement regulations.

41 CFR Part 14H–70 provides the contract clauses which shall be included in contracts made with tribal organizations under this Part and places some requirements on them in addition to those given in this Subpart.

§ 274.47 Contract revision or amendment.

(a) Any contract made under this Part may be revised or amended as deemed necessary to carry out the purposes of the contract. No revision or amendment shall be made without the consent of the contractor. A contractor may make a written request for a revision or amendment of a contract to the Bureau contracting officer.

(b) If the contracting officer disapproves the proposed revision or amendment of the contract, he will notify the contractor in writing within 30 days after receiving the request. The notice shall state:

(1) The objections to the requested revision or amendment.

(2) The right of the contractor to appeal as provided in Subpart C of 43 CFR Part 4.

§ 274.48 Cancelling a contract for cause.

(a) Any contract entered into under this Part may be cancelled for cause when the contractor fails to perform the work called for under the contract.

(b) Before cancelling the contract, the Bureau will advise the contractor in writing of the following:

(1) The reasons why the Bureau is considering cancelling the contract.

(2) That the contractor will be given an opportunity to bring its work up to an acceptable level.

(3) That the Bureau may furnish technical advice and assistance to help overcome the deficiencies in the contract performance, when requested.

(c) If the contractor does not overcome the deficiencies in its contract performance, the Bureau will cancel the contract for cause. The Bureau will notify the contractor, in writing, of the cancellation. The notice shall give the reasons for the cancellation and the right of the contractor to appeal under Subpart C of 43 CFR Part 4.

(d) When a contract is cancelled for cause, the Bureau will either perform the work with its own forces or by another contract, as appropriate. However, when the contract is with other than the governing body of the Indian tribe, the advice of the tribe(s) will be obtained to determine how they wish the work to be performed.

§ 274.49 Privacy Act requirements.

(a) When a contractor operates a system of records to accomplish a Bureau function, the contractor shall comply with Subpart D of 43 CFR Part 2 which implements the Privacy Act (5 U.S.C. 552 a). Examples of the contractor's responsibilities are:

(1) To continue maintaining those systems of records declared by the Bureau to be subject to the Privacy Act as published in the FEDERAL REGISTER.

(2) To make such records available to individuals involved.

(3) To disclose an individual's record to third parties only after receivng permission from the individual to whom the record pertains. 43 CFR 2.56 lists exceptions to this procedure.

(4) To establish a procedure to account for access, disclosures, denials, and amendments to records.

(5) To provide safeguards for the protection of the records.

(b) The contractor may not:

(1) Discontinue or alter any established systems of records without prior

approval of the appropriate Bureau systems manager.

(2) Deny requests for notification or access of records without prior approval of the appropriate Bureau systems manager.

Subpart D—Appeals

§ 274.51 Contract appeal.

A contractor may appeal an adverse decision or action of a Bureau contracting officer regarding a contract under this Part as provided in Subpart C of 43 CFR Part 4.

§ 274.52 Appeal from decision to cancel contract for cause.

A contractor may appeal the decision of a Bureau official to cancel a contract under this Part for cause. The appeal shall be made as provided in Subpart C of 43 CFR Part 4.

§ 274.53 Other appeals.

Any decision or action taken by a Bureau official under this Part, other than those given in §§ 274.51 and 274.52 may be appealed only as provided in Part 2 of this chapter.

PART 275—STAFFING

Sec.
275.1 Purpose and scope.
275.2 Definitions.
275.3 Methods for staffing.
275.4 Implementing regulations.

AUTHORITY: Sec. 502, 84 Stat. 1909, 1925; Sec. 105, Pub. L. 93-638, 88 Stat. 2203; 25 U.S.C. 48.

§ 275.1 Purpose and scope.

The purpose of this Part is to outline methods available to tribes for utilizing the services of Bureau employees. These regulations are not intended to prevent an Indian tribe or tribal organization from staffing their programs by other methods they feel appropriate. However, when an Indian tribe or tribal organization decides to provide Bureau employees certain Federal benefits, Civil Service Commission regulations must be adhered to.

§ 275.2 Definitions.

As used in this Part:

(a) "Act" means the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203).

(b) "Area Director" means the official in charge of a Bureau of Indian Affairs Area Office.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Commissioner" means the Commissioner of Indian Affairs.

(e) "Days" means calendar days.

(f) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony, or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(g) "Indian" means a person who is a member of an Indian tribe.

(h) "Superintendent" means the official in charge of a Bureau of Indian Affairs Agency Office.

(i) "Tribal Chairman" means tribal chairman, governor, chief or other person recognized by the tribal government as its chief executive officer.

(j) "Tribal government" "tribal governing body," and "tribal council" means the recognized governing body of any Indian tribe.

(k) "Tribal organization" means the recognized governing body of any Indian tribe; or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

§ 275.3 Methods for staffing.

(a) An Iidian tribal organization may use any of the following three methods to employ or obtain the services of Bureau employees:

(1) Agreement in accordance with the Intergovernmental Personnel Act of 1970 (5 U.S.C. 3371-3376). The agreement may be arranged between the tribal organization, the employee, and the Area Director or Commissioner. Assistance will be provided by the Area Personnel Office in complying with Civil Service instructions (Federal Personnel Manual Chapter 334) for completing an agreement.

(2) Employment of Bureau employees on or before December 31, 1985, when serving under an appointment not limited to one year or less. A mutual agreement will be made between a tribal organization and the employee before leaving Federal employment to retain coverage for any of the following Federal benefits:

(i) Compensation for work injuries.

(ii) Retirement.

(iii) Health insurance.

(iv) Life insurance.

(3) An agreement by an Indian tribe in accordance with the 1834 Act (25 U.S.C. 48) may be made in connection with contracts under section 102 of the Act.

(i) The agreement may provide for the tribal government to direct the day-to-day activities of Bureau employees. Tribal government direction of Bureau employees means the tribal chairman or other tribal official, as designated by the tribal governing body, is responsible for the planning, coordination, and completion of the daily on-the-job assignments of Bureau employees. The daily assignments of each such Bureau employee are limited to those that fall within the general range of duties prescribed in the employee's Bureau position.

(ii) The agreement to direct day-to-day activities of Bureau employees shall include all employees:

(A) whose positions are in the program or portion of the program to be contracted; or

(B) in a portion of the program to continue under Bureau operation in connection with a contract for other portions of the program.

(iii) The proposed agreement will be worked out between the tribe, the Superintendent, and the Area Director and forwarded to the Commissioner for final approval.

(b) When a contract application under Part 271 of this chapter does not include a proposed agreement for direction of Bureau employees, the application must be submitted at least 120 days in advance of the proposed effective date of the contract to allow time for placement of affected employees.

§ 275.4 Implementing regulations.

Regulations to implement section 105 of the Act will be issued by the Civil Service Commission. The regulations will cover the situations described in paragraphs (a) (1) and (a) (2) of § 275.3.

PART 276—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS

Sec.
276.1 Purpose and scope.
276.2 Definitions.
276.3 Cash depositories.
276.4 Bonding and insurance.
276.5 Recordkeeping.
276.6 Program income.
276.7 Standards for grantee financial management systems.
276.8 Financial reporting requirements.
276.9 Monitoring and reporting program performance.
276.10 Grant payment requirements.
276.11 Property management standards.
276.12 Procurement standards.
276.13 Indian preference in grant administration.
276.14 Budget revision.
276.15 Grant closeout.
276.16 Subgrants and subcontracts to nonprofit organizations.

APPENDIX A—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS

APPENDIX B—FINANCIAL REPORTING REQUIREMENTS

AUTHORITY: 34 CFR 256; Sec. 104, Public Law 93-638, 88 Stat. 2203, unless otherwise noted.

§ 276.1 Purpose and scope.

(a) The purpose of the regulations in this Part is to give the uniform administrative requirements for grants awarded by the Bureau of Indian Affairs.

(b) The regulations in this Part shall apply to all grants awarded by the Bureau of Indian Affairs unless the Part which gives the application process and special requirements for the specific type of grant states otherwise.

§ 276.2 Definitions.

As used in this part:

(a) "Advance by Treasury check" means a payment made by a Treasury check to a grantee upon its request or through the use of predetermined payment schedules before payments are made by the grantee.

(b) "Date of completion" means the date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

(c) "Disallowed costs" means those charges to a grant which the Bureau or its representative determines to be unallowable.

(d) "Economic enterprise" means any commercial, industrial, agricultural or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(e) "Excess property" means property under the control of the Bureau which, as determined by the Commissioner, is no longer required for its needs.

(f) "Expendable personal property" means all tangible personal property other than nonexpendable property.

(g) "Grant closeout" means the process by which the Bureau determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the Bureau.

(h) "Grantee" means the entity which is responsible for administration of the grant.

(i) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(j) "Letter of credit" means an instrument certified by an authorized official of the Bureau which authorizes a grantee to draw funds when needed from the Treasury, through a Regional Disbursing Office, in accordance with the provisions of Treasury Circular No. 1075 as modified and supplemented by a memorandum of understanding between the Bureau of Government Financial Operation, Department of the Treasury and the Department of the Interior.

(k) "Nonexpendable personal property" means tangible personal property having useful life of more than one year and an acquisition cost of $300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

(l) "Personal property" means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

(m) "Real property" means land, land improvements, structures and appurtenances thereto, excluding removable personal property, machinery and equipment.

(n) "Reimbursement by Treasury check" means a payment made to a grantee with a Treasury check upon request for reimbursement from the grantee.

(o) "Suspension of a grant" means an action by the Bureau which temporarily suspends assistance under the grant pending corrective action by the grantee or pending decision to terminate the grant by the Bureau.

(p) "Termination of a grant" means the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the date of completion.

(q) "Tribal government", "tribal governing body" and "tribal council" means the recognized governing body of an Indian tribe.

(r) "Tribal organization" means the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or bodies of which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

§ 276.3 Cash depositories.

(a) Except for situations described in paragraphs (b) and (c) of this section, the Bureau will not:

(1) Require physical segregation of cash depositories for Bureau grant funds provided to a grantee.

(2) Establish any eligibility requirements for cash depositories in which Bureau grant funds are deposited by grantees or their subgrantees.

(b) A separate bank account shall be used when payments under letter of credit are made on a "check-paid" basis in accordance with agreements entered into by a grantee, the Bureau, and the banking institutions involved. A check-paid basis letter of credit is one under which funds are not drawn from the Treasury until the grantee's checks have been presented to its bank for payment.

(c) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees are encouraged to use minority banks.

§ 276.4 Bondings and insurance.

In administering Bureau grants, grantees shall observe their regular requirements and practices with respect to bonding and insurance. The Bureau will not impose additional bonding and insurance requirements, including fidelity bonds, except as provided in paragraphs (a) and (b) of this section.

(a) The recipient of a Bureau grant which requires contracting for construction or facility improvement (including any Bureau grant which provides for alterations or renovations of real property) shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding $100,000. For contracts exceeding $100,000, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) A payment bond on the part of the contractor for 100 per cent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(b) Where, in connection with a Bureau grant, the Bureau also guarantees the payment of money borrowed by the grantee, the Bureau may at its discretion require adequate bonding and insurance if the bonding and insurance requirements of the grantee are not deemed to be sufficient to protect adequately the interests of the Federal Government.

§ 276.5 Recordkeeping.

(a) The Bureau shall not impose record retention requirements over and above those established by the grantee except that financial records, supporting documents, statistical records, and all other records pertinent to a Bureau grant, or to any subgrant (or negotiated contract exceeding $2500) under a grant, shall be retained for a period of three years, with the following qualifications:

(1) The records shall be retained beyond the three year period if audit findings have not been resolved.

(2) Records for nonexpendable property which was acquired with Bureau grant funds shall be retained for three years after its final disposition.

(3) When grant records are transferred to or maintained by the Bureau, the three-year retention requirement is not applicable to the grantee.

(b) The retention period starts from the date of submission of the final expenditure report or, for grants which are renewed annually, from the date of the submission of the annual expenditure report.

(c) Grantees are authorized, if they desire, to substitute microfilm copies in lieu of original records.

(d) The Bureau shall request transfer of certain records to its custody from grantees when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping the Bureau may make arrangements with the grantee for the grantee to retain any records which are continuously needed for joint use.

(e) The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the grantees and their subgrantees which are pertinent to a specific grant

program for the purpose of making audit, examination, excerpts, transcripts and copies at government expense.

(f) Unless otherwise required by law, the Bureau shall not place restrictions on grantees which will limit public access to the grantee's records created as part of the grant except when records must remain confidential. Following are some of the reasons for withholding records:

(1) Prevent a clearly unwarranted invasion of personal privacy;

(2) Specifically required by statute or Executive Order to be kept secret;

(3) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.

§ 276.6 Program income.

(a) No grantee receiving a grant shall be held accountable for interest earned on grant funds, pending their disbursement for program purposes.

(b) Proceeds from the sale of real or personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with § 276.11.

(c) Royalties received from copyrights and patents produced under the grant during the grant period shall be retained by the grantee and, in accordance with the grant agreement, be either added to the funds already committed to the program or deducted from total allowable project costs for the purpose of determining the net costs on which the Bureau share of costs will be based. After termination or completion of the grant, the Bureau share of royalties in excess of $200 received annually shall be returned to the Bureau in the absence of other specific agreements between the Bureau and the grantee. The Bureau share of royalties shall be computed on the same ratio basis as the Bureau share of the total project cost.

(d) All other program income earned during the grant period shall be retained by the grantee and, in accordance with the grant agreement, shall be either:

(1) Added to funds committed to the project by the Bureau and the grantee and be used to further eligible program objectives, or

(2) Deducted from the total project costs for the purpose of determining the net costs on which the Bureau share of costs will be based.

(e) Grantees shall record the receipt and expenditures of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions when such revenues are specifically earmarked for a grant project in accordance with grant agreements.

§ 276.7 Standards for grantee financial management systems.

(a) Grantee financial management systems for grants and subgrantee financial management systems for subgrants shall provide for:

(1) Accurate, current, and complete disclosure of the financial results of each grant program in accordance with Federal reporting requirements and for each subgrant in accordance with the grantees' requirements. Except when specifically required by law, the Bureau will not require financial reporting on the accrual basis from tribal organizations whose records are not maintained on that basis. However, when accrual reporting is required by law, tribal organizations whose records are not maintained on that basis will not be required to convert their accounting systems to the accrual basis; they may develop the accrual information through an analysis of the documentation on hand or on the basis of best estimates.

(2) Records which identify adequately the source and application of funds for grant—or subgrant—supported activities. These records shall contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(3) Effective control over and accountability for all grant or subgrant funds, and real and personal property acquired with grant or subgrant funds. Grantees and subgrantees shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(4) Comparison of actual with budgeted amounts for each grant or subgrant, and, when specifically required by the performance reporting requirements of the grant or subgrant, relation of financial information with performance or productivity data, including the production of unit cost information.

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns from the U.S. Treasury as close as possible to the time of making the disbursements. Subgrantees shall institute similar procedures when funds are advanced by the grantee.

(6) Procedures for determining the allowability and allocability of costs shall be in accordance with the applicable cost principles prescribed in Appendix A of this Part.

(7) Accounting records which are supported by source documentation.

(8) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(b) Grantees shall require subgrantees (recipients of grants which are passed through by the grantee) to adopt all of the standards in paragraph (a) of this section.

§ 276.8 Financial reporting requirements.

Requirements for grantees to report financial information to the Bureau, and to request advances and reimbursement when a letter of credit method is not used, are prescribed in Appendix B of this Part.

§ 276.9 Monitoring and reporting program performances.

(a) Grantees shall constantly monitor the performance under grant-supported activities to assure that adequate progress is being made toward achieving the goals of the grant. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant application.

(b) Grantees shall submit a performance report for each grant which briefly presents the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons for slippage in those cases where established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) Grantees shall submit the performance reports to the Bureau with the Financial Status Reports (prescribed in Appendix B of this Part) in the frequency established by Appendix B. The Bureau shall prescribe the frequency with which the performance reports will be submitted with the Request for Advance or Reimbursement (prescribed in Appendix B) when that form is used in lieu of the Financial Status Report. In no case shall the performance reports be required more frequently than quarterly or less frequently than annually.

(d) Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the grantee shall inform the Bureau as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accomplished by a statement of the action taken, or contemplated, and any Bureau assistance needed to resolve the situation.

(2) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

(e) If any performance review conducted by the grantee discloses the need for change in the budget estimates in accordance with the criteria established in § 276.14, the grantee shall submit a request for budget revision.

(f) The Bureau shall make site visits as frequently as practicable to:

(1) Review program accomplishments and management control systems.

(2) Provide such technical assistance as may be required, or requested.

§ 276.10 Grant payment requirements.

(a) Except for construction grants for which the letter-of-credit method is optional, the letter-of-credit funding method shall be used by the Bureau where all of the following conditions exist:

(1) When there is or will be a continuing relationship between a grantee

and the Bureau for at least a 12-month period and the total amount of advances to be received within that period from the Bureau is $250,000, or more, as prescribed by Treasury Circular No. 1075.

(2) When the grantee has established or demonstrated to the Bureau the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the grantee.

(3) When the grantee's financial management system meets the standards for fund control and accountability prescribed in § 276.7.

(b) The method of advancing funds by Treasury check shall be used, in accordance with the provisions of Treasury Circular No. 1075, when the grantee meets all of the requirements specified in paragraphs (a) (2) and (3) of this section.

(c) The reimbursement by Treasury check method shall be the preferred method when the grantee does not meet the requirements specified in either paragraph (a)(2) or (a)(3), or both. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and when the Bureau grant assistance constitutes a minor portion of the program.

(d) Unless otherwise required by law, the Bureau shall not withhold payments for proper charges made by grantees at any time during the grant period unless:

(1) A grantee has failed to comply with the program objectives, grant award conditions, or Bureau reporting requirements; or

(2) The grantee is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States. Under such conditions, the Bureau may, upon reasonable notice, inform the grantee that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal government is liquidated.

(e) Appendix B of this Part provides the procedures for requesting advances or reimbursements.

§ 276.11 Property management standards.

(a) Grantees may follow their own property management policies and procedures if they observe the requirements of this section. With respect to property covered by this section, the Bureau may not impose on grantees any requirements (including property reporting requirements) not authorized by this Part unless specifically required by Federal law.

(b) Title to real property to be acquired in whole or in part from a Bureau grant under Part 272 of this Chapter shall vest in one of the following manners:

(1) Title may be taken by the United States in trust for the Indian tribe upon the request of the tribe and when the real property to be acquired is within the reservation boundaries or adjoins on at least two sides other trust or restricted lands as prescribed in Part 272 of this chapter.

(2) Fee title to the acquired real property shall vest in the Indian tribe whenever the acquisition does not meet the criteria in paragraph (b)(1) of this section or unless for other reasons a tribe requests title to be taken in the name of the United States. In the absence of applicable statutory authority governing the disposition of real property acquired by a tribe, the tribe shall use the real property for the authorized purposes and in accordance with any other requirements imposed by the terms and conditions of the original grant. Changes in use compatible to other tribal programs may be authorized by the Bureau. When no longer needed for the authorized purposes, the real property shall be used in accordance with the standards set forth in § 276.11(d)(1) for non-expendable personal property. Accordingly, the following priority order for use of such property shall be:

(i) Other grants from the Bureau.

(ii) Grants from other Federal agencies.

(iii) Tribal purposes consistent with those authorized for support by Bureau grants.

(iv) Tribal official activities.

(3) In those instances where the Indian tribe requests, title may be acquired by the United States. Use of these acquired real property interests will be subject to the authorized purposes and in accordance with the provisions of the original grant. Upon a determination that the real property is no longer needed for the authorized purposes, disposition may be made by declaring it excess under provisions of the Act of January 2, 1975 (88 Stat. 1954) and title transferred to the Secretary to be held by the United States in trust for the tribe. Where real property does not meet the requirements under the Act of January 2, 1975 (88 Stat. 1954), the tribe may elect to acquire title under applicable enabling statutory authorities, or in the absence of statutory authority, request withholding disposition in aid of legislation, or authorize disposal under the General Services Administration procedures.

(c) The provisions of paragraph (b)(2) and (3) of this section shall also apply when real property is acquired in whole or in part by a Bureau grant other than that provided under Part 272 of this Chapter. However, when such property is acquired by a grantee other than an Indian tribe, or a tribal governing body, fee simple title to the property shall vest in the grantee upon acquisition. In the absence of applicable statutory provisions governing the use or disposition of such property, it shall be subject to the following requirements, in addition to any other requirements imposed by the terms and conditions of the grant:

(1) The grantee shall use the real property for the authorized purpose of the original grant as long as needed.

(2) The grantee shall obtain approval by the Bureau for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

(3) When the real property is no longer needed as provided in paragraphs (c) (1) and (2) of this section, the grantee shall return all real property furnished or purchased wholly with Bureau grant funds to the control of the Bureau. In the case of property purchased in part with Bureau grant funds, the grantee may be permitted to take title to the Federal interest therein upon compensating the Federal Government for its fair share of the property. The Federal share of the property shall be the amount computed by applying the percentage of the Federal participation in the total cost of the grant program for which the property was acquired to the current fair market value of the property.

(d) Standards and procedures governing ownership, use, and disposition of nonexpendable personal property furnished by the Bureau or acquired with Bureau funds are set forth below:

(1) *Nonexpendable personal property acquired with Bureau funds.* When nonexpendable personal property is acquired by a grantee wholly or in part with Bureau funds, title will not be taken by the Bureau except as provided in paragraph (d)(1)(iv) of this section but shall be vested in the grantee subject to the following restrictions on use and disposition of the property:

(i) The grantee shall retain the property acquired with Bureau funds in the grant program as long as there is a need for the property to accomplish the purpose of the grant program whether or not the program continues to be supported by Bureau funds. When there is no longer a need for the property to accomplish the purpose of the grant program, the grantee shall use the property in connection with the other Federal grants it has received in the following order of priority:

(A) Other grants from the Bureau needing the property.

(B) Grants of other Federal agencies needing the property.

(ii) When the grantee no longer has need for the property in any of its Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor, the property may be used for its own official activities in accordance with the following standards:

(A) Nonexpendable property with an acquisition cost of less than $500 and used four years or more. The grantee may use the property for its own official activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(B) All other nonexpendable property. The grantee may retain the property for

its own use if a fair compensation is made to the Bureau for the latter's share of the property. The amount of compensation shall be computed by applying the percentage of Bureau participation in the grant program to the current fair market value of the property.

(iii) If the grantee has no need for the property, disposition of the property shall be made as follows:

(A) Nonexpendable property with an acquisition cost of $1,000 or less. Except for that property which meets the criteria of paragraph (d)(1)(ii)(A) of this section, the grantee shall sell the property and reimburse the Bureau an amount which is computed in accordance with paragraph (d)(1)(iii) of this section.

(B) Nonexpendable property with an acquisition cost of over $1,000. The grantee shall request disposition instructions from the Bureau. The Bureau shall determine whether the property can be used to meet the Bureau's requirement. If no requirement exists within the Bureau, the availability of the property shall be reported to the General Services Administration (GSA) by the Bureau to determine whether a requirement for the property exists in other Federal agencies. The Bureau shall issue instructions to the grantee within 120 days and the following procedures shall govern:

(1) If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(2) If the grantee is instructed to otherwise dispose of the property, he shall be reimbursed by the Bureau of such costs incurred in its disposition.

(3) If disposition instructions are not issued within 120 days after reporting, the grantee shall sell the property and reimburse the Bureau an amount which is computed by applying the percentage of Bureau participation in the grant program to the sales proceeds. Further, the grantee shall be permitted to retain $100 or 10 percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(iv) Where the Bureau determines that property with an acquisition cost of $1,000 or more and financed solely with Bureau funds is unique, different, or costly to replace, it may reserve title to such property, subject to the following provisions:

(A) The property shall be appropriately identified in the grant agreement or otherwise made known to the grantee.

(B) The Bureau shall issue disposition instructions within 120 days after the completion of the need for the property under the grant for which it was acquired. If the Bureau fails to issue disposition instructions within 120 days, the grantee shall apply the standards of paragraphs (d)(1)(i), (d)(1)(ii)(B), and (d)(1)(iii)(B) of this section.

(2) Federally-owned nonexpendable personal property. Unless statutory authority to transfer title has been granted to an agency, title to Federally-owned property (property to which the Federal Government retains title including excess property made available by the Bureau to grantees) remains vested by law in the Federal Government. Upon termination of the grant or need for the property, such property shall be reported to the Bureau for further Bureau use or, if appropriate, for reporting to the General Services Administration for other Federal agency use. Appropriate disposition instructions will be issued to the grantee after completion of Bureau review.

(e) The grantee's property management standards for nonexpendable personal property shall also include the following procedural requirements:

(1) Property records shall be maintained accurately and provide for a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage of Federal funds used in the purchase of property; location, use, and condition of the property; and ultimate disposition data including sales price or the method used to determine current fair market value if the grantee reimburses the Bureau for its share.

(2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current use, and continued need for the property.

(3) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

(f) When the total inventory value of any unused expendable personal property exceeds $500 at the expiration of need for any grant purposes, the grantee may retain the property or sell the property as long as he compensates the Bureau for its share in the cost. The amount of compensation shall be computed in accordance with paragraph (d)(1)(ii)(B) of this section.

(g) Specific standards for control of intangible property are provided as follows:

(1) If any program produces patentable items, patent rights, processes, or inventions, in the course of work aided by a Bureau grant, such fact shall be promptly and fully reported to the Bureau. Unless there is prior agreement between the grantee and Bureau on disposition of such items, the Bureau shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued on it—shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's memorandum for heads of executive departments and agencies), dated August 23, 1971, and Statement of Government Patent Policy as printed in 36 FR 16889.

(2) Where the grant results in a book or other copyrightable material, the author or grantee is free to copyright the work, but the Bureau reserves a royalty-free nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

(h) The use of Bureau-owned facilities under the jurisdiction of the Commissioner by a grantee for purposes of carrying out a grant may be authorized when the facilities are not needed for Bureau purposes.

§ 276.12 Procurement standards.

(a) The standards contained in this section do not relieve the grantee of the contractual responsibilities arising under its contracts. The grantee is the responsible authority, without recourse to the Bureau regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a grant. This includes but is not limited to: disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to the tribal, Federal or other authority which has proper jurisdiction.

(b) Grantees may use their own procurement regulations provided that procurements made with Bureau grant funds adhere to the standards set forth as follows:

(1) The grantee shall maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Bureau grant funds. Grantee's officers, employees or agents, shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible by law, rules or regulations, such standards shall provide for penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by either the grantee officers, employees, or agents, or by contractors or their agents.

(2) All procurement transactions regardless of whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition. The grantee should be alert to organizational conflicts of interest or non-competitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade. However, this provision will apply only after the Indian preference requirements prescribed in § 276.13 have been met.

(3) The grantee shall establish procurement procedures which provide for, as a minimum, the following procedural requirements:

(i) Proposed procurement actions shall be reviewed by grantee officials to

avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(ii) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, such description shall not contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. When so used, the specific features of the named brand which must be met by offerors should be clearly specified.

(iii) Positive efforts shall be made by the grantees to use small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed using Bureau grant funds. However, this provision will apply only after the Indian preference requirements prescribed in § 276.13 have been met.

(iv) The type of procuring instruments used (i.e., fixed price contracts, cost reimbursable contracts, etc.) shall be appropriate for the particular procurement and for promoting the best interest of the grant program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(v) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to paragraph (b) (3) (vi) of this section is necessary to accomplish sound procurement. However, procurement of $10,000 or less need not be so advertised. Where such advertised bids are obtained the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the grantee, price and other factors considered. (Factors such as discounts, transportation costs, taxes may be considered in determining the lowest bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the grantee. Any or all bids may be rejected when it is in the grantee's interest to do so.

(vi) Procurements may be negotiated if it is impracticable and unfeasible to use formal advertising. Generally, procurements may be negotiated by the grantee if:

(A) The public exigency will not permit the delay incident to advertising;

(B) The material or service to be procured is available from only one person or firm; (all contemplated sole source procurements where the aggregate expenditure is expected to exceed $5,000 shall be referred to the Bureau for prior approval).

(C) The total amount involved does not exceed $10,000;

(D) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institutions;

(E) No acceptable bids have been received after formal advertising;

(F) The purchases are for highly perishable materials or medical supplies; for material or services where the prices are established by law; for technical items or equipment requiring standardization and interchangeability of parts with existing equipment; for experimental, developmental or research work; for supplies purchased for authorized resale; and for technical or specialized supplies requiring substantial initial investment for manufacture;

(G) Otherwise authorized by law, rules or regulations. Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(vii) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(viii) Procurement records or files for purchases in amounts over $10,000 shall provide at least the following pertinent information: Justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiation.

(ix) A system for contract administration shall be maintained to assure contractor conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely followup of all purchases.

(c) In addition to provisions to define a sound and complete agreement, the grantee shall include the following provisions in all contracts and subgrants:

(1) Contracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts, amounts for which are over $10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions where the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) In all contracts for construction or facility improvement awarded over $100,000, grantees shall observe the bonding requirements provided in § 276.4.

(4) All construction contracts awarded by recipients and their contractors or subgrantees having a value of more than $10,000, shall contain a provision requiring compliance with Executive Order No. 11246, entitled "Equal Employment Opportunity," as amended by Labor Regulations (41 CFR Part 60). However, this Equal Employment Opportunity provision will apply only after the Indian preference requirements prescribed in § 276.13 have been met.

(5) All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the Bureau.

(6) When required by the Federal grant program legislation, all construction contracts awarded by grantees and subgrantees over $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the Bureau.

(7) Where applicable, all contracts awarded by grantees and subgrantees over $2,000 for construction contracts and over $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible if the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked over 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act applies to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles

ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(8) Contracts or agreements, the principal purpose of which is to create, develop, or improve products, processes or methods; or for exploration into fields which directly concern public health, safety, or welfare; or constraints in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Bureau. The contractor shall be advised as to the source of additional information regarding these matters.

(9) All negotiated contracts (except those of $10,000 or less) awarded by grantees shall include a provision to the effect that the grantee, the Bureau, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

(10) Contracts and subgrants of amounts over $100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1251 et seq.) as amended. Violations shall be reported to the Bureau and the Regional Office of the Environmental Protection Agency.

§ 276.13 Indian preference in grant administration.

Any grant or subgrant shall require that to the greatest extent feasible:

(a) Preferences and opportunities for training and employment in connection with the administration of such a grant or subgrant shall be given to Indians.

(b) Preference in the award of a subgrant, contract or subcontract in connection with administration of a grant shall be given to Indian organizations and economic enterprises.

(c) A tribal governing body may develop its own Indian preference requirements to the extent that such requirements are not inconsistent with the purpose and intent of paragraphs (a) and (b) of this section for grants executed under this Part.

§ 276.14 Budget revision.

Criteria and procedures to be followed by grantees in reporting deviations from grant budgets and requesting approval for budget revisions are as follows:

(a) For nonconstruction grants, grantees shall request prior approvals promptly from the Bureau for budget revisions whenever:

(1) The revision results from changes in the scope or the objective of the grant-supported program.

(2) The revision indicates the need for additional Bureau funding.

(3) The grant budget is over $100,000 and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed $10,000, or five percent of the grant budget, whichever is greater. The same criteria apply to cumulative amount of transfers among programs, functions, and activities when budgeted separately for a grant, except that the Bureau shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

(4) The grant budget is $100,000, or less, and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed five percent of the grant budget. The same criteria apply to the cumulative amount of transfers among programs, functions, and activities when budgeted separately for a grant, except that the Bureau shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

(5) The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs.

(6) The revisions pertain to the addition of items requiring approval in accordance with the provisions of Appendix A of this Part.

(b) All other changes to nonconstruction grant budgets, except for the changes described in paragraph (d) of this section do not require approval. These changes include (1) the use of grantee funds in furtherance of program objectives over and above the grantee minimum share included in the approved grant budget and (2) the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

(c) For construction grants, grantees shall request prior approval promptly from the Bureau for budget revisions whenever:

(1) The revision results from changes in the scope or the objective of the grant-supported programs.

(2) The revision increases the budgeted amounts of Bureau funds needed to complete the project.

(d) When the Bureau awards a grant which provides support for both construction and nonconstruction work, the Bureau may require, in the grant agreement, the grantee to request prior approval before making any fund or budget transfers between the two types of work supported.

(e) For both construction and nonconstruction grants, the Bureau shall require tribal grantees to notify the Bureau promptly whenever the amount of Bureau authorized funds is expected to exceed the needs of the grantee by more than $5,000 or 5 percent of the Bureau grant, whichever is greater. This notification will not be required when applications for additional funding are submitted for continuing grants.

(f) When requesting approval for budget revisions, grantees shall use the budget forms which were used in the grant application. However, grantees may request by letter the approvals required by the provisions of Appendix A of this Part.

(g) Within 30 days from the date of receipt of the request for budget revisions, the Bureau shall review the request and notify the grantee whether or not the budget revisions have been approved. If the Bureau does not reach a decision prior to the end of the 30 day period or should the grantee not be notified of the Bureau's decision by the end of the 30 day period the grantee may appeal directly to the Commissioner.

§ 276.15 Grant closeout.

(a) In closing out Bureau grants, the following shall be observed:

(1) Upon request, the Bureau shall make prompt payments to a grantee for allowable reimbursable costs under the grant being closed out.

(2) The grantee shall immediately refund to the Bureau any unencumbered balance of cash advanced to the grantee.

(3) The Bureau shall obtain from the grantee within 90 days after the date of completion of the grant all financial, performance, and other reports required as a condition of the grant. The Bureau may grant extensions when requested by the grantee.

(4) The Bureau shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.

(5) The grantee shall account for any property acquired with grant funds, or received fom the Government in accordance with the provisions of § 276.11.

(6) If a final audit has not been performed before the closeout of the grant, the Bureau shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(b) Suspension. When a grantee has materially failed to comply with the terms and conditions of a grant, the Bureau may after reasonable notice to the grantee, suspend the grant. The notice preceding suspension shall include the effective date of the suspension, the reasons for the suspension, the corrective measures necessary for reinstatement of the grant, and, if there is no immediate threat to safety, a reasonable time frame for corrective action prior to actual suspension. No obligations incurred by the grantee during the period of suspension shall be allowable under the suspended grant, except that the Bureau may at its discretion allow necessary and proper costs which the grantee could not reasonably avoid during the period of suspensions if such costs would otherwise be allowable under the applicable cost principles specified in Appendix A of this Part. Appropriate adjustments to the payments under the suspended grant will be made, either by withholding the payments or by not allowing the grantee credit for disbursements which he may make in liquidation of unauthorized obligations he incurs during the period of suspension. Suspensions shall remain in

effect until the grantee has taken corrective action to the satisfaction of the Bureau or given assurances satisfactory to the Bureau that corrective action will be taken, or until the Bureau cancels the grant.

(c) (1) Cancellation for cause. The Bureau may cancel any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has:

(i) Materially failed to comply with the terms and conditions of the grant;

(ii) Violated the rights or endangered the health, safety, or welfare of any persons;

(iii) Been grossly negligent in or has mismanaged the handling or use of funds provided under the grant.

(2) When it appears that cancellation of a grant shall become necessary, the Bureau shall promptly notify the grantee in writing of this possibility. This written notice shall advise the grantee of the reason for the possible cancellation and the corrective action necessary to avoid cancellation. The Bureau shall also offer, and provide if requested by the grantee, any technical assistance which may be required to effect the corrective action. The grantee shall have 60 days in which to effect this corrective action before the Bureau provides notice of intent to cancel the grant as provided in paragraph (c) (3) of this section.

(3) Upon deciding to cancel for cause, the Bureau shall promptly notify the grantee in writing of that decision, the reasons for the cancellation, and the effective date. The Bureau shall also provide a hearing for the grantee before cancellation. However, the Bureau may immediately cancel the grant, upon notice to the grantee, if the Bureau determines that continuance of the grant poses an immediate threat to safety. In this event, the Bureau shall provide a hearing for the grantee within ten (10) days of cancellation.

(4) Payments made to grantees or recoveries by the Bureau under grants cancelled for cause shall be in accordance with the legal rights and obligations of the parties.

(d) (1) Cancellation on other grounds. Except as provided in paragraph (c) of this section, grants may be cancelled in whole or in part only as follows:

(i) By the Bureau with the consent of the grantee, in which case the two parties shall agree upon the cancellation conditions, including the effective date, and in the case of partial cancellation, the portion to be cancelled; or

(ii) By the grantee, upon written notice to the Bureau, setting forth the reasons for the cancellation, the effective date, and, in the case of partial cancellation, the portion to be cancelled.

(2) When a grant is cancelled in accordance with paragraph (d) of this section, the grantee shall not incur new obligations for the cancelled portion after the effective date, and shall cancel as many outstanding obligations as possible. The Bureau shall allow full credit to the grantee for the Bureau share of the noncancellable obligations properly incurred by the grantee before cancellation.

§ 276.16 Subgrants and subcontracts to non-profit organizations.

The uniform administrative requirements in this part, including the cost principles in Appendix A, to this part, are applicable to all subgrants or subcontracts made by a grantee in accordance with the provisions of this chapter. However, these requirements and cost principles are applicable as minimum standards for subgrants or subcontracts made to nonprofit organizations. Accordingly, the grantee may prescribe additional or more stringent requirements with regard to subgrants or subcontracts made to non-profit organizations.

APPENDIX A—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS

PART I—GENERAL

A. *Purpose and scope.* 1. *Objectives.* This attachment sets forth principles for determining the allowable costs of programs administered by grantees under grants from the Bureau. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Bureau and tribal participation in the financing of a particular grant. They are designed to provide that Bureau assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The application of these principles is based on the fundamental premises that:

a. Grantees are responsible for the efficient and effective administration of grant programs through the application of sound management practices.

b. The grantee assumes the responsibility for seeing that Bureau assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

3. *Application.* These principles will be applied by the Bureau in determining costs incurred by grantees under Bureau grants (including subgrants, contracts by grantees and subcontracts).

B. *Definitions.* 1. *Approval or authorization of the Bureau* means documentation evidencing consent prior to incurring specific cost.

2. *Cost allocation plan* means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

3. *Cost,* as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Bureau as a discharge of the grantee's accountability for Bureau funds.

4. *Cost objective* means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

5. *Federal agency* means any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to grantees.

6. *Grant* means an agreement between the Bureau and a grantee whereby the Bureau provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this Appendix as applicable to grants in general also apply to any Federally sponsored cost reimbursement type of agreement performed by a grantee, including contracts, subcontracts and subgrants.

7. *Grant program* means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

8. *Grantee* means the entity which is responsible for administration of the grant.

9. *Services,* as used herein, means goods and facilities, as well as services.

10. *Supporting services* means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

C. *Basic guidelines.* 1. *Factors affecting allowability of costs.* To be allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of a grantee.

b. Be authorized or not prohibited under applicable laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both Federally assisted and other activities of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other Federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. *Allocable costs.* a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this Appendix may not be shifted to other Federal grant programs to overcome funds deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in Section I.

3. *Applicable credits.* a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indentities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Bureau funds are received or are available

from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use of depreciation of items donated or financed by the Bureau to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. *Composition of cost.* 1. *Total cost.* The total cost of a grant program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential, therefore, that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow.

E. *Direct costs.* 1. *General.* Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the other ultimate cost objective.

2. *Application.* Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and effort devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

F. *Indirect costs.* 1. *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration or relative benefits derived.

2. *Grantee departmental indirect costs.* All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Part. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used:

a. *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. *Limitation on indirect costs.* a. Bureau grants may be subject to laws that limit the amount of indirect costs that may be allowed. In this event, the Bureau will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Appendix, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Appendix the amount not recoverable as indirect costs under a grant may not be shifted to another Federally sponsored grant program or contract.

G. *Cost incurred by organizations other than the grantee.* 1. *General.* The cost of service provided by other organizations may only include allowable direct costs of the service plus a prorata share of allowable supporting costs and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of an organization and his staff assistants not directly involved in operations. However, supervision by the head of an organization whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying organizations.

2. *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by another organization, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. *Standard indirect rate.* An amount equal to ten percent of direct labor cost in providing the service performed by another organization (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in Section F.2.a.

H. *Cost incurred by grantee for others.* 1. *General.* The principles provided in Section G will also be used in determining the cost of services provided by the grantee to another agency.

I. *Cost allocation plan.* 1. *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee should cover all joint costs of the grantees as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the Federally sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Bureau, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by grantees in preparation of cost allocation plans.

4. *Negotiation and approval of indirect cost proposals for grantees.* a. The Bureau, in collaboration with the other Federal agencies and offices concerned, will be responsible for negotiation, approval, and audit of cost allocation plans, which will be submitted to it by the grantees. These plans will cover central support service costs of the grantees.

b. The Department of the Interior Office of Audit and Investigation will have responsibility similar to that set forth in a., above, for the negotiation, approval, and audit of the indirect cost proposal.

c. Questions concerning the cost allocation plans approved under a. and b., above, should be directed to the Bureau.

PART II—STANDARDS FOR SELECTED ITEMS OF COST

A. *Purpose and applicability.* 1. *Objective.* This attachment provides standards for determining the allowability of selected items of cost.

2. *Application.* These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in Part I of this Appendix.

B. *Allowable costs.* 1. *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes cost incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall tribal government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. *Advertising.* Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel required for the grant program.

b. Solicitation of bids for the procurement of goods and services required.

c. Disposal of scrap or surplus materials acquired in the performance of the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.* Costs incurred by grantee advisory councils or committees established pursuant to Bureau requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. *Audit service.* The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.* Costs of premiums on bonds covering employees who handle grantee funds are allowable.

6. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office activity participate in the grantee budget process, the cost of identifiable services is allowable.

7. *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. *Central stores.* The cost of maintaining and operating a central store's organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.* Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services.* a. *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits. The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) is responsible for the services rendered, (2) follows an appointment made in accordance with tribal government ordinances and rules and which meets Federal merit system or other requirements, where applicable; and (3) is determined and supported as provided in b., below. Compensation for employees engaged in federally assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the tribal government. In cases where the kinds of employees required for the federally assisted activities are not found in the other activities of the tribal government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution of time.* Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the tribal government. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowance.* a. Grantees may be compensated for the use of their own buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Bureau through charges to Bureau grant programs or otherwise, irrespective of whether title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the Bureau.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected Federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.* The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.* Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in Section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and in other activities.

14. *Employee morale, health and welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred, are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a tribal government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.* The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities.* a. *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) the benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cost of the membership is reasonably related to the value of the services or benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.* Costs are allowable when the purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.* The costs of a service organization which provides automobiles to grantees at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.

23. *Printing and reproduction.* Cost for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.

25. *Taxes.* In general, taxes or payments in lieu of taxes which the grantee is legally required to pay are allowable.

26. *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits grant programs is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the Bureau.

27. *Transportation.* Costs incurred for freight, cartage, express, postage and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

28. *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-Federally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available.

C. *Costs allowable with approval of the Bureau.* 1. *Automatic data processing.* The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the Bureau as provided under the selected item for capital expeditures.

2. *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the Bureau.

a. *Rental cost.* The rental cost of space in a privately owned building is allowable.

b. *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.* Cost incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (Section C.3.) are allowable when specifically approved by the Bureau.

d. *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in Section B.11.

e. *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by the Bureau.

3. *Capital expenditures.* The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Bureau. When assets acquired with Bureau grant funds are (a) sold, (b) no longer available for use in a Federally sponsored program or (c) used for purposes not authorized by the Bureau, the Bureau's equity in the asset will be refunded in the same proportion as Bureau participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

4. *Insurance and indemnification.* a. Costs of insurance required, or approved and maintained pursuant to the grant agreement, is allowable.

b. Costs of other insurance in connection with the general conduct of activities is allowable subject to the following limitations:

(1) Types and extent and cost of coverage will be in accordance with sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property is unallowable except to the extent that the Bureau has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Bureau are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. *Indemnification* includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Bureau is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d. above.

5. *Management studies.* The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee or outside consultants is allowable only when authorized by the Bureau.

6. *Preagreement costs.* Costs incurred prior to the effective date of the grant, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services.* Cost of professional services rendered by individuals or organizations not a part of the grantee is allowable subject to such prior authorization as may be required by the Bureau.

8. *Proposal costs.* Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

9. *Tribal government officer salaries and expenses.* Identifiable salary and expense costs incurred as a direct result of a tribal government officer's service to a grant program provided under this chapter are allowable subject to advance agreement with and approval by the Bureau. A general limitation in this regard is prescribed in section D.6.

D. *Unallowable costs.* 1. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations.* Unallowable.

4. *Entertainments.* Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties.* Costs resulting from violations of, or failure to comply with Federal, State and local laws and regulations are unallowable.

6. *Tribal officer salaries and expenses.* The salaries and expenses of tribal government officers are considered a cost of general tribal government and are unallowable except as prescribed in Section C.9.

7. *Interest and other financial costs.* Interest on borrowing (however requested), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation.

8. *Underrecovery of costs under grant agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

Appendix B—Financial Reporting Requirements

A. *Purpose and scope.* This appendix prescribes requirements for grantees to report financial information to the Bureau and to request advances and reimbursement when a letter-of-credit method is not used.

B. *Definitions.* 1. *Accrued expenditures.* Accrued expenditures are the charges incurred by the grantee during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, and other payees; and (3) amounts becoming owed under programs for which no current services or performance are required.

2. *Accrued income.* Accrued income is the earnings during a given period which is a source of funds resulting from: (1) services performed by the grantee; (2) goods and other tangible property delivered to purchasers; and (3) amounts becoming owed to the grantee for which no current services or performance are required by the grantee.

3. *Disbursements.* Disbursements are payments in cash or by check.

4. *Bureau funds authorized.* Funds authorized represent the total amount of the Bureau funds authorized for obligations and establish the ceilings for obligation of Bureau funds. This amount may include any authorized carryover of unobligated funds from prior fiscal years.

5. *Obligations.* Obligations are the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

6. *Outlays.* Outlays represent charges made to the grant project or program. Outlays can be reported on a cash or accrued expenditure basis.

7. *Program income.* Program income represents earnings by the grantee realized from the grant-supported activities. Such earnings exclude interest income and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, sale of assets purchased with grant funds, and royalties on patents and copyrights. Program income can be reported on a cash or accrued income basis.

8. *Unobligated balance.* The unobligated balance is the portion of the funds authorized by the Bureau which has not been obligated by the grantee and is determined by deducting the cumulative obligations from the funds authorized.

9. *Unpaid obligations.* Unpaid obligations represent the amount of obligations incurred by the grantee which have not been paid.

C. Standard forms. 1. Only the following forms will be authorized for obtaining financial information from grantees for grant programs:

a. *Financial Status Report.* (1) The Bureau shall require grantees to use a standard Financial Status Report to report the status of funds for all nonconstruction grant programs. The Bureau may, however, have the bursement (paragraph 2a) is determined to provide adequate information to meet their needs, except that a final Financial Status Report shall be required at the completion of the grant when the Request for Advance or Reimbursement form is used only for advances.

(2) The Bureau shall prescribe whether the report shall be on a cash or accrual basis. If the Bureau requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee should develop such information through an analysis of the documentation on hand or on the basis of best estimates.

(3) The grant agreement shall determine the frequency of the Financial Status Report for each grant program considering the size and complexity of the particular program. However, the report shall not be required more frequently than quarterly or less frequently than annually. Also, a final report shall be required at the completion of the grant.

(4) The original and two copies of the Financial Status Report shall be submitted 30 days after the end of each specified reporting period. In addition, final reports shall be submitted 90 days after the end of the grant period or the completion of the project or program. Extensions to reporting due dates may be approved when requested by the grantee.

b. *Report of federal cash transactions.* (1) When funds are advanced to grantees through letters of credit or with Treasury checks, each grantee shall submit a report of Federal Cash Transactions. The Bureau shall use this report to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant or project from the grantees.

(2) The grant agreement may require forecasts of Federal cash requirements in the Remarks section of the report.

(3) When practical and deemed necessary, the Bureau may require grantees to report in the Remarks section the amount of cash in excess of three days' requirements in the hands of subgrantees or other secondary recipients and to provide short narrative explanations of actions taken by the grantees to reduce the excess balances.

(4) The Bureau shall accept the identical information from the grantees in a machine-usable format in lieu of the Report of Federal Cash Transactions.

(5) Grantees shall submit the original and two copies of the Report of Federal Cash Transactions no later than 15 working days following the end of each quarter. For those grantees receiving annual grants totalling one million dollars or more, the Bureau shall require a monthly report.

(6) The Bureau shall waive the requirement for submission of a Report of Federal Cash Transactions when monthly advances do not exceed $10,000 per grantee provided that such advances are monitored through other forms contained in this Appendix or the grantee's accounting controls are adequate to minimize excessive Federal advances.

2. Except as noted below, only the following forms will be authorized for the grantees in requesting advances and reimbursements.

a. *Request for advance or reimbursement.* (1) The "Request for Advance or Reimbursement" form is the standard form for all nonconstruction grant programs when letters of credit or predetermined automatic advance methods are not used. The Bureau, however, has the option of using this form for construction programs in lieu of an "Outlay Report and Request for Reimbursement for Construction Programs" (paragraph 2b) and shall specify in the grant agreement.

(2) Grantees shall be authorized to submit requests for advances or reimbursement at least monthly when letters of credit are not used. Grantees shall submit the original and two copies of a Request for Advance or Reimbursement.

b. *Outlay Report and Request for Reimbursement for Construction Program.* (1) The "Outlay Report and Request for Reimbursement for Construction Programs" form is the standard format to be used for requesting reimbursement for construction programs. The Bureau may, however, have the option of substituting a "Request for Advance or Reimbursement" form (paragraph 2a) in lieu of this form when the Bureau determines that the former provides adequate information to meet its needs as stated in the grant agreement.

(2) Grantees shall be authorized to submit requests for reimbursement at least monthly when letters of credit are not used. Grantees shall submit the original and two copies of an "Outlay Report and Request for Reimbursement for Construction Programs" form.

3. When the Bureau needs additional information in using these forms, the following shall be observed:

a. When necessary to comply with future legislative requirements, the Bureau shall issue instructions to require grantees to submit such information under the Remarks section of the reports.

b. When necessary to meet specific program needs, the Bureau shall submit the proposed reporting requirements to the General Services Administration for approval under the exception provision of this Appendix.

c. The Bureau, in obtaining information as in paragraphs a and b above, must also comply with report clearance requirements of the Office of Management and Budget Circular No. A-40, as revised.

PART 277—SCHOOL CONSTRUCTION CONTRACTS FOR PUBLIC SCHOOLS

Subpart A—General Provisions

Sec.
277.1 Purpose.
277.2 Scope.
277.3 Definitions.
277.4 Revision or amendment of regulations.

Subpart B—Application Process

277.11 Eligible applicants.
277.12 Consultation with Indians.
277.13 Application procedure for placement on priority list.
277.14 Submitting priority list to Bureau.
277.15 Preparing a commitment-to-fund list.
277.16 Negotiating a contract.
277.17 Funding provisions.

Subpart C—General Contract Requirements

277.21 Costs included in contracts.
277.22 Architectural design.
277.23 Facilities construction.
277.24 Selecting initial equipment.
277.25 Advance payments.
277.26 Use and transfer of Government property.
277.27 Wage and labor standards.
277.28 Indian preference.
277.29 Liability and motor vehicle insurance.
277.30 Recordkeeping.
277.31 Audit and inspection.
277.32 Freedom of information.
277.33 Reporting.
277.34 Repayment of funds.
277.35 Penalties.
277.36 Applicable procurement regulations.

Subpart D—Contract Revision or Cancellation

277.41 Contract revision or amendment.
277.42 Cancelling a contract for cause.

Subpart E—Appeals

277.51 Contract appeal.
277.52 Appeal from decision to cancel contract for cause.
277.53 Other appeals.

AUTHORITY: Sec. 204, Pub. L. 93-638, 88 Stat. 2203, unless otherwise noted.

Subpart A—General Provisions

§ 277.1 Purpose.

The purpose of the regulations in this Part is to give the application and approval process for a State or local education agency to obtain school construction contracts from the Bureau under Section 204 of Title II of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, 88 Stat. 2203), to assist in the education of Indians.

§ 277.2 Scope.

(a) The application process for public school construction contracts under Section 204 of Pub. L. 93-638 is given in 20 U.S.C. 631-645 and 45 CFR 114. The application process is administered by and is the responsibility of the Commissioner of Education. The Commissioner of Indian Affairs participates with the Commissioner of Education in preparation of programs, cost estimates and other supplemental data which are part of the application and national priority index. The Commissioner of Education furnishes the national priority index to the Bureau at the start of each fiscal year.

(b) The Bureau requests and receives funding for acquisition of sites and for architectural-engineering design, facilities construction and equipment for the program. Funds are allocated to projects by the Bureau on the basis of funding priorities as established by the Commissioner of Education. In accordance with the approved program, a contract is negotiated with the applicant by a Bureau contracting officer, designated by the Commissioner, for the acquisition of sites and for the design, construction and purchase of equipment to provide educational facilities meeting standards of construction given in Pub. L. 81-815.

§ 277.3 Definitions.

As used in this Part:

(a) "Bureau" mean the Bureau of Indian Affairs.

(b) "Commissioner of Education" means the United States Commissioner of Education, Department of Health, Education, and Welfare.

(c) "Commissioner of Indian Affairs" means the Commissioner of Indian Affairs, Department of the Interior.

(d) "Contractor" means an applicant who has been awarded a contract under this Part.

(e) "Days" means calendar days.

(f) "Economic enterprise" means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(g) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony, or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(h) "Indian" means a person who is a member of an Indian tribe.

(i) "P.L. 81-815" means the Act of September 23, 1950 (P.L. 81-815, 72 Stat. 548), as amended.

(j) "P.L. 93-638" means the Indian Self-Determination and Education Assistance Act (P.L. 93-638, 88 Stat. 2203).

(k) "School district" or "local education agency" means that subdivision of the State which contains the public elementary and secondary educational institutions providing educational services and is controlled by a duly elected board, commission or similarly constituted assembly.

(l) "Secretary" means the Secretary of the Interior.

(m) "State" means a State of the United States of America or any political subdivision of a State.

(n) "State education agency" means the State Board of Education or other agency or office primarily responsible for supervision by the State of public elementary and secondary schools or, if there is no such office or agency, an office or agency designated by the Governor or by State law.

(o) "Tribal government", "tribal governing body" and "tribal council" means the recognized governing body of an Indian tribe.

§ 277.4 Revision or amendment of regulations.

In order to make any substantive revisions or amendments to regulations in this Part, the Secretary shall take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Publish any proposed revisions or amendments in the FEDERAL REGISTER as proposed rulemaking to provide adequate notice to, and receive comments from, all interested parties.

(c) After consideration of all comments received, publish the regulations in the FEDERAL REGISTER in final form not less than 30 days before the date they are made effective.

(d) Annually consult with Indian tribes and national and regional Indian organizations about the need for revision or amendment, and consider their views in preparing the revision or amendment.

(e) Nothing in this section shall preclude Indian tribes or national or regional Indian organizations from initiating request for revisions or amendments subject to paragraphs (a), (b) and (c) of this section.

Subpart B—Application Process

§ 277.11 Eligible applicants.

(a) Any school district may apply for a contract with the Bureau to assist the agency or district in acquiring sites for, or in constructing, acquiring, or renovating, facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians.

(b) The project for which the applicant is requesting funding must meet the eligibility requirements under subsections (a) and (b) of section 14 of Pub. L. 81-815.

§ 277.12 Consultation with Indians.

(a) Except where there is a majority of Indians on an elected public school board, the Commissioner of Indian Affairs shall consult with the local Indian Education Committee and the tribal governing body(s) of the local Indian tribe(s) affected before the application for funding public school construction is submitted to the Commissioner of Education.

(b) This requirement will be deemed to be met unless the official tribal governing body(s) of the Indian tribe(s) to be benefited by the application notify the Commissioner of Education, in writing, within 60 days after the date of the consultation that the tribe(s) disapprove the application. The notice of disapproval must give specific stated objections to the application. A copy of the notice of disapproval shall be delivered or mailed to the Commissioner of Indian Affairs at the same time as the notice is delivered or mailed to the Commissioner of Education.

(c) After being notified that the tribe(s) disapproved a proposed application, the Commissioner of Indian Affairs or his designated representatives shall meet with tribal, public school officials and the Indian Education Committee to provide assistance in resolving the stated objectives to the application. The Commissioner of Indian Affairs shall notify the Commissioner of Education 15 days in advance of the date, place, and time of such meetings and shall invite the Commissioner of Education or his representatives to attend.

§ 277.13 Application procedure for placement on priority list.

(a) Applications for public school construction assistance under this Part will be submitted and processed in accordance with procedures outlined in 20 U.S.C. 631-645 and 45 CFR 114. Application forms, instructions, advice, and assistance in accordance with 20 U.S.C. 636 and 45 CFR 114 may be obtained from each State education agency. All questions pertaining to the preparation and filing of preapplications, applications, and request for materials should be directed to the State Representative for School Assistance, who will respond or may forward the inquiries, where appropriate, to the Commissioner of Education.

(b) Section 204(b) of Pub. L. 93-638 assigns responsibility for the application processing, determination of eligibility and establishment of project priority to the Commissioner of Education. Such application and review and determination processes includes the following:

(1) Field and site review by the Commissioner of Education assisted by the Commissioner of Indian Affairs to determine:

(i) Tentative cost estimate for budget purposes. The Commissioner of Indian Affairs or his representative will assist the Commissioner of Education in conducting the on-site inspection to determine which buildings need to be retained, demolished or remodeled and to gather initial information required for development of the planning document. From this information, a tentative cost estimate for design, construction, and equipment will be made for budget purposes.

(ii) Equal quality and standard of education. While assisting in the on-site inspection, the Commissioner of Indian Affairs or his representative must determine whether the quality and standard of education (including facilities and auxiliary services) for Indian students enrolled in the school are at least equal to that provided all other students from resources, other than resources provided under this Part, which are available to the local school district. If it is determined that the quality and standard of education for Indian students is not at least equal to that given all other students enrolled in the schools, the Commissioner of Indian Affairs or his representative shall recommend that the project not be placed on the priority list. Such a project will not be placed on the Bureau's commitment-to-fund list which is prepared under § 277.15.

(2) Discussion and consultation with State and local education agencies to determine the exact nature of the project to be constructed, including existing structure renovation or replacement.

(3) Presentation of program development for review and approval by the State and/or local education representatives and a current and updated project cost estimate.

(c) The Commissioner of Indian Affairs participates in the application process by furnishing technical assistance to the Commissioner of Education. The Commissioner of Indian Affairs insures consultation with Indians and assists with the preparation of the program, cost estimates, etc. as part of the data needed in order for the Commissioner of Education to prepare the priority listing of eligible applicants.

(d) The projects will be ranked by priority based on criteria established by

the Commissioner of Education as given in 45 CFR 114.16.

§ 277.14 Submitting priority list to Bureau.

Pursuant to Section 204(b) of Pub. L. 93-638, a list of public school projects eligible for funding under this Part shall be submitted to the Commissioner of Indian Affairs by the Commissioner of Education at the beginning of each fiscal year.

§ 277.15 Preparing a commitment-to-fund list.

(a) When the Commissioner of Indian Affairs receives the priority list from the Commissioner of Education, the Commissioner of Indian Affairs will place the project highest on the priority list at the top of a commitment-to-fund list. Projects will be added to the commitment-to-fund list in the same order as they are on the priority list. Each project will be added to the commitment-to-fund list as long as the total of the tentative cost estimates is less than the amount of funds appropriated for public school construction under this Part for the new fiscal year. However, a project shall not be placed on the commitment-to-fund list if the Commissioner of Indian Affairs or his representative has determined under § 277.13(b)(1)(iii) that the quality and standard of education for Indian students enrolled in the schools are not at least equal to that provided all other students from resources, other than resources provided under this Part, which are available to the local school district.

(b) Each applicant will be notified in writing when the project has been placed on the commitment-to-fund list.

§ 277.16 Negotiating a contract.

When a project has been placed on the commitment-to-fund list, a contract will be negotiated by a Bureau contracting officer with the applicant. The contract will be developed in accordance with the regulations in 41 CFR 1 as supplemented by 41 CFR 14 and 41 CFR 14H, except 41 CFR Part 14H-70.

§ 277.17 Funding provisions.

(a) The Commissioner of Indian Affairs will expend not less than 75 per cent of appropriated funds authorized pursuant to Title II, Part B, Section 204 of Pub. L. 93-638 on those projects which meet the eligibility requirements under subsections (a) and (b) of section 14 of Pub. L. 81-815.

(b) Projects which are partially funded shall be given first consideration for the additional funding necessary to complete such projects.

(c) No funds from any contract under this Part shall be made available by any Federal agency directly to other than public agencies. However, school districts and State education agencies assisted by this Part may use funds provided under this Part to contract for necessary services with any appropriate individual, organization, or corporation.

(d) Funds approved for public school construction under this Part may not exceed the Federal share of the total cost of the proposed school facilities, as such facilities are defined within the meaning of Pub. L. 81-815, to serve both Indian and non-Indian children, with the definition of children to be as prescribed by Pub. L. 81-815.

(e) When non-Federal funds are involved, a local school district shall have 120 days from receipt of the notice that the project has been placed on the commitment-to-fund list to assemble the funds from local and/or State sources before the contract negotiations are completed. An extension may be granted by the Commissioner of Indian Affairs for unusual circumstances.

Subpart C—General Contract Requirements

§ 277.21 Costs included in contracts.

A contract with a school district under this Part may include costs for architectural design, site acquisition, facilities construction (including site development and supervision), and equipment in accordance with the approved project description.

§ 277.22 Architectural design.

(a) Drawings and specifications for a project shall comply with such Federal, State, and local laws, codes, ordinances and regulations pertaining to standards of construction and safety requirements, as may be applicable.

[16 Comp. Gen. 948 (1937)]

(b) Local education agencies shall give due consideration to excellence of architecture and design when constructing minimum school facilities under this Part.

(c) An Architect/Engineer shall be selected by the contractor to prepare the plans and specifications with the advice and assistance of the Commissioner of Indian Affairs who shall counsel the contractor with respect to professional qualifications and performance history of firms in order that the best qualified firm be selected. No Architect/Engineer agreement involving the expenditures of Federal funds shall be entered into by the contractor until the Commissioner of Indian Affairs has reviewed such agreement.

(d) The drawings and specifications will conform to the project description as shown in the completed application, or as modified by approved revisions.

(e) The drawings and specifications will be sent to the Commissioner of Education for review to ensure that the approved program is followed. The drawings and specifications will be reviewed with the local education agency.

After approval by the State and other regulatory agencies, the final drawings and specifications will be reviewed and approved by the Bureau for structural and safety adequacy.

§ 277.23 Facilities construction.

The contractor usually bids, awards and administers the construction contract. The Commissioner of Indian Affairs will assist in preconstruction and construction activities to assure conformity with the requirements of Pub. L. 93-638. Approval of all proposed preconstruction documents will be obtained from the Commissioner of Indian Affairs. Assistance prior to the preparation of these and similar documents will be provided upon request. In this connection, the Commissioner of Indian Affairs may suggest a preliminary conference with the project architect and others if that seems desirable. The Bureau shall make interim inspections and audits during construction and participate in the final acceptance inspection.

§ 277.24 Selecting initial equipment.

Equipment procured with payments under this part must be approved by the Commissioner before invitations for bids or requests for proposals as to the acquisition of such equipment are issued. In order to obtain such approval, a list of equipment to be procured (indicating quantities, costs, and specifications) shall be provided to the Commissioner for prior approval.

§ 277.25 Advance payments.

Advance payments to State education agencies or school districts will be made in accordance with the applicable provisions of 41 CFR 1 as supplemented by 41 CFR 14 and 41 CFR 14H, except 41 CFR Part 14H-70.

§ 277.26 Use and transfer of Government property.

(a) The use of Government-owned facilities for public school purposes may be authorized when not needed for Government activities. Transfer of title to such facilities (except land) may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41), subject to the approval of the tribal government if property is located on a reservation.

(b) In carrying out a contract made under this Part, the Commissioner of Indian Affairs may, with the approval of the tribal government, permit a contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau under terms and conditions agreed upon for their use and maintenance. The property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

(c) Use of Government property is subject to the following conditions:

(1) When nonexpendable Government property is turned over to public school authorities under a use permit, the permittee shall insure such property against damage by flood, fire, rain, windstorm, vandalism, snow, and tornado in amounts and with companies satisfactory to the Bureau officer in charge of the property. In case of damage or destruction of the property by flood, fire, rain, windstorm, vandalism, snow or tornado, the insurance money collected shall be expended only for repair or replacement of prop-

erty. Otherwise, insurance proceeds shall be paid to the Bureau.

(2) If the public school authority is self-insured and can present evidence of that fact to the Commissioner of Indian Affairs, insurance for lost or damaged property will not be required. However, the public school authority will be responsible for replacement of such lost or damaged property at no cost to the Government or for paying the Government enough to replace the property.

(3) The permittee shall maintain the property in a reasonable state of repair consistent with the intended use and educational purposes.

§ 277.27 Wage and labor standards.

All laborers and mechanics employed by contractors or subcontractors in constructing, altering, or repairing buildings or other facilities in connection with contracts under this Part shall be paid wages not less than those on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended.

§ 277.28 Indian preference.

(a) Any contract made by the Bureau with a State or school district shall provide that the contractor shall, to the greatest extent feasible, give preference in employment and training to Indians.

(b) Any contract made by the Bureau with a State or school district shall provide that the contractor shall, to the greatest extent feasible, give preference in the award of subcontracts to Indian organizations and to Indian-owned economic enterprises.

(c) All subcontractors employed by the contractor shall, to the greatest extent feasible, give preference to Indians for employment and training and shall be required to include in their bid submission a plan to achieve maximum use of Indian personnel.

(d) In the performance of contracts under this Part 277 and subject to the provisions of Part 14 H of Title 41, a tribal governing body may develop its own Indian preference requirements to the extent that such requirements are not inconsistent with the purpose and intent of paragraphs (a), (b), and (c) of this section.

§ 277.29 Liability and motor vehicle insurance.

(a) States and school districts shall obtain public liability and motor vehicle insurance under contracts entered into with the Bureau under this Part. However, where the Bureau contracting officer determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk, the contract may be exempted from this requirement.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the State or school district to provide liability insurance, regardless of how small the risk.

(c) If the State or public school authority is self-insured and can present evidence of that fact to the Commissioner of Indian Affairs, liability and motor vehicle insurance will not be required.

§ 277.30 Recordkeeping.

A contractor will be required to develop and maintain a recordkeeping system which will:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner which will provide accurate, current and complete disclosure of financial status; correlation with budget or allowable cost schedules; and clear audit facilitating data.

(b) Reflect the amounts and sources of funds other than Bureau contract funds which may be included in the construction project.

(c) Provide for the creation, maintenance and safeguarding of records of lasting value.

§ 277.31 Audit and inspection.

(a) During the term of a contract under this Part and for three years after the project or undertaking is completed, the Comptroller General and the Secretary, or any of their duly authorized representatives, shall have access, for audit and examination purposes, to any of the contractor's books, documents, papers, and records which, in their opinion, may be related or pertinent to the contract or any subcontract.

(b) The contractor will be responsible for maintaining all documents such as invoices, purchase orders, cancelled checks, balance sheets and all other records relating to financial transactions in a manner which will facilitate auditing. The contractor will be responsible for maintaining files of correspondence and other documents relating to the contract properly separated from general records or cross-referenced to general files.

(c) The contractor receiving funds under this Part shall be primarily responsible for contract compliance.

(d) The records involved in any claim or expenditure that has been questioned shall be further maintained until final determination has been made on the questioned expenditure.

(e) All contracts, reports, budgets, budget estimates, plans, and other documents pertaining to administration of the contract shall be made available by the contractor. The contractor shall provide information in accordance with the Freedom of Information Act.

§ 277.32 Fredom of information.

(a) Unless otherwise required by law, the Bureau shall not place restrictions on contractors which will limit public access to the contractor's records except when records must remain confidential.

(b) A contractor under this Part shall make all reports and information concerning the contract available to the Indian people which the contract affects. Reports and information may be withheld from disclosure only when both of the following conditions exist:

(1) The reports and information fall within one of the following exempt categories:

(i) Specifically required by statute or Executive Order to be kept secret.

(ii) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.

(iii) Personnel, medical, and similar files where disclosure would be a clearly unwarranted invasion of personal privacy.

(iv) Geological and geophysical information and data concerning wells.

(2) Disclosure is prohibited by statute or Executive Order or sound grounds exist for using the exemption given in paragraph (b)(1) of this section.

(c) A request to inspect or copy reports and information shall be in writing and must reasonably describe the reports and information requested. The request may be delivered or mailed to the contractor. Within ten (10) working days after receiving the request, the contractor shall determine whether to grant or deny the request. The requester shall be notified immediately of the determination.

(d) The time limit for making a determination may be extended up to an additional ten (10) working days for good reason. The requester shall be notified in writing of the extension, reasons for the extension, and the date on which the determination is expected to be made.

§ 277.33 Reporting.

(a) A contractor under this Part shall make a detailed report to the Commissioner of Indian Affairs after construction is completed. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended.

(b) The contractor shall furnish other contract-related reports when and as required by the Commissioner of Indian Affairs.

(c) A contractor under this Part shall send copies of the reports required by paragraphs (a) and (b) of this section to the tribe(s) affected by the construction at the same time as the reports are sent to the Bureau.

§ 277.34 Repayment of funds.

Any funds paid under a contract entered into under this Part which are not expended, obligated or used for the purposes of the contract during its term shall be returned to the Bureau.

§ 277.35 Penalties.

If any officer, director, agent, or employee of, or connected with, any contractor or subcontractor under this Part embezzles, willfully misapplies, steals, or obtains by fraud any of the funds or property connected with the contract or subcontract, he shall be subject to the following penalties:

(a) If the amount involved does not exceed $100, he shall be fined not more

than $1,000 or imprisoned not more than one year, or both.

(b) If the amount involved exceeds $100, he shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

§ 277.36 Applicable procurement regulations

States or school districts wanting to contract with the Bureau under this Part must comply with the applicable requirements in the Federal Procurement Regulations (41 CFR 1), as supplemented by the Interior Procurement Regulations (41 CFR 14) and the Bureau of Indian Affairs Procurement Regulations (41 CFR 14H), except 41 CFR Part 14H–70.

§ 277.37 Privacy Act requirements.

(a) When a contractor operates a system of records to accomplish a Bureau function, the contractor shall comply with Subpart D of 43 CFR Part 2 which implements the Privacy Act (5 U.S.C. 552a). Examples of the contractor's responsibilities are:

(1) To continue maintaining those systems of records declared by the Bureau to be subject to the Privacy Act as published in the FEDERAL REGISTER.

(2) To make such records available to individuals involved.

(3) To disclose an individual's record to third parties only after receiving permission from the individual to whom the record pertains. 43 CFR 2.56 lists exceptions to this procedure.

(4) To establish a procedure to account for access, disclosures, denials, and amendments to records.

(5) To provide safeguards for the protection of the records.

(b) The contractor may not:

(1) Discontinue or alter any established systems of records without prior approval of the appropriate Bureau systems manager.

(2) Deny request for notification or access of records without prior approval of the appropriate Bureau systems manager.

Subpart D—Contract Revision or Cancellation

§ 277.41 Contract revision or amendment.

Any contract made under this Part may be revised or amended as deemed necessary to carry out the purposes of the contract. A contractor may make a written request for a revision or amendment of a contract to the Bureau contracting officer.

§ 27.42 Canceling a contract for cause.

(a) Any contract entered into under this Part may be cancelled for cause when the contractor fails to perform the work called for under the contract.

(b) Before cancelling the contract, the Bureau will advise the contractor in writing of the following:

(1) The reasons why the Bureau is considering cancelling the contract.

(2) That the contractor will be given an opportunity to bring its work up to an acceptable level.

(c) If the contractor does not overcome the deficiencies in its contract performance, the Bureau shall cancel the contract for cause. The Bureau will notify the contractor, in writing, of the cancellation. The notice shall give the reasons for the cancellation and the right of the contractor to appeal under Subpart C of 43 CFR Part 4.

(d) When a contract is cancelled for cause, the Bureau will either perform the work with its own forces or by another contract, as appropriate.

Subpart E—Appeals

§ 277.51 Contract appeal.

A contractor may appeal an adverse decision or action of a Bureau contracting officer regarding a contract under this Part as provided in Subpart C of 43 CFR Part 4.

§ 277.52 Appeal from decision to cancel contract for cause.

A contractor may appeal the decision of a Bureau official to cancel a contract under this Part for cause. The appeal shall be made as provided in subpart C of 43 CFR Part 4.

§ 277.53 Other apeals.

Any decision or action taken by a Bureau official under this Part, other than those given in §§ 277.51 and 277.52, may be appealed only as provided in Part 2 of this chapter.

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Title 41—Public Contracts and Property Management

CHAPTER 14H—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

PART 14H–70—CONTRACTING WITH INDIAN ORGANIZATIONS PURSUANT TO THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

OCTOBER 24, 1975.

Beginning on page 41025 of the September 4, 1975, FEDERAL REGISTER (40 FR 41025), there was published a notice of proposed rulemaking to amend Chapter 14H of Title 41 of the Code of Federal Regulations by adding a new Part 14H–70. This amendment was proposed pursuant to the authority contained in the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638; 88 Stat. 2203).

The purpose of the amendment is to consolidate in one Part all of the contracting requirements which Indian tribal and Alaska Native organizations must follow in contracting with the Bureau of Indian Affairs under the Indian Self-Determination and Education Assistance Act. In preparing the regulations in new Part 14H–70, waivers were made of some of the standard Federal Procurement Regulations as authorized by section 106(a) of the Act. Certain requirements were waived in an attempt to simplify contracting procedures for Indian tribal and Alaska Native organizations. Additional waivers may be made on a case-by-case basis as the Commissioner considers such waivers appropriate.

The Bureau of Indian Affairs has sought to be responsive to the recommendations of Indian and Alaska Native governing bodies who are, or have contemplated, operating Bureau programs under contract. For some time, these groups have been critical of the complexities inherent in negotiating contracts under the standard Federal Procurement Regulations. In many instances, an unfavorable psychological climate was created that inhibited local desires for more meaningful expressions of self-determination based on their own needs and goals.

Through experience, the Bureau of Indian Affairs and its constituents have found the standard procurement regulations to contain numerous requirements that have little if any applicability to contracts. For this reason, the Bureau has evolved what, in essence, is a set of "Indian" Procurement Regulations for dealing with tribal and Alaska Native groups as the new Part 14H–70.

These regulations reflect the Bureau's attempt to follow the recommendations of Indian and Alaska Native people to place in one part all pertinent contracting regulations or references to such regulations affecting contracts with tribal organizations; to reduce referencing regulations contained in other CFR Parts, if possible; to make the regulations as comprehensive and clear as possible; to assure that both parties to the contract know their rights, roles and responsibilities; and to remove any unnecessary or inapplicable requirements found in the standard procurement rules which would not apply to self-determination contracts with tribal organizations.

The contractual approach is one of several voluntary options available to Indian and Alaska Native governing bodies to assist them in the self-development process. Depending on their basic needs and goals, they may want to use the contract mechanism in their self-development process. If so, Part 14H–70 seeks to simplify the contracting procedure for them.

The public was given until October 4, 1975, to submit written comments, suggestions, or objections regarding the proposed amendment. All comments received with respect to the proposed amendment were given due consideration.

A. *Changes made due to comments received.* As a result of comments received, the following changes in the regulations are made in addition to language changes for clarification:

1. A new § 14H–70.103 is added to define what is considered an Indian reservation and the former §§ 14H–70.103 and 14H–70.104 are redesignated as §§ 14H–70.104 and 14H–70.105, accordingly.

2. Section 14H–70.402 is revised to make it clear that an Indian tribe has the right to determine the tribal organization that will provide services to it under a contract and that, in such instances, the tribe's determination constitutes the Bureau's justification for

negotiating the contract with the designated tribal organization on a noncompetitive basis.

3. Section 14H–70.605 is revised to conform it to the revision in 25 CFR 271.71 and 25 CFR 271.72.

4. Section 14H–70.608 and § 14H–70.610 are changed to conform them to the revision in 25 CFR 271.44.

5. Section 14H–70.612(a) is revised by amending paragraph (f) of the Advance Payment clause to remove a restrictive requirement on liquidation of advance payments.

6. Section 14H–70.612(b) is revised to remove language from paragraph (f) of the clause concerning interest earned on advances that was inconsistent with the Act.

7. Section 14H–70.612(c) is revised by adding language to the preamble to the clause and paragraph (a) thereunder to take into consideration a memorandum of understanding between the Departments of Interior and Treasury which simplifies advance payment procedures under letters of credit.

8. Section 14H–70.615 is revised to insure that reports required under a contract be specified in the contract.

9. Section 14H–70.616 is revised to make sure it conforms to the requirements in 25 CFR 271.74.

10. A new § 14H—70.635 is added to reflect the addition of the Privacy Act requirements to 25 CFR Part 271.

11. A new § 14H–70.636 is added in response to concerns expressed over copyrights.

12. A new § 14H–70.637 is added in response to concerns expressed over the Government Printing and Binding Regulations.

13. A new § 14H–70.638 is added on cancellation of contracts for cause because it was inadvertently omitted when the proposed regulations were published on September 4, 1975. It has, however, been drafted to conform to 25 CFR 271.75.

14. Section 14H–70.1403(a) is revised to take into consideration modifications or supplements to Chapter 2000 of the Treasury Fiscal Requirements Manual.

15. Section 14H–70.1405 is revised to authorize use of letters of credit for advance payments when the amount of the advance is $120,000 rather than $250,000 and to take into consideration modifications or supplements to Chapter 2000 of the Treasury Fiscal Requirements Manual.

B. *Changes not adopted.* Certain other comments have been carefully considered but have not been accepted. The following suggestions were not adopted for the reasons given:

1. Several comments were received that were common to both 25 CFR Part 271 and this Part 14H–70 of Title 41 of the Code of Federal Regulations. To the extent that these common comments were not accepted or taken under further consideration, they were answered in the preamble to 25 CFR Part 271 (a related document published elsewhere in Part II of this issue of the FEDERAL REGISTER).

2. Several commentators took exception to the requirement for liability insurance and expressed that as a minimum the Bureau should assume responsibility for losses over an agreed to amount. The Bureau will seek counsel on this issue and, if the results thereof indicate a change can be made, the commentators' comments will be considered accordingly.

3. One commentator expressed the opinion that the language of the Disputes clause in § 14H–70.618 placed an almost impossible burden on the contractor. The Bureau cannot agree with this contention as the language in question is common to Government contracts.

4. One commentator expressed the opinion that referencing Appendix A to 25 CFR Part 276 in § 14H–70.626 precludes the Bureau from accepting an indirect cost rate approved by another Federal agency. The Bureau does not agree with this opinion as express reference has been made to the acceptability of another Federal agency's audited rate in § 14H–70.1003.

Accordingly, Chapter 14H of Title 41 of the Code of Federal Regulations is amended by adding a new Part 14H–70 as set forth below.

Effective date. The addition of Part 14H–70 shall become effective on December 4, 1975.

MORRIS THOMPSON,
Commissioner of Indian Affairs.

Subpart 14H–70.0—Regulation System

Sec.

14H–70.000 Scope of part.
14H–70.001 Scope of subpart.
14H–70.002 General.
14H–70.003 Federal and Interior procurement regulations.
14H–70.004 Area office implementation of Federal or Interior procurement regulation issuances.
14H–70.005 Applicability.
14H–70.006 Changes of regulations.

Subpart 14H–70.1—Definition of Terms

14H–70.101 Definitions.
14H–70.102 Contract.
14H–70.103 Indian reservation.
14H–70.104 Program.
14H–70.105 Project.

Subpart 14H–70.2—General Policies

14H–70.201 Method of procurement.
14H–70.202 Profit.
14H–70.203 Payment of interest on contractor's claim.
14H–70.204 Protests to Comptroller General.

Subpart 14H–70.3—Procurement Responsibility and Authority

14H–70.301 General.

Subpart 14H–70.4—Procurement by Negotiation

14H–70.401 Scope of subpart.
14H–70.402 Circumstances permitting negotiation.
14H–70.403 Determinations, findings and authorities.
14H–70.404 Types of contract.
14H–70.405 Negotiated overhead rates.
14H–70.406 Price negotiated policies.
14H–70.407 Requirements for price or cost analysis and cost or pricing data.
14H–70.408 Audit as a pricing aid.
14H–70.409 Subcontracting.

Subpart 14H–70.5—Special and Directed Sources of Supply

Sec.

14H–70.501 General Services Administration supply sources.
14H–70.502 Inter-agency motor pool vehicles.
14H–70.503 Purchase of passenger carrying vehicles.

Subpart 14H–70.6—Contract Clauses

14H–70.601 Scope of subpart.
14H–70.602 Required clauses.
14H–70.603 Definitions.
14H–70.604 Effect on existing rights.
14H–70.605 Retrocession.
14H–70.606 Examination of records.
14H–70.607 Penalties.
14H–70.608 Indian employment preference.
14H–70.609 Equal opportunity.
14H–70.610 Use of Indian business concerns.
14H–70.611 Indemnity and insurance.
14H–70.612 Advance payment.
14H–70.613 Contract funding and renegotiation.
14H–70.614 Government furnished property.
14H–70.615 Annual reporting.
14H–70.616 Reassumption of programs.
14H–70.617 Fair and uniform services.
14H–70.618 Disputes.
14H–70.619 Officials not to benefit.
14H–70.620 Changes.
14H–70.621 Bid guarantee and bonds.
14H–70.622 Certificate of nonsegregated facilities.
14H–70.623 Convict labor.
14H–70.624 Limitation of costs.
14H–70.625 Allowable cost and payment.
14H–70.626 Negotiated overhead rates.
14H–70.627 Assignment of claims.
14H–70.628 Payment of interest on contractor's claims.
14H–70.629 Audit and records.
14H–70.630 Contract Work Hours and Safety Standards Act—Overtime Compensation.
14H–70.631 Price reduction for defective cost or pricing data.
14H–70.632 Subcontractor cost and pricing data.
14H–70.633 Buy American Act.
14H–70.634 Anti-Kickback Act.
14H–70.635 Privacy Act requirements.
14H–70.636 Rights in data.
14H–70.637 Printing.
14H–70.638 Cancellation for cause.

Subpart 14H–70.7—Cancellation or Reassumption of Contracts

14H–70.701 General.
14H–70.702 Settlement of cancelled contracts.

Subpart 14H–70.8—Bonds and Insurance

14H–70.801 Scope of subpart.
14H–70.802 Policy on use of bid guarantees.
14H–70.803 Performance bonds.
14H–70.804 Payment bonds.
14H–70.805 Liability insurance.
14H–70.806 Insurance coverage.
14H–70.807 Exceptions.
14H–70.808 Motor vehicle insurance.
14H–70.809 Indemnity and insurance clause.

Subpart 14H–70.9—Labor

14H–70.901 Labor standards in construction contracts.
14H–70.902 Labor standards in subcontracts.

Subpart 14H–70.10—Contract Cost Principles and Procedures

14H–70.1001 Principles for determining costs.
14H–70.1002 Predetermined fixed rates.
14H–70.1003 Procedures.

Subpart 14H–70.11—Procurement Forms

14H–70.1101 Applicability of standard forms.

Sec.

Subpart 14H–70.12—Procurement of Construction

14H–70.1201 Scope of subpart.
14H–70.1202 Exceptions.

Subpart 14H–70.13—Retention Requirements for Contractor and Subcontractor Records

14H–70.1301 General.

Subpart 14H–70.14—Contract Financing

14H–70.1401 General.
14H–70.1402 Reimbursement.
14H–70.1403 Advance payments by Treasury check.
14H–70.1404 Advance payments when special bank account required.
14H–70.1405 Letter of credit.
14H–70.1406 Approval of advance payments.
14H–70.1407 Sub-advances.
14H–70.1408 Interest.
14H–70.1409 Automatic advances.
14H–70.1410 Agreement for special bank account.

Subpart 14H–70.15—Novation and Change of Name Agreements

14H–70.1501 General.

Subpart 14H–70.16—Procurement Reports

14H–70.1601 General.
14H–70.1602 Standard Form 37, Report on Procurement by Civilian Executive Agencies.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486 (c); Pub. L. 93–638, 88 Stat. 2203.

§ 14H–70.000 Scope of part.

This part sets forth policies and procedures concerning the Bureau of Indian Affairs Procurement Regulation System insofar as the system pertains to contracts entered into under the authority of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, 88 Stat. 2203).

Subpart 14H–70.0—Regulation System

§ 14H–70.001 Scope of subpart.

This Subpart establishes a system for the codification and publication of procurement policy and procedural regulations of the Bureau of Indian Affairs which implement the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, 88 Stat. 2203).

§ 14H–70.002 General.

The Act provides that, contracts with tribal organizations pursuant to Section 102 of the Act shall be in accordance with all contracting laws and regulations except that, in the discretion of the Secretary, contracts may be negotiated without advertising and need not conform with the provisions of the Act of August 24, 1935 (49 Stat. 793), as amended. The Secretary may waive any provision of such contracting laws or regulations which he determines are not appropriate for the purposes of the contract involved or inconsistent with the provisions of the Act.

§ 14H–70.003 Federal and Interior procurement regulations.

To the extent that the Federal Procurement Regulations and Interior Procurement Regulations, 41 CFR Chapter 1, Chapter 14, and Chapter 14H (except 41 CFR Part 14H–1) respectively are not made specifically applicable to contracts entered into pursuant to the Act by reference in this Part 14H–70 they are hereby waived. If this part conflicts with any of the provisions of either the Federal Procurement Regulations or Interior Procurement Regulations the provisions of this Part 14H–70 shall govern. When either the Federal Procurement Regulations or Interior Procurement Regulations are referenced in this Part, the reference shall be similar to the following:

(a) "§ 1–1.000 of this title", when referring to a section of the Federal Procurement Regulations.

(b) "§ 14–1.000 of this title", when referring to a section of the Interior Procurement Regulations.

§ 14H–70.004 Area Office implementation of Federal or Interior procurement regulation issuances.

Any regulations issued through the Federal Procurement Regulation or Interior Procurement Regulation System shall not be implemented by contracting officers insofar as contracts entered into pursuant to the Act are concerned unless such regulations are implemented in this Part 14H–70.

§ 14H–70.005 Applicability.

The provisions of this Part 14H–70 apply only to those contracts between the Bureau and Indian organizations entered into pursuant to the Act. They do not apply to contracts with individuals, partnerships, corporations or other Indian organizations that do not fall under the purview of the Act.

§ 14H–70.006 Changes of regulations.

(a) To the extent that a change of the regulations issued under this Part 14H–70 may—

(1) Impose additional requirements on the contractor;

(2) Have an adverse effect on the contractor's operations; or,

(3) Delay or impede the contracting process, such changes shall be made only after consultation, to the maximum extent practicable, with Indian tribes and national and regional Indian organizations. Further those changes shall be presented to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives before publication in the FEDERAL REGISTER for comments.

(b) To the extent that changes of the regulations issued under this Part 14H–70 affect only the internal operation of the Bureau's contracting offices, the changes may be made without consultation.

Subpart 14H–70.1—Definition of Terms

§ 14H–70.101 Definitions.

For the purpose of this part, unless otherwise indicated in 25 CFR 271.2, the terms given in this subpart have the meanings set forth in this subpart. The definitions in 25 CFR 271.2 also apply to this part.

§ 14H–70.102 Contract.

"Contract" means any promissory arrangement between a tribal organization and the Federal government which is reduced to writing and signed by duly authorized agents of the parties. The term "contract" will also mean a transaction authorized by a purchase order signed in behalf of the Federal government by a duly authorized agent and accepted in behalf of a tribal organization by beginning performance.

§ 14H–70.103 Indian reservation.

"Indian reservation" means any Indian tribe's reservation, Pueblo, Colony, or Rancheria, including former reservations in Oklahoma, Alaska native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

§ 144–70.104 Program.

"Program" means a delivery of service generally of a continuing nature separated from other similar efforts by funds, staff or location, except that a program may involve, in certain instances, more than one location.

§ 14H–70.105 Project.

"Project" means an effort aimed at a specific objective, not of a continuing nature, and having defined parameters.

Subpart 14H–70.2—General Policies

§ 14H–70.201 Method of procurement.

It is neither feasible nor practicable to obtain competition on contracts entered into under the Act. Therefore, contracts with tribal organizations entered into pursuant to the Act will be negotiated without competition.

§ 14H–70.202 Profit.

(a) Profit is not allowable on contracts entered into pursuant to the Act.

(b) Profit may be allowed when a contract is entered into pursuant to the Act of June 25, 1910 (36 Stat. 861; 25 U.S.C. 47), commonly referred to as the "Buy Indian Act" and its implementing regulations and when all of the following conditions are met:

(1) The contract is for the procurement of goods, materials, supplies, etc., or, if for services, the services are for a specific project rather than for the operation of a Bureau program or part of a program.

(2) The materials to be supplied or the services to be provided are normally supplied or provided by a private contractor rather than by Bureau personnel or, in the case of services traditionally performed by Bureau personnel, a contract for such services does not involve "tribal governmental functions" or "business related functions" as defined in 25 CFR 271.2 or contractable trust resources programs as set forth in 25 CFR 271.32.

(3) Definitive specifications are used which permit rejection by the Bureau of defective material and workmanship and replacement at the contractor's expense as may be required.

(4) The price to be paid can be demonstrated to be fair and reasonable in

terms of the price prevailing in the locality for similar materials or services, including profit.

(5) All requirements of applicable procurement laws and regulations are followed.

§ 14H–70.203 Payment of interest on contractor's claim.

(a) Payment of interest on contractor's claims is allowable under the conditions set forth in §1–1.322 of this title.

(b) Payment of interest is allowable whether the clause set forth in § 14H–70.628–28 is or is not included in the contract.

§ 14H–70.204 Protests to Comptroller General.

Contracting officers will process protests to the Comptroller General in accordance with the procedures set forth in §§ 1–2.407–8 and 14–2.407–8 of this title.

Subpart 14H–70.3—Procurement Responsibility and Authority

§ 14H–70.301 General.

The responsibilities of the Bureau under Subparts 1–1.4 and 14–1.4 of this title are not changed by the Act.

Subpart 14H–70.4—Procurement by Negotiation

§ 14H–70.401 Scope of subpart.

This subpart concerns negotiation of contracts entered into pursuant to the Act.

§ 14H–70.402 Circumstances permitting negotiation.

Contracts for the performance of programs or parts of programs located on or near an Indian reservation can be performed successfully only by the Indian tribe which represents such Indian reservation or by a tribal organization approved by the Indian tribe. Such contracts will be negotiated on a non-competitive basis with the tribal organization designated by such Indian tribe in its request. Contracts for programs and parts of programs which are not located on or near an Indian reservation may be negotiated with a tribal organization approved by the Indian tribe or tribes served by such program or parts of programs.

§ 14H–70.403 Determinations, findings and authorities.

A tribe's request that a contract be entered into with a designated tribal organization will be entered into the contract file and will serve as the contracting officer's justification for negotiating the contract on a non-competitive basis.

§ 14H–70.404 Types of contract.

Cost-reimbursement type contracts provide for payment to the contractor of allowable costs incurred in the performance of the contract, to the extent prescribed in the contract. This type of contract establishes an estimate of total cost to obligate the funds, and a monetary ceiling which the contractor may not exceed. Cost reimbursement type contracts will be used for all contracts made pursuant to this Part.

§ 14H–70.405 Negotiated overhead rates.

Overhead (indirect costs) is allowable on contracts entered into pursuant to the Act under the conditions set forth in Subpart 14H–70.10 of this part.

§ 14H–70.406 Price negotiation policies.

(a) When costs reflected in a program proposal submitted by a tribal organization essentially conform with the Bureau budget for that program and do not exceed the amount programmed for and allocated to the operating level, the proposal may be accepted without price negotiation.

(b) When costs reflected in a program proposal differ from the Bureau budget with respect to certain budget items, the contracting officer may request the tribal organization to submit cost and pricing data in sufficient detail to determine the validity and reasonableness of costs.

(c) When a program proposal is not based on a Bureau budget which has previously been established in the budget process for that program, unit costs and total costs will be subject to negotiation.

(d) Nothing in this section is to be construed to mean that contracting officers and cognizant program officials are relieved from responsibility for assuring that elements of total contract amounts are reasonable as to unit prices, salary scales, and program requirements. Recognition will be given to the special and unique relationship between the Bureau and tribal organizations under this Act; however, acceptance of proposals, without review, discussion and resolution of differences by negotiation will not be made, except as provided in § 14H–70.408. Files will be properly documented to reflect the negotiation process, including the basis for final determination of the scope of work and price.

§ 14H–70.407 Requirements for price or cost analysis and cost or pricing data.

Except for initial contracts or other agreements, the requirements of § 1–3.807–2 and § 1–3.807–3 of this title are optional with the contracting officer.

§ 14H–70.408 Audit as a pricing aid.

(a) In instances in which a basis for price determination does not exist in sufficient detail and form and the contract amount is expected to exceed $100,000, the contracting officer may request a pre-award audit; or if time does not permit, a clause may be inserted in the contract providing for adjustment of allowable costs when determined necessary or advisable by a post-award audit.

(b) When the contracting officer determines that there is sufficient information to award a contract without a pre-award audit the audit may be waived. However, the waiver of a pre-award audit shall be supported by a written statement in the contract files setting forth the reason for the waiver as prescribed by § 14–63.103(a) (1) of this title.

§ 14H–70.409 Subcontracting.

Any contract proposal or plan of operations submitted by a tribal organization which contains a proposed subcontract will identify the subcontractor, the amount and purpose of the subcontract, the manner in which the subcontractor was selected, and the basis for the cost of subcontract. Subcontract opportunities shall be advertised or negotiated in a manner that provides open and free competition to the maximum extent practicable and subcontracts will be awarded in accordance with sound business practices.

Subpart 14H–70.5—Special and Directed Sources of Supply

§ 14H–70.501 General Services Administration supply sources.

Tribal organizations performing services under cost reimbursement contracts pursuant to the Act are entitled to use General Services Administration supply sources in accordance with Subpart 1–5.9 of this title.

§ 14H–70.502 Inter-agency motor pool vehicles.

Tribal organizations performing services under cost reimbursement contracts pursuant to the Act are entitled to use General Services Administration inter-agency motor pool vehicles in accordance with Subpart 1–5.5 of this title.

§ 14H–70.503 Purchase of passenger carrying vehicles.

Purchase of passenger carrying vehicles is prohibited. If allowed under the contract, purchase of other vehicles shall be through Federal buying channels unless a waiver by the General Services Administration is obtained.

Subpart 14H–70.6—Contract Clauses

§ 14H–70.601 Scope of subpart.

This subpart sets forth the clauses to be included in the contracts entered into with tribal organizations pursuant to the Act.

§ 14H–70.602 Required clauses.

The clauses set forth in this subpart shall be included in all contracts entered into pursuant to the Act unless otherwise indicated.

§ 14H–70.603 Definitions.

DEFINITIONS

The following terms shall have the meanings set forth below throughout this contract:

(a) The term "head of the agency" or "Secretary" as used herein means the Secretary, the Under Secretary, and Assistant Secretary, or any other head or assistant head of the Department of the Interior; and the term "his duly authorized representative" means any person or persons or board (other than the contracting officer) authorized to act for the head of the agency or the Secretary.

(b) The term "contracting officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is properly designated as a contracting officer; and the term includes, except as otherwise provided in this

contract, the authorized representative of a contracting officer acting within the limits of his authority.

§ 14H–70.604 Effect on existing rights.

EFFECT ON EXISTING RIGHTS

(a) Nothing in this contract shall be construed as—

(1) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or,

(2) Authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

§ 14H–70.605 Retrocession.

RETROCESSION

The contractor agrees to comply with the procedures and requirements in 25 CFR 271.71 and 271.72 in the event of retrocession.

§ 14H–70.606 Examination of records.

(a) The following clause shall be included in all negotiated contracts which do not exceed $10,000:

EXAMINATION OF RECORDS

(a)(1) The contractor agrees to maintain books, records, documents and other evidence pertaining to the costs and expense of this contract (hereinafter collectively called records) to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs of whatever nature for which reimbursement is claimed under the provisions of this contract.

(2) The contractor agrees to make available at the office of the contractor at all reasonable times during a period of three years, after final payment under this contract all records specified in paragraph (1) above for examination and audit by designated representative of the Comptroller General, the Secretary of Interior or the contracting officer.

(3) The contractor further agrees that records which relate to claims, litigation, or to any costs or expenses of this contract to which exception has been taken by the Comptroller General, the Secretary of Interior or the contracting officer or any of their duly authorized representatives shall be retained by the contractor until such appeals, litigation or exceptions have been disposed of.

(4) The provisions of this clause shall be applicable to and included in any negotiated subcontract.

(b) The following clause shall be included in all negotiated contracts which exceed $10,000:

EXAMINATION OF RECORDS

(a)(1) The contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this contract (hereinafter collectively called "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract.

(2) The contractor agrees to make available at the office of the contractor at all reasonable times during the period set forth in subparagraph (4) below any of the records for inspection, audit or reproduction by any authorized representative of the Comptroller General, Secretary of the Interior, and the contracting officer.

(3) If the Comptroller General or any of his duly authorized representatives determine that his audit of the amounts reimbursed under this contract as transportation charges will be made at a place other than the office of the contractor, the contractor agrees to deliver, with the reimbursement voucher covering such charges or as may be otherwise specified within 2 years after reimbursement of charges covered by any such voucher, to such representative as may be designated for that purpose through the contracting officer, such documentary evidence in support of transportation costs as may be required by the Comptroller General or any of his duly authorized representatives.

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the contractor shall preserve and make available his records:

(i) Until expiration of 3 years after final payment under this contract or of the time periods for the particular records specified in Part 1–20 of the Federal Procurement Regulations (41 CFR Part 1–20), whichever expires earlier, and

(ii) For such longer period, if any, as is required by applicable statutes, by any other clause of this contract, or by (A) or (B) below:

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting settlement.

(B) Records which relate to:

(1) Appeals under the disputes clause of this contract;

(ii) Litigation or the settlement of claims arising out of the performance of this contract; or,

(iii) Costs and expenses of this contract to which exception has been taken by the Comptroller General, Secretary of the Interior or the contracting officer, or any of their duly authorized representatives, shall be retained by the contractor until such appeals, litigation, claims or exceptions have been disposed of.

(5) Except for documentary evidence delivered pursuant to subparagraph (3) above, and the records described in subparagraph (4)(ii)(B) above, the contractor may in fulfillment of his obligation to retain his records as required by this clause substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of 2 years following the last days of the month of reimbursement to the contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the contracting officer with the concurrence of the Comptroller General or his duly authorized representative.

(6) The provisions of this paragraph (a), including this subparagraph (6), shall be applicable to and included in each subcontract hereunder which is on a cost, cost-plus-a-fixed-fee, time-and-material or labor-hour basis.

(b) The contractor further agrees to include in each of his subcontracts hereunder, other than those set forth in paragraph (a)(6) above, a provision to the effect that the subcontractor agrees that the Comptroller General, the Secretary of the Interior, and the contracting officer, or any of their duly authorized representatives, shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Part 1–20 of the Federal Procurement Regulations (41 CFR Part 1–20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract", as used in this paragraph (b) only, excludes:

(i) Purchase orders not exceeding $10,000; and

(ii) Subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

§ 14H–70.607 Penalties.

PENALTIES

(a) Any officer, director, agent, employee or such other person connected in any capacity with this contract or any subcontract thereunder that embezzles, willfully misapplies, steals or obtains by fraud any of the money, funds, assets or property provided through the contract shall be fined not more than $10,000 or imprisoned for not more than two years, or both; Provided, that if the amount embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, such person shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) The contractor agrees to insert this clause in all subcontracts.

§ 14H–70.608 Indian employment preference.

INDIAN EMPLOYMENT PREFERENCE

(a) The contractor shall give preference in employment for all work performed under the contract, including subcontracts thereunder, to qualified Indians regardless of age, religion or sex and, to the extent feasible consistent with the efficient performance of the contract, provide employment and training opportunities to Indians, regardless of age, religion or sex that are not fully qualified to perform under the contract. The contractor shall comply with any Indian preference requirements established by the tribe receiving services under the contract to the extent that such requirements are not inconsistent with the purpose and intent of this paragraph.

(b) If the contractor or any of its subcontractors is unable to fill its employment openings after giving full consideration to Indians as required in paragraph (a) above, these employment openings may then be filled by other than Indians under the conditions set forth in the Equal Opportunity clause of this contract.

(c) The contractor agrees to include this clause or one similar thereto in all subcontracts issued under the contract.

§ 14H–70.609 Equal opportunity.

EQUAL OPPORTUNITY

During the performance of this contract and after complying with the Indian Employment Preference clause of this contract, the contractor agrees as follows:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, age, religion, or sex. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, religion, or sex. Such action shall include, but not be limited to, the following: Employment, up-grading, demotion, or transfer; recruitment or recruitment advertising; payoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, age, religion or sex.

(c) The contractor will include the provisions of paragraphs (a) through (b) in every subcontract or purchase order, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Bureau of Indian Affairs may direct as a means of enforcing such provisions, including sanctions for noncompliance. However, if the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Bureau of Indian Affairs, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

§ 14H–70.610 Use of Indian business concerns.

USE OF INDIAN BUSINESS CONCERNS

(a) As used in this clause, the term "Indian business concern" means Indian organizations or an Indian-owned economic enterprise as defined in 25 CFR 271.2.

(b) The contractor agrees to give preference to qualified Indian business concerns in the awarding of any subcontracts entered into under the contract consistent with the efficient performance of the contract. The contractor shall comply with any preference requirements regarding Indian business concerns established by the tribe(s) receiving services under the contract to the extent that such requirements are not inconsistent with the purpose and intent of this paragraph.

(c) If no Indian business concerns are available under the conditions in paragraph (b) above, the contractor agrees to accomplish the maximum amount of subcontracting, as the contractor determines is consistent with its efficient performance of the contract, with small business concerns, labor surplus area concerns or minority business enterprises, the definitions for which are contained in Subparts 1–1.7, 1–1.8, and 1–1.13 of the Federal Procurement Regulations. The contractor is not, however, required to establish a small business, labor surplus, or minority business subcontracting program as described in § 1–1.710–3(b), § 1–1.805–3(b) and § 1–1.1310–2(b) respectively of the Federal Procurement Regulations (41 CFR 1).

§ 14H–70.611 Indemnity and insurance.

INDEMNITY AND INSURANCE

(a) The contractor shall indemnify and save and keep harmless the Government against any or all loss, cost, damage, claim, expense or liability whatsoever, because of accident or injury to persons or property or others occurring in connection with any program included as a part of this contract, and provide where applicable, the insurance described below.

(b) The contractor shall secure, pay the premium for, and keep in force until the expiration of this contract or any renewal period thereof, insurance as provided below. Such insurance policies shall specifically include a provision stating the liability assumed by the contractor under this contract.

(1) Workman's compensation insurance as required by laws of the State.

(2) Owner's, landlord's and tenant's bodily injury liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(3) Property damage liability insurance with limits of not less than $25,000 for each accident.

(4) Automobile bodily injury liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident and property damage liability insurance with a limit of not less than $5,000 for each accident.

(5) Food products liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(6) Other insurance not specifically mentioned when required.

(c) Each policy of insurance shall contain an endorsement providing that cancellation by the insurance company shall not be effective unless a copy of the cancellation is mailed (registered) to the contracting officer at least 30 days before the effective date of cancellation.

(d) A certificate of each policy of insurance, and any changes therein, shall be furnished to the contracting officer immediately upon receipt from the insurance company.

(e) Insurance companies of the contractor shall be satisfactory to the contracting officer. When in his opinion an insurance company is not satisfactory for reasons that will be stated, the contractor shall provide insurance through companies that are satisfactory to the contracting officer.

(f) Each policy of insurance shall contain a provision that the insurance carrier waives any rights it may have to raise as a defense the tribe's sovereign immunity from suit, but such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy of insurance. The policy shall contain no provision, either express or implied, that will serve to authorize or empower the insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

§ 14H–70.612 Advance payment.

(a) The following clause will be inserted in all contracts in which deposit of the advance in a special bank account is not required.

ADVANCE PAYMENT

(a) *Amount of advance.* At the request of the contractor, and subject to the conditions set forth herein, the Government shall make advance payments to the contractor. Each payment shall be limited to the amount determined necessary for the contractor's operation under the contract for the period of time covered by the advance, which shall not be less than two weeks, except that the final payment under the contract may be a period less than two weeks.

(b) Payment will be made by check payable to the contractor.

(c) Funds advanced under this contract may not be used for any purpose except for making payments for materials, labor, administrative and overhead expenses allowable under this contract.

(d) The contractor shall keep separate accounts in his accounting system which will reflect all receipts, expenditures, fund balances and obligations under this contract.

(e) *Return of funds.* The contractor may at any time repay any or all of the funds advanced hereunder when it is determined that such funds will not be required for operations under the contract; or, when requested, in writing, by the contracting officer, as a result of retrocession, recision or termination for cause of this contract, the contractor shall return such amount as may be determined by the contracting officer is not required for settlement of outstanding obligations.

(f) *Liquidation.* If not otherwise liquidated, the advance payment(s) made hereunder shall be liquidated as herein provided. When the sum of all the estimated payments remaining due on the contract approximate the unliquidated amount of the advance payment(s), the contracting officer shall thereafter withhold further payments due on the contract, represented by proper invoiced amounts submitted by the contractor, and apply the amount(s) withheld against the liquidation of the advance payment until the advance payment has been fully liquidated. If upon completion or termination of the contract, or for other reasons, the entire advance payment(s) is not fully liquidated, by the process indicated above, and the contractor does not repay the balance due upon request, then the balance thereof shall be offset against any sums otherwise due or which may become due to the contractor from the Government on any other contracts or from any source.

(g) No interest will be charged on advance payments.

(b) The following clause will be used in all contracts under which deposit of advance payments in a special bank account will be required.

ADVANCE PAYMENTS

(a) *Amount of advance.* At the request of the contractor and subject to conditions set forth herein, the Government shall make advance payments to the contractor in amounts and at such times as agreed to between the contractor and the contracting officer and which are specified in _____ of this contract.

(b) *Special bank account.* Until the advance payment(s) made hereunder is liquidated and the contracting officer approves in writing the release of any funds due and payable to the contractor, the advance payment(s) and all other payments (progress, partial, and final) made under the contract shall be made by check payable to the contractor but mailed to the bank, where the special bank account is maintained as stated in the Agreement for Special Bank Account. The check must be marked for "Deposit in Special Bank Account Number _____, Bureau of Indian Affairs." The Agreement for Special Bank Account shall designate the account number. No part of the funds deposited in the Special Bank Account shall be mingled with other funds of the contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be only by check of the contractor, unless countersigning on behalf of the Government by the contracting officer or such other person as he may designate in writing is determined to be in the best interest of the Government and the contracting officer notifies the contractor and bank in writing that countersigning will be required.

(c) *Use of funds.* The funds in the Special Bank Account may be withdrawn by the contractor solely for the purposes of making payments for materials, labor, administrative and overhead expenses, and other purposes required for this contract, or for the purposes of reimbursing the contractor for such payments, and for such other purposes as the contracting officer may approve in writing. If this is a cost reimbursement contract, the funds in the Special Bank Account may be withdrawn by the contractor solely for the purpose of making payments for items of allowable costs as provided in the clause titled "Allowable Cost and Payment" of this contract. Any interpretation required as to the proper use of funds shall be made in writing by the Contracting Office.

(d) *Return of funds.* The contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the contracting officer, the contractor shall repay to the Government such part of the unliquidated balance of the advance payment as shall in the opinion of the contracting officer be in excess of the contractor's current requirements or, when added to total advances previously made and liquidated, are in excess of the amount specified in paragraph (a)(1) hereof or are no longer to be made available to the contractor because of default, or abuse of their use, or for such other reasons as the contracting officer may specify. If the contractor

fails to repay such part of the unliquidated balance of the advance payment when so requested by the Contracting Officer, all or any part thereof may be withdrawn from the Special Bank Account by check(s) made payable to the Bureau of Indian Affairs signed by the contracting officer or by an official of the Bureau of Indian Affairs authorized in writing by the contracting officer to take such action. Such withdrawals shall be applied in reduction of the advance payment(s) then outstanding hereunder. The contracting officer shall notify the contractor and the bank of the action taken.

(e) *Liquidation.* If not otherwise liquidated, the advance payment(s) made hereunder shall be liquidated as herein provided. When the sum of all the estimated payments remaining due on the contract approximate the unliquidated amount of the advance payment(s), the contracting officer shall thereafter withhold further payments due on the contract, represented by proper invoiced amounts submitted by the contractor, and apply the amount(s) withheld against the liquidation of the advance payment until the advance payment has been fully liquidated. If, upon completion or termination of the contract, or for other reasons, the entire advance payment(s) is not fully liquidated, by the process indicated above, and the contractor does not repay the balance due upon request, then the balance thereof shall be offset against any sums otherwise due or which may become due to the contractor from the Government on any other contracts or from any source.

(f) *Interest charge.* No interest will be charged on the amount of the advance payment(s).

(g) *Bank agreement.* Before an advance payment(s) is made hereunder, the contractor shall submit to the contracting officer in the form prescribed, an Agreement for Special Bank Account, in triplicate, signed by the contractor and an official of the bank in which the Special Bank Account is established as the depository for the advance payment(s) and other payments. The agreement shall clearly set forth the character of the Special Bank Account and the responsibilities of the contractor, the bank and contracting officer, thereunder. Wherever possible, such bank shall be a member of the Federal Reserve System, or an "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935, 49 Stat. 684, as amended; 12 U.S.C. 264).

(h) *Lien on special bank account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payment(s) made hereunder.

(i) *Lien on property under contract.* Any advance payment(s) made under this contract shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract. The Government's lien shall apply to all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the contractor. The contractor shall identify, by marking or segregation, all property which is subject to a lien in favor of the Government by virtue of any provisions of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The contractor shall maintain adequate accounting control over such property on his books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, interalia, the existence of such lien. A copy of each receipt shall be delivered by the contractor to the contracting officer. If this contract is cancelled in whole or in part and the contractor is authorized to sell or retain cancellation inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the contracting officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such cancellation inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention of the contractor's termination claim, is applied in reduction of advance payment(s) then outstanding hereunder.

(j) *Insurance.* The contractor represents and warrants that he is now maintaining with responsible insurance carriers:

(1) Insurance upon his own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality;

(2) Adequate insurance against liability on account of damage to persons or property; and,

(3) Adequate insurance under all applicable workmen compensation laws. The contractor agrees that, until work under this contract has been completed and the advance payment(s) made hereunder has been liquidated, he will:

(i) Maintain such insurance;

(ii) Maintain adequate insurance upon any materials, parts, assemblies, sub-assemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and,

(iii) Furnish such certificate with respect to his insurance as the contracting officer may require.

(k) *Default provisions.* Upon the happening of any of the following events of default:

(1) Cancellation of this contract by reason of fault of the contractor;

(2) A finding by the contracting officer that the contractor:

(i) Has failed to observe any covenants, conditions, or warranties of these provisions or has failed to comply with any material provision of this contract; or,

(ii) Has so failed to make progress or is in such unsatisfactory financial conditions as to endanger performance of this contract; or,

(iii) Has allocated inventory to this contract substantially exceeding reasonable requirements; or,

(iv) Is delinquent in payment of taxes, or of the costs of performance of this contract in the ordinary course of business.

(3) Appointment of a trustee, receiver or liquidator for all or a substantial part of the contractor's property or institution of bankruptcy, reorganization, arrangement, or liquidation proceedings by or against the contractor;

(4) Service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account; or,

(5) The commission of an act of bankruptcy; the Government, without limiting any rights which it may otherwise have, may in its discretion and upon written notice to the contractor and bank, withhold further withdrawals from the Special Bank Account and withhold further payments on this contract. Upon the continuance of any such events of default for a period of 30 days after such written notice to the contractor and bank, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances:

(i) Withdraw all or any part of the balance in the Special Bank Account by checks made payable to the Bureau of Indian Affairs, signed solely by an official of the Bureau of Indian Affairs authorized in writing by the contracting officer to take such action, and apply such amounts in reduction of the advance payment(s) then outstanding hereunder and in reduction of any other claims of the Government against the contractor;

(ii) Demand immediate repayment of the unliquidated balance of the advance payment(s) hereunder; or,

(iii) Take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of the advance payment(s) hereunder and in reduction of any other claims of the Government against the contractor.

(l) *Prohibition against assignment.* Notwithstanding any other provision of this contract, the contractor shall not, while any part of the advance payment(s) is unliquidated, pledge, or otherwise assign any monies due under this contract, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(m) *Information—access to records.* The contractor shall furnish to the contracting officer signed or certified balance sheets and profit and loss statements monthly, if required by the contracting officer, together with a monthly bank statement for the Special Bank Account and such other information concerning the operation of the contractor's business as may be requested. The contractor shall afford to authorize representatives of the Government facilities for inspection of the contractor's books, records, and accounts.

(n) *Designations and determinations.* (1) *Amount.* The amount of the advance payment(s) at any time outstanding hereunder shall not exceed the amount authorized in the Findings, Determinations, and Authorization for the advance payment(s).

(2) *Depository.* The advance payment(s) shall be deposited in the bank with which the Agreement for Special Bank Account is established.

(o) *Other security.* The terms of this contract shall be considered adequate security for advance payment(s) hereunder.

(p) *Representations and warranties.* To induce the making of the advance payment(s), the contractor represents and warrants that:

(1) No litigation or proceedings are presently pending or threatened against the contractor.

(2) None of the provisions herein contravenes or is in conflict with the authority under which the contractor is doing business or with the provision of any existing agreement of the contractor.

(3) The contractor has the power to enter into this contract and accept an advance

payment(s) hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this contract.

(4) None of the assets of the contractor is subject to any lien or encumbrance of any character except for current taxes not delinquent. There has been no assignment of claims under any contract affected by these advance payment provisions, or if there has been any assignment, such assignments have been terminated.

(5) All information furnished by the contractor to the contracting officer in connection with the request for an advance payment is true and correct.

(6) These representations and warranties shall be continuing and shall be deemed to have been repeated by the submission of any subsequent request for additional advance payment(s) under this contract.

(q) *Subadvances.* Subject to the prior written approval of the contracting officer, funds from the Special Bank Account may be used by the contractor to make advance payment(s) or down payments to subcontractors and suppliers of material in advance of performance by the subcontractor or suppliers of material. Such subadvances shall not exceed the subcontract price or estimated cost as the case may be. The subcontractors or suppliers of material to whom such advance payment(s) is made shall furnish adequate security therefor. Unless other security is required by the contracting officer, convenants in subcontracts, expressly made for the benefit of the Government providing for a Special Bank Account for the subadvance with Government lien thereon, and providing for a Government lien, paramount to all other liens, on all property under such subcontract, and imposing upon the subcontractor and the depository bank substantially the same duties and giving the Government substantially the same rights as are provided herein (and in the Agreement for Special Bank Account supplemental hereto) between the Government, the contractor, and the bank may be considered as adequate for such subadvance(s), unless adequate justification is first furnished to and approval obtained by the contracting officer.

(r) *Covenants.* During the period of time that an advance payment(s) made hereunder remains unliquidated, the contractor shall not, without prior written consent of the contracting officer:

(1) Mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the contractor now owned or hereinafter acquired by it, or permit any pre-existing mortgages, liens, or other encumbrances to remain on or attach to any assets of the contractor which are allocated to the performance of this contract and with respect to which the Government has a lien hereunder;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for money due or to become due.

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any such stock, except as required by sinking fund or redemption arrangements reported to the contracting officer incident to the establishment of these advance payment(s) provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or governmental authority, except direct obligations, of the United States.

(6) Make any advance or loan to or incur any liability as guarantor;

(7) Permit a writ of attachment or any similar process to be issued against its property without procuring release thereof or bonding the same within 30 days after the entry of the writ of attachment or any similar process;

(8) Pay any salaries, commissions, bonuses, or other remuneration in any form or manner to its directors, officers, or key employees in excess of existing rates of payments, or of rates provided by this contract, or in existing agreements, in connection with which notice has been given to the contracting officer; or accrue such excess remuneration without first obtaining an agreement subordinating the same to all claims of the Government hereunder.

(9) Make any substantial change in management, ownership, or control of the organization with which this contract is made.

(10) Merge or consolidate with any other firm or corporation, change the type of its business, or engage in any transaction outside the ordinary course of its business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation; or,

(12) Create or incur indebtedness, borrow money or advances other than advances to be made hereunder, except as specified herein.

(c) The following clause will be used in all contracts in which the advance payment will be made by Letter of Credit:

ADVANCE PAYMENT

At the request of the contractor, and subject to the conditions set forth herein, and to Treasury Fiscal Requirements Manual, Department Circular 1075 as modified by the memorandum of understanding between the Departments of Treasury and Interior. The Government shall make advance payments to the contractor by Letter of Credit.

(a) The contractor agrees to comply with all the requirements and conditions set forth in Treasury Fiscal Requirements Manual, Department Circular 1075, as modified by the memorandum of understanding between the Departments of Treasury and Interior, a copy of which is attached and made a part of this contract.

(b) The contractor agrees to initiate cash draw-downs only when actually needed for its disbursements.

(c) The contractor agrees to report to the contracting officer cash disbursements and balances monthly not later than 15 days after the end of the month covered by the report.

(d) Failure to adhere to the provisions of this clause may cause the unobligated portion of the Letter of Credit to be dissolved by the contracting officer or the Department of the Treasury.

§ 14H–70.613 Contract funding and renegotiation.

The following clause shall be included in contracts which have a term of more than one year under the conditions set forth in 25 CFR 271.51.

CONTRACT FUNDING AND RENEGOTIATION

(a) Funds other than those appropriated during the fiscal year in which the contract commenced, that are included in the contract amount are subject to the availability of appropriations from Congress and there shall be no legal liability on the part of the Government in regard to such funds unless and until they are appropriated. Funds appropriated during the fiscal year in which the contract commenced that are included in the contract amount but not expended at the end of such fiscal year may be carried over and used for contract purposes in the succeeding fiscal year of the contract's operation, when the contract funds were appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208), except as otherwise specifically provided in appropriation acts, or may be used to provide additional services upon modification of the contract to include such services therein.

(b) Each succeeding year of the contract may be renegotiated prior to the end of the then current fiscal year in order to reflect changes that have taken place beyond the control of the contractor since the contract was originally negotiated or last renegotiated as is applicable.

§ 14H–70.614 Government furnished property.

GOVERNMENT FURNISHED PROPERTY

(a) The Government will deliver to the contractor the property described in the Schedule and may, at its option, furnish other supplies or equipment as it may from time to time deem necessary or desirable for use in performing the work under this contract. All property furnished by the Government, together with all property acquired or furnished by the contractor with contract funds, title to which vests in the Government under this article, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property."

(b) The title of each item of equipment purchased with funds made available under this contract, the cost of which is reimbursable to the contractor under the contract, shall pass to and vest in the Government upon:

(1) Issuance for use of such property and in the performance of this contract; or,

(2) Commencement of processing or use of such property in the performance of this contract; or,

(3) Reimbursement of the cost thereof by the Government, whichever first occurs. A simple record listing all items of equipment purchased with funds made available under this contract showing such property by names, manufacturers, serial number (if any), and the cost of the equipment, will be furnished to the contracting officer by the contractor. Each item of Government property shall be given an identification number, be subject to accountability, and become a part of the Bureau's property inventory, all as provided by the Bureau Manual.

(c) Title to Government property shall remain in the Government and shall be unaffected by the incorporation or attachment thereof to any property not owned by the Government, nor shall Government property or any part thereof be or become a fixture or lose its identity as personal property by reason of affixation to any reality. Except as otherwise specifically provided in this contract, the contractor:

(1) Shall not pledge, assign, or transfer title to any Government property; nor to allow or suffer anything to be done whereby any Government property may be seized, taken in execution, attached, destroyed or injured, and

(2) Shall not remove or otherwise part with possession of, or permit the use by others of, any Government property.

(d) The contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection and preservation of Government property.

(e) Except as may be otherwise provided for herein, Government property shall be used only for the performance of this contract unless written permission is granted by the contracting officer.

(f) Upon completion or termination of the contract, the contractor shall make such

disposition of Government property then in his possession or custody as the contracting officer shall direct.

(g) The contractor shall be responsible for the care and safekeeping of Government property, and for the return or delivery of the same in the condition in which received or appropriated for the contract, except for reasonable wear and tear, and except to the extent such property is consumed in the performance of this contract.

§ 14H–70.615 Annual reporting.

ANNUAL REPORTING

(a) Within 90 days of the end of each fiscal year of this contract's term, the Indian tribe that requested the contract shall furnish the contracting officer a report that includes but is not limited to an accounting of the amounts and purposes for which the contract funds were expended and information on the conduct of the program or services and the extent to which the goals and objectives of the tribe were accomplished.

(b) When the contractor is the governing body of the Indian tribe that requested the contract, the report shall be submitted directly to the contracting officer.

(c) When the contractor is a tribal organization other than the governing body of the tribe, the tribal governing body that requested the contract shall submit the report. However, at the option of the tribe, the contractor shall prepare the report and submit it to the tribe for review and approval prior to the tribe submitting the report to the contracting officer.

(d) When the contract benefits more than one tribe, the contractor shall prepare the report and submit it to each of the tribes. Each of the tribes will endorse and make any comments they consider applicable before submitting the report to the contracting officer.

(e) Notwithstanding this requirement for an annual report, the contracting officer may request the contractor to furnish such other reports at such intervals as specified by the contract.

§ 14H–70.616 Reassumption of programs.

REASSUMPTION OF PROGRAMS

The contractor agrees to comply with the procedures and requirements given in 25 CFR 271.74 in the event of reassumption.

§ 14H–70.617 Fair and uniform services.

FAIR AND UNIFORM SERVICES

The contractor agrees that any services or assistance provided to Indians under the contract shall be provided in a fair and uniform manner.

§ 14H–70.618 Disputes.

DISPUTES

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the contracting officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the contractor. The decision of the contracting officer shall be final and conclusive unless within thirty (30) days from the date of receipt of such copy, the contractor mails or otherwise furnishes to the contracting officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the contractor shall proceed diligently with the performance of the contract and in accordance with the contracting officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above. However, nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

§ 14H–70.619 Officials not to benefit.

OFFICIALS NOT TO BENEFIT

No members of Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

§ 14H–70.620 Changes.

The following changes clauses are for use as indicated:

(a) For contracts other than construction.

CHANGES

This contract may be modified or amended on the written request of the contractor to the contracting officer; or when recommended by the contracting officer and with the consent of the contractor. When the contracting officer recommends declination of a contractor's request to amend the contract, the matter shall be resolved as prescribed in 25 CFR 271.63, 271.64, and 271.65.

(b) In addition, all cost-reimbursement contracts over $10,000 shall contain the following clause:

FUNDING CHANGES

If for any reason beyond the control of the Bureau, the amount of funds allocated for the program operated under this contract are reduced by an amount or by a percentage resulting in a specific amount, the contract will be modified accordingly after consultation with the contractor. Such modification shall be made without penalty to the Government and shall not constitute basis for a claim under this contract.

§ 14H–70.621 Bid guarantee and bonds.

The following clause shall be included in all construction contracts with a tribal organization, in accordance with § 1–10.103, § 1–10.104–1(a) and § 1–10.104–1(b) of this title, when it is estimated that the amount of the contract will exceed $2,000:

BID GUARANTEE AND BONDS

(a) The contractor shall require a bid guarantee from all (sub) contractors who submit bids (proposals) for performing work under the contract in accordance with the policy set forth in § 1–10.103–1 of the Federal Procurement Regulations (41 CFR 1). When the bid guarantee is in the form of a bid bond, it may be submitted on other than the standard Government form: Provided, that the bond binds the Principal and the Surety(ies) in the same manner as they would be bound had the bid (proposal) been submitted to the Government.

(b) The contractor shall require the successful bidder (offerer) to furnish performance and payment bonds in the amounts set forth in the Miller Act (40 U.S.C. 270a–270e) and in accordance with the policies in §§ 1–10.104 and 1–10.105 of the Federal Procurement regulations (41 CFR 1) as a condition precedent to the award of the (sub) contract. The bonds may be submitted on other than the standard Government form: Provided, that the form used binds the Principal and the Surety(ies) in the same manner that they would be bound were the (sub) contract with the Government.

§ 14H–70.622 Certificate of nonsegregated facilities.

CERTIFICATE OF NONSEGREGATED FACILITIES

By signing the contract, the contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A certification of nonsegregated facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

§ 14H–70.623 Convict labor.

CONVICT LABOR

In connection with the performance of work under this contract, the contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89–176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and Executive Order 11755, December 29, 1973.

§ 14H–70.624 Limitation of costs.

LIMITATION OF COSTS

(a) It is estimated that the total costs to the Government for the performance of the work specified in this contract, will not exceed the estimated costs set forth in the Schedule. The contractor agrees to use its best efforts to perform this contract within

the estimated total amount so specified, but neither the Government nor the contractor guarantees the accuracy of such estimate. If at any time the contractor has reason to believe that the costs which it expects to incur in the performance of this contract in the next succeeding thirty (30) days, when added to all costs previously incurred, will exceed eighty-five percent (85%) of the estimated costs then set forth in the Schedule, or if at any time the contractor has reason to believe that the total costs for the performance of this contract, will be greater or substantially less than the then estimated cost thereof, the contractor shall notify the contracting officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obliged to reimburse the contractor for costs incurred in excess of the estimated costs set forth in the Schedule, and the contractor shall not be obliged to continue performance under the contract or to incur costs in excess of such estimate, unless and until the contracting officer has notified the contractor in writing that such estimated cost has been increased, and has specified in such notice a revised estimated cost, which shall thereupon constitute the estimated cost of performance of this contract. When, and to the extent that, the estimated cost has been increased, any costs previously incurred by the contractor in excess of such estimated cost shall be allowable to the same extent as if such costs are incident to and necessary for the performance of work specifically authorized under this contract at the time incurred.

(c) If the estimated cost is not increased, and additional funds are not allocated to the contract, and all work under this contract is discontinued because of exhaustion of funds, the contractor shall furnish a final report on the work which has been performed and the Government shall have no obligation to make further payments hereunder.

§ 14H–70.625 Allowable cost and payment.

ALLOWABLE COST AND PAYMENT

(a) For the performance of this contract, the Government shall pay to the contractor (1) the costs thereof (hereinafter referred to as "allowable cost") determined by the contracting officer to be allowable in accordance with:

(i) Appendix A to 25 CFR 276 as in effect on the date of this contract.

(ii) The terms of this contract.

(b) Once each month (or at more frequent intervals as may be specified elsewhere, or if approved by the contracting officer), the contractor may submit to the contracting officer or his authorized representative, in such form and reasonable detail as may be required, an invoice or public voucher supported by a statement of cost incurred by the contractor in the performance of this contract and claimed to constitute allowable cost.

(c) Promptly after receipt of each invoice or voucher, the Government shall make payment of the allowable costs incurred subject to the provisions of (d) below.

(d) At any time or times prior to final payment under this contract, the contracting officer may cause to be made such audit of the invoices or vouchers and statements of cost as shall be deemed necessary. Each payment made before that time shall be subject to reduction to the extent that amounts included in the related invoice or vouchers and statement of cost are found by the contracting officer not to constitute allowable cost, and shall also be subject to reduction for overpayments or to increase for underpayments on preceding invoices or vouchers.

(e) On receipt and approval of the voucher or invoice designated by the contractor as the "completion voucher" or "completion invoice" and statement of cost, which shall be submitted by the contractor as promptly as may be practicable following completion of the work under this contract but no later than six (6) months (or such longer period as the contracting officer may in his discretion, approve in writing) from the date of such completion, and following compliance by the contractor with all provisions of this contract, the Government shall as promptly as may be practicable pay to the contractor any balance of allowable cost.

(f) Any cost incurred by the contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specification or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the contractor at its expense or without cost to the Government.

§ 14H–70.626 Negotiated overhead rates.

NEGOTIATED OVERHEAD RATES

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The contractor, as soon as possible, but not later than six (6) months after the expiration of each of the contractor's financial years or such other period as may mutually be agreed upon by the Government and the contractor shall submit to the contracting officer, with a copy of the cognizant audit agency, a proposed final overhead rate or rates for that period based on the contractor's costs experience during that period, together with supporting cost data. Negotiation of final overhead rates by the contractor and the contracting officer shall be undertaken as promptly as practicable after receipt of the contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Appendix A of 25 CFR 276, as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (1) the agreed final rates, (2) the bases to which the rates apply, (3) the periods for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of final overhead rates for any period, the contractor shall be reimbursed either at negotiated provisional rates as provided in this contract or at billing rates acceptable to the contracting officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in this contract shall be set forth in an amendment to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the contracting officer within the meaning of the clause of this contract entitled "Disputes."

§ 14H–70.627 Assignment of claims.

ASSIGNMENT OF CLAIMS

Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due the contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing.

§ 14H–70.628 Payment of interest on contractor's claims.

PAYMENT OF INTEREST ON CONTRACTOR'S CLAIMS

(a) If an appeal is filed by the contractor from a final decision of the contracting officer under the disputes clause of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92–41, 85 Stat. 97, from the date the contractor furnishes to the contracting officer his written appeal under the disputes clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to the contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.

(b) Notwithstanding (a) above, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of appeal, and (2) interest shall not be paid for any period of time that the contracting officer determines the contractor has unduly delayed in pursuing his remedies before a board of contract appeals or a court of competent jurisdiction.

§ 14H–70.629 Audit and records.

AUDIT AND RECORDS

(a) The contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The foregoing constitute "records" for the purposes of this clause.

(b) The contractor's facilities, or such part thereof as may be engaged in the performance of this contract, and his records shall be subject at all reasonable times to inspection and audit by the contracting officer or his authorized representatives. In addition, for purpose of verifying that cost or pricing data submitted, in conjunction with the negotiation of this contract or any contract change or other modification involving an amount in excess of $100,000, were accurate, complete and current, the contracting officer, or his authorized representative, shall, until the expiration of 3 years from the date of final payment under this contract, or of

the time periods for the particular records specified in Part 1–20 of the Federal Procurement Regulations (41 CFR Part 1–20), whichever expires earlier, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this contract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(c) The contractor shall preserve and make available his records (1) until the expiration of 3 years from the date of final payment under this contract, or of the time period for the particular records specified in 41 CFR Part 1–20, whichever expires earlier, and (2) for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (c)(2)(i) or (ii) below.

(i) If the contract is completely or partially cancelled the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final settlement.

(ii) Records which relate to (A) appeals under the "Disputes" clause of this contract, (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs and expenses of this contract as to which exception has been taken by the contracting officer or any of his duly authorized representatives, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.

(d)(1) The contractor shall insert the substance of this clause, including the whole of this paragraph (d), in each subcontract hereunder that is not firm-fixed-price or fixed-price with escalation. When so inserted, changes shall be made to designate the higher-tier subcontractor at the level involved in place of the contractor; to add "of the Government prime contract" after "contracting officer"; and to substitute "the Government prime contract" in place of "this contract" in (B) of paragraph (c)(2)(ii) above.

§ 14H–70.630 Contract Work Hours and Safety Standards Act—Overtime Compensation.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION

This contract is subject to the Contract Work Hours and Safety Standards Act and to the applicable rules, regulations, and the interpretations of the Secretary of Labor.

(a) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any work-week in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such work-week on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such work-week, whichever is the greater number of overtime hours.

(b) *Violation, liability for unpaid wages, liquidated damages.* In the event of any violation of the provisions of paragraph (a), the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard work-week of forty hours without payment of the overtime wages required by paragraph (a).

(c) *Withholding for unpaid wages and liquidated damages.* The contracting officer may withhold from the Government prime contractor, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provision of paragraph (b).

(d) *Subcontracts.* The contractor shall insert paragraphs (a) through (d) of this section in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) *Records.* The contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract.

§ 14H–70.631 Price reduction for defective cost or pricing data.

The following clause shall be included in all contracts where cost and pricing data is required in accordance with § 14H–70.407.

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

(a) If the contracting officer determines that any price negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because the contractor, or any subcontractor pursuant to the clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data-Price Adjustments," or any subcontract clause therein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in his Contractor's Certificate of Current Cost or Pricing Data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(b) Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(NOTE: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the contractor. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

§ 14H–70.632 Subcontractor cost and pricing data.

The following clause should be included in all contracts, when the subcontracts of the type and size described herein are contemplated.

SUBCONTRACTOR COST AND PRICING DATA

(a) The contractor shall require subcontractors hereunder to submit in writing cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursed type, time and material, labor-hour, incentive, or price redeterminable subcontract the price of which is expected to exceed $100,000; and

(2) Prior to the award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (a) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The contractor shall insert the substance of this clause including this paragraph (c) in each of his cost-reimbursement type, time and material, labor-hour, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder which exceed $100,000 unless the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder which exceed $100,000, the contractor shall insert the substance of the following clause:

SUBCONTRACTOR COST AND PRICING DATA—PRICE ADJUSTMENTS

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000. The requirements of this clause shall be limited to such price adjustments.

(b) The contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursement type, time and material, labor-hour, incentive, or price redeterminable subcontract, the price of which is expected to exceed $100,000; and—

(2) Prior to award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The contractor shall require subcontractors to certify, in substantially the same form as that used in the Certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (b) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modification.

(d) The contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000.

§ 14H–70.633 Buy American Act.

BUY AMERICAN ACT

(a) The Buy American Act (41 U.S.C. 10a–d) requires, with certain exceptions, that in the procurement of supplies and services only domestic source end products shall be acquired for public use.

(b) The provisions of Part 1–6 of the Federal Procurement Regulations (41 CFR 1–6) deals with the Buy American Act and its application to Government contracts.

(c) The provisions of Part 1–6 of the Federal Procurement Regulations (41 CFR 1–6) are applicable to this contract and any subcontracts entered into under the contract. Questions concerning the Buy American Act and its applicability in specific circumstances should be directed to the contracting officer.

§ 14H–70.634 Anti-Kickback Act.

ANTI-KICKBACK ACT

(a) Pub. L. 86–695, September 2, 1960 (41 U.S.C. 51–54) among other things, prohibits the payment, directly or indirectly, by or on behalf of a subcontractor in any tier under any Government negotiated contract of any fee, gift, or gratuity to the prime contractor or any higher tier subcontractor or any officer, agent, partner or employee thereof, as an inducement or acknowledgement for the award of a subcontract or order.

(b) The provisions of Pub. L. 86–695, are set forth in more detail in § 1–1.320 of the Federal Procurement Regulations (41 CFR 1–1) and are applicable to this contract and any subcontracts entered into under the contract.

§ 14H–70.635 Privacy Act requirements.

PRIVACY ACT REQUIREMENTS

The contractor agrees to comply with all the requirements and provisions of Subpart D of 43 CFR Part 2 which implements the Privacy Act (5 U.S.C. § 552a).

§ 14H–70.636 Rights in data.

RIGHTS IN DATA

(a) *Subject data.* As used in this clause, the term "Subject Data" means writings, sound recordings, pictorial reproductions, drawings, designs or other graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and words of any similar nature (whether or not copyrighted or copyrightable) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

(b) *Government rights.* Subject only to the provision of (c) below, the Government may use, duplicate or disclose for government purposes, all subject data delivered under this contract.

(c) *License to copyrighted data.* In addition to the Government rights as provided in (b) above, with respect to any Subject Data which may be copyrighted the Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive and irrevocable license to use, or duplicate such data for government purposes: Provided, that such license shall be only to the extent that the Contractor now has, or prior to completion of final settlement of this contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(d) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Marking and identification.* The contractor shall mark all Subject Data with the number of this contract and the name and address of the contractor or subcontractor who generated the data. The contractor shall not affix any restrictive markings upon any Subject Data, and if such markings are affixed, the Government shall have the right at any time to modify, remove, obliterate, or ignore any such markings.

(f) *Subcontractor data.* Whenever any Subject Data is to be obtained from a subcontractor under this contract, the contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's rights in that subcontractor Subject Data.

(g) *Deferred ordering and delivery of data.* The Government shall have the right to order, at any time during the performance of this contract, or within 2 years from either acceptance of all items (other than data) to be delivered under this contract or termination of this contract, whichever is later, any Subject Data and any data not called for in the schedule of this contract but generated in performance of the contract, and the contractor shall promptly prepare and deliver such data as is ordered. If the principal investigator is no longer associated with the contractor, the contractor shall exercise its best efforts to prepare and deliver such data as is ordered. The Government's right to use data delivered pursuant to this paragraph (g) shall be the same as the rights in Subject Data as provided in (b) above. The contractor shall be relieved of the obligation to furnish data pertaining to an item obtained from a subcontractor upon the expiration of 2 years from the date he accepts such items. When data, other than Subject Data, is delivered pursuant to this paragraph (g), payment shall be made, by equitable adjustment or otherwise, for converting the data into the prescribed form, reproducing it or preparing it for delivery.

§ 14H–70.637 Printing.

PRINTING

Unless otherwise specified in this contract, the contractor shall not engage in, nor subcontract for, any printing (as that term is defined in title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract: Provided, however, That performance of a requirement under this contract involving the reproduction of less than 5,000 production units of any one page or less than 25,000 production units in the aggregate of multiple pages, will not be deemed to be printing. A production unit is defined as one sheet, size 8 by 10½ inches, one side only, one color.

§ 14H–70.638 Cancellation for cause.

CANCELLATION FOR CAUSE

This contract may be cancelled for cause under the conditions and in accordance with the procedures set forth in 25 CFR 271.75.

Subpart 14H–70.7—Cancellation or Reassumption of Contracts

§ 14H–70.701 General.

(a) Contracts pursuant to the Act may only be cancelled or reassumed under the conditions set forth in 25 CFR 271 as follows:

(1) Retrocession (25 CFR 271.71)

(2) Reassumption (25 CFR 271.74)

(3) Cancellation for cause (25 CFR 271.76)

(b) The clauses to be included in contracts covering the above situations are found in Subpart 14H–70.6 of this Part.

§ 14H–70.702 Settlement of cancelled contracts.

The settlement of any contracts cancelled or reassumed for the reasons set forth in § 14H–70.701 shall be as mutually agreed to by the Bureau and the contractor. If mutual agreement cannot be reached, the principles set forth in Subpart 1–8.6 of this title shall be used to arrive at the settlement.

Subpart 14H–70.8—Bonds and Insurance

§ 14H–70.801 Scope of subpart.

This subpart deals with the requirement for tribal organizations to furnish bid guarantees, performance bonds and payment bonds on contracts for construction.

§ 14H–70.802 Policy on use of bid guarantees.

Bid guarantee will not be required in connection with construction contracts negotiated with an Indian tribe or an Indian organization serving as a governmental instrumentality of an of an Indian tribe; *Provided that* such tribe or tribal organization shall require any potential subcontractor to furnish a bid guarantee in the amount and manner set forth in § 1–10.104–1 of this title.

§ 14H–70.803 Performance bonds.

(a) Performance bonds will not be required from an Indian tribe or Indian organization serving as a governmental instrumentality or an Indian tribe; *Provided that* such tribe or tribal organization shall require any subcontractor performing work under the contract to provide a performance bond in the amount and manner set forth in § 1–10.104–1 of this title.

(b) The clause to be included in construction contracts with Indian tribes and Indian organizations relative to performance bonds is set forth in § 14H–70.621.

§ 14H–70.804 Payment bonds.

(a) Payment bonds will not be required from an Indian tribe or Indian organization serving as a governmental instrumentality of an Indian tribe: However, such tribe or tribal organization shall require any subcontractor performing work under the contract to provide a payment bond in the amount and manner set forth in § 1–10.105–1 of this title.

(b) The clause to be included in construction contracts with Indian tribes and Indian organizations relative to payment bonds is set forth in § 14H–70.621.

§ 14H–70.805 Liability insurance.

(a) This section prescribes policies and procedures with respect to the furnishing of liability insurance by Indian contractors in accordance with 25 CFR 271.45.

(b) Contracting offices shall assure themselves that all contracts with tribal organizations provide for the tribal orga-

nization to obtain general liability insurance and motor vehicle insurance. Each such contract shall further provide that the insurance carrier must be satisfactory to the contracting officer and that the contractor shall forward to the contracting officer a copy of the certificate of insurance as soon as such certificate is received from the insurance carrier.

§ 14H–70.806 Insurance coverage.

(a) The insurance provided by the contractor shall provide coverage to the contractor, the United States, their agents, and their employees within minimum amounts that are at least comparable to the minimum insurance coverage carried by other organizations in the same general area performing similar activities.

(b) The insurance shall provide for a waiver by the insurance carrier of any right it may have to raise as a defense the tribe's sovereign immunity from suit when a claim is within the limits of the policy. Further, the insurance shall not empower the insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

§ 14H–70.807 Exceptions.

(a) In those cases where the contracting officer determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk, he may exempt such contracts from the requirements of this Subpart.

(b) Some of the factors which the contracting officer shall consider in determining the magnitude of the risk involved are:

(1) The nature of the program contracted for.

(2) The number of persons involved in performing the contract.

(3) The contract period.

(4) The number of persons likely to come in contact with or be affected by the performance of the contract.

(5) The nature and value of any property which might be affected by the contract.

§ 14H–70.808 Motor vehicle insurance.

Notwithstanding the provisions of § 14H–70.807, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the tribal contractors to provide motor vehicle insurance, regardless of how small the risk may seem.

§ 14H–70.809 Indemnity and insurance clause.

The clause contained in § 14H–70.611 shall be included in all contracts with tribal contractors, unless the contracting officer determines that an exemption is warranted under § 14H–70.807. The limits of liability prescribed in the clause may be modified by the contracting officer when he determines such action is warranted.

Subpart 14H–70.9—Labor

§ 14H–70.901 Labor standards in construction contracts.

The provisions of Subpart 1–12.4 of this title are applicable to construction contracts entered into pursuant to the Act, except when the contractor is the recognized governing body of an Indian tribe or a non-profit Indian organization serving as a governmental instrumentality of an Indian tribe.

§ 14H–70.902 Labor standards in subcontracts.

Subcontracts shall include and subcontractors shall comply with the provisions of Part 1–12 of the Federal Procurement Regulations (41 CFR 1–12) to the extent that the provisions are applicable to the subcontract requirements. Questions concerning the applicability of the provisions of Part 1–12 of the Federal Procurement Regulations should be addressed to the contracting officer.

Subpart 14H–70.10—Contract Cost Principles and Procedures

§ 14H–70.1001 Principles for determining costs.

The principles for determining costs applicable to contracts under the Act are contained in Appendix A to 25 CFR 276.

§ 14H–70.1002 Predetermined fixed rates.

(a) Indirect cost or overhead rates may be negotiated annually where cost experience, reliable accounting data and other pertinent facts are available to support the projection of allowable costs for the period covered by the contract or grant. Negotiated rates shall not result in an amount which will exceed actual costs.

(b) Where cost experience and accounting data are not available to support a negotiated rate and where the estimated amount of the contract is less than $10,000, a lump sum overhead amount may be negotiated. Such an amount will be based on reasonable projection of estimated costs to be incurred by the tribal organization and shall take into consideration all costs which can be applied as direct costs, and shall not exceed 10 percent of the direct labor costs.

§ 14H–70.1003 Procedures.

(a) When a tribal organization desires overhead rates to be established and where no other Federal agency has established a rate nor will be expected to do so, the tribal organization may request through the contracting officer that a rate be established. The request shall be supported by, as a minimum:

(1) A schedule of common costs which cannot be feasibly charged as direct costs of a program and are costs benefiting more than one program.

(2) The nature and extent of services provided and their relevance to the specific program.

(3) Methods and manner of distribution of costs.

(4) Total business of all programs to which indirect costs will be distributed.

(b) The contracting officer shall, after review and if indicated, further consultations with the tribal organization, forward the request to the Department of Interior, Office of Audit and Investigation, for review and audit as determined necessary. In the event a rate is approved without audit, the contract shall contain a clause to the effect that upon audit the rate may be changed retroactively to the beginning of the contract period.

(c) An audit by the Department's Office of Audit and Investigation will not be required prior to contract award and overhead rates may be approved by the Contracting Officer when:

(1) The amount of the contract is less than $100,000.

(2) The contract is not the initial contract with the particular tribal organization, an overhead rate was previously established, and the overhead rate currently requested does not exceed that previously established one by more than one percentage point.

(3) Current overhead rates have been established by another Federal agency.

Subpart 14H–70.11—Procurement Forms

§ 14H–70.1101 Applicability of standard forms.

The standard forms prescribed in Part 1–16 of this title may be used in connection with contracts entered into pursuant to the Act when applicable and may be modified when deemed necessary. However, standard forms other than SF 147 that contain clauses not prescribed by this Part 14H–70 shall not be used.

Subpart 14H–70.12—Procurement of Construction

§ 14H–70.1201 Scope of subpart.

This subpart sets forth procedures and requirements peculiar to construction contracts. The terms and conditions of construction contracts when negotiated with an Indian organization pursuant to the Act shall to the extent applicable be in accordance with the requirements set forth in Part 1–18 of this title. However, if there is a conflict between Part 1–18 of this title and any provision of the Act or 25 CFR 271, the Act or 25 CFR 271 shall govern.

§ 14H–70.1202 Exceptions.

(a) Subpart 1–18.10 of this title is not applicable.

(b) The contract clauses required by § 1–18.703–1 of this title shall be inserted in construction contracts with an Indian tribe or an Indian organization which serves as a governmental instrumentality of an Indian tribe, but shall be prefaced by the provision contained in § 1–18.703–2 of this title.

(c) In all cases, the contracting officer shall obtain and insert the Wage Determination Decision issued by the Secretary of Labor in the contract prior to award of any contract for construction that falls within the purview of the Davis-Bacon Act. The Wage Determina-

tion Decision should be furnished sufficiently in advance of the contract award date to permit full consideration by the tribal organization and any prospective subcontractors prior to contract award.

Subpart 14H–70.13—Retention Requirements for Contractor and Subcontractor Records

§ 14H–70.1301 General.

The record retention requirements in Subpart 1–20.2 and Subpart 1–20.3 of this title are applicable to contracts under the Act.

Subpart 14H–70.14—Contract Financing

§ 14H–70.1401 General.

This subpart sets forth the methods of making payments to tribal organizations performing contracts under the Act.

§ 14H–70.1402 Reimbursement.

This method will be used when a tribal organization does not request an advance payment. Payment will be made on receipt of a SF–1034 or other approved invoice form supported by documentation required by the contract after completion of the contract or such portions thereof as provided in the contract for partial payments.

§ 14H–70.1403 Advance payments by Treasury check.

(a) At the request of a tribal contractor, and subject to the conditions hereinafter set forth, and Chapter 2000 of the Treasury Fiscal Requirements Manual as modified or supplemented, the Government will make advance payments to tribal organizations as prescribed in 25 CFR 271.41.

(b) Any request for advance payment by a tribal contractor shall specify the amount(s) required and the dates such advance(s) will be required and shall be supported by a schedule of estimated expenditures.

(c) An initial advance will be limited to the amount of estimated expenditures for a period of time required to effect payment, based on experience in the locality. The initial advance may be made in amounts at times determined suitable to satisfy the minimum essential needs of the contractor.

(d) Subsequent advances may be made at times and in amounts determined necessary to insure availability of funds for timely payment of the contractor's obligations and to minimize the time between withdrawal from the Treasury and expenditure. Requests for advances subsequent to an initial advance shall be accompanied and supported by a report of expenditures to date and the amount of funds on hand.

§ 14H–70.1404 Advance payments when special bank account required.

(a) Contracts authorizing the making of advance payments shall, except as provided in 25 CFR 271.41(a)(2)(i), require that the check be mailed to a bank to be deposited in a special bank account in the name of the contractor. No part of the funds deposited in the special bank account shall be mingled with other funds of the contractor prior to withdrawal to meet obligations accruing under the contract.

(b) For all advance payments requiring the use of a special bank account, the form of Agreement for Special Bank Account prescribed in § 14H–70.1410 shall be used.

(c) All contracts requiring the use of a special bank account shall contain the contract clause prescribed in § 14H–70.612(b).

§ 14H–70.1405 Letter of credit.

When a contract authorizes advance payments totaling $120,000 or more and the contract period is one year or more, advance payments will normally be made by Letter of Credit in accordance with the policies and procedures contained in Treasury Fiscal Requirements Manual, Chapter 2000, as modified or supplemented.

§ 14H–70.1406 Approval of advance payments.

(a) Area Directors may approve advance payments which do not exceed $250,000. When the contract term is for more than one year, Area Directors may approve advance payments which do not exceed $250,000 each succeeding year of the contract.

(b) Requests for advance payments exceeding $250,000 in the aggregate for the term of the contract, or one year if a multi-year contract, shall be forwarded to the Commissioner of Indian Affairs by Area Director for submission to the Department in accordance with § 14–30.406 of this title.

§ 14H–70.1407 Sub-advances.

Sub-advances may be made when predetermined as a part of a contracted program or when specifically authorized in writing by the contracting officer. Sub-advances will not be made to individuals except for approved travel and in such cases shall not exceed the minimum required for one trip and shall be settled by voucher or repayment within 30 days.

§ 14H–70.1408 Interest.

(a) Contractors shall not be held accountable for interest earned on funds advanced pending disbursement. However, it is required that bank balances be maintained at the minimum level consistent with program requirements, and requests for advances shall be reviewed to insure that excess funds are not advanced.

(b) Contractors shall not be charged interest by the Bureau for funds advanced under contracts entered into pursuant to the Act.

§ 14H–70.1409 Automatic advances.

When periodic payments under a contract will be essentially uniform and predictable, automatic advance payments may be authorized by the contracting officer to avoid delay inherent in payments based on formal request by the contractor. In such cases, reports of expenditures will be required and payments will be adjusted as necessary to prevent withdrawal of funds over and above that needed for efficient operation, and to insure adequate funds for timely settlement of the contractor's obligations. Adjustments to automatic advances shall be made after consultation with the contractor.

§ 14H–70.1410 Agreement for special bank account.

(a) In all instances where deposit of an advance payment in a special bank account is required, the following form of agreement will be used:

AGREEMENT FOR SPECIAL BANK ACCOUNT

(1) This agreement entered into between the United States of America, hereinafter called the "Government," contractor, and Bank, each represented by the officials executing this agreement.

(2) The Government and the contractor entered into the contract(s) or Supplemental Agreement(s) thereto, providing for the making of advance payment(s) to the contractor. Copy of the advance payment clause included in the contract is attached to and made a part of this agreement.

(i) The advance payment clause requires that amounts advanced to the contractor be deposited in a Special Bank Account at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U.S.C. 264), separate from the contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(ii) This Special Bank Account shall be designated as indicated in paragraph (7) of this agreement.

(3) In consideration of the foregoing, and for other good and valuable considerations, it is agreed that:

(i) The Government shall have a lien upon the credit balance in said account to secure the repayment of all advance payments made to the contractor, which lien shall be superior to any lien or claim of the bank with respect to such account.

(ii) The Bank will be bound by the provisions of the advance payment clause relating to the deposit in and withdrawal of funds from the Special Bank Account, but shall not be responsible for the use of funds withdrawn from said account. Upon receipt by the Bank of written directions of any kind from the contracting officer, or from the duly authorized representative of the contracting office, pertaining to the use of the funds in the Special Bank Account upon Department of the Interior, Bureau of Indian Affairs stationery and purporting to be signed by the contracting officer or the contracting officer's authorized representative, the Bank shall act thereon and insofar as the rights, duties, and liabilities of the Bank are concerned, the written directions shall be conclusively deemed to have been properly issued and filed with the Bank by the Department of the Interior, Bureau of Indian Affairs.

(iii) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to the Special Bank Account at all reasonable times and for all reasonable purposes, including (but without limiting the generality thereof) the inspection or copying of such books and records and any and all memoranda, checks, correspondence or documents appertaining thereto. Such books and records shall be preserved by the Bank for a period of six (6) years after the closing of the Special Bank Account.

(4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the

Bank will promptly notify the contracting officer.

(5) The Bank, contractor, and Government by executing this agreement are bound by all of the provisions contained in the advance payment clause attached which is made a part of the contract.

(6) The contract number and purpose of the Contract(s) or supplemental agreement(s) referred to above are as follows:

---

(7) The Special Bank Account shall be designated as SPECIAL BANK ACCOUNT NUMBER ____ Bureau of Indian Affairs. IN WITNESS WHEREOF, The parties hereto have caused this agreement to be executed as of the date and year written below:

Date _____, 19__.
CONTRACTOR
Name: _____
_____
Name and title of representative: _____
_____
Complete mailing address: _____
_____
_____
BANK
Name: _____
_____
Name and title of representative: _____
_____
Complete mailing address: _____
_____
_____
UNITED STATES OF AMERICA DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs: _____
_____
Complete Mailing Address: _____
_____
_____
Name and Title of Contracting Officer: _____
_____
_____

(b) The following instructions apply to the form of agreement shown in paragraph (a) of this section:

(1) Under paragraph (6) of the agreement, state the contract number and describe the purpose of the contract in brief but sufficient detail to convey a general understanding of its nature. If the contract uses a descriptive title to designate its purpose, that description should be used.

(2) Insert, in the blank space in paragraph (7) of the agreement, the number assigned by the Bank as the Account Number for the "Special Bank Account."

(3) The agreement should be dated on the date it is signed by the contracting officer.

(4) The complete mailing address of the Bank is necessary as the advance payment check and all progress payment checks will be mailed to the Bank. The zip code is required.

(5) The contracting officer should not sign the agreement until authority to make the advance payment has been obtained.

(c) The following is the form of modification of an agreement for a special bank account for advance payments:

AGREEMENT FOR SPECIAL BANK ACCOUNT

Modification Number _____

(1) The Agreement for Special Bank Account dated _____, 19__, is modified as follows:

(2) The contract number and the purpose of the contract is as follows: _____
_____
_____
_____
_____

(4) The Special Bank Account number is indicated as follows: _____
_____

IN WITNESS WHEREOF, the parties hereto have caused this modification to be executed as of the date and year written below:

Date _____, 19__
Name of contractor
_____
Signature
By _____
Name and title of contractor's representative:
_____
_____
_____
Name of bank
_____
Signature
By _____
Name and title of bank's representative:
_____
_____
_____

Subpart 14H–70.15—Novation and Change of Name Agreements

§ 14H–70.1501 General.

The provisions of Subpart 1–26.4 of this title are applicable to contracts under the Act.

Subpart 14H–70.16—Procurement Reports

§ 14H–70.1601 General.

This subpart sets forth the requirements for reporting procurement actions under the Act.

§ 14H–70.1602 Standard Form 37, Report on Procurement by Civilian Executive Agencies.

Procurements under the Act shall be reported on SF–37, in accordance with § 1–16.804–3 and § 14–16.804–3 of this title. However, the number and dollar amount of such procurements shall be entered in the "remarks" section of SF–37, and shall be clearly identified as having been entered into with tribal organizations pursuant to the Act.

[FR Doc.75–29302 Filed 11–3–75;8:45 am]

federal register

TUESDAY, NOVEMBER 4, 1975



PART III:

FEDERAL ELECTION COMMISSION

■

FEDERAL CAMPAIGN FUNDS

Public Financing of Conventions and Advisory Opinions and Requests

FEDERAL ELECTION COMMISSION

[11 CFR Parts 120, 121, 122, 123, 124]

[Notice 1975-68]

FEDERAL CAMPAIGN FUNDS

Public Financing of Conventions Regulation

The Federal Election Commission today publishes proposed regulations covering Public Financing of Conventions, 26 U.S.C. 9008.

Comment period. Interested parties are invited to submit written comments on these proposed regulations to the Rulemaking Section, Office of the General Counsel, Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463. Comments should be received on or before December 4, 1975.

Hearings. The schedule for public hearings on the proposed regulation will be published in the near future.

Effective date. These regulations shall become effective on a date specified in a future notice published in the FEDERAL REGISTER, which effective date shall not be less than 30 calendar days after the date of this notice of proposed rulemaking, nor before approval by the United States Congress.

PART 120—GENERAL PROVISIONS

Sec.
120.1 Scope.
120.2 Definitions.

AUTHORITY: 26 U.S.C. 9008.

§ 120.1 Scope.

(a) This part interprets 26 U.S.C. 9008, which authorizes the Federal Election Commission to certify to the Secretary of the Treasury for payments of the amounts to which the national committee or any major or minor party is entitled under 26 U.S.C. 9008 with respect to a presidential nominating convention, but the entitlement of each major party may not exceed the aggregate amount of $2,000,000.

(b) Under 26 U.S.C. 9008(b) the national committees of both major and minor parties are entitled to payments from public funds to defray expenses which they have incurred with respect to a presidential nominating convention. For a minor party to be entitled to its proportionate share of public funds for convention expenses, its presidential candidate in the last election must have received (as the presidential candidate of that party) at least 5 percent of the total popular vote received by all presidential candidates in such election.

§ 120.2 Definitions.

The following definitions shall apply for the purposes of Parts 120–129.

(a) "Commission" means the Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463, telephone (202) 382-5162.

(b) "Fund" means the Presidential Election Campaign Fund established by 26 U.S.C. 9006(a).

(c) "Major party" means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.

(d) "Minor party" means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office.

PART 121—PAYMENT PROCEDURE FOR PRESIDENTIAL NOMINATING CONVENTIONS

Sec.
121.1 Information required to qualify for public funds.
121.2 Commission review.
121.3 Payment schedule.

AUTHORITY: 26 U.S.C. 9008.

§ 121.1 Information required to qualify for public funds.

(a) To qualify for public financing of their conventions, the national committees of the major and minor parties shall file an application statement containing the information in paragraph (c) of this section with the Federal Election Commission.

(b) Such statement shall be filed no earlier than June 1 of the calendar year preceding the year in which a presidential nominating convention of a political party is held.

(c) The application statement shall include:

(1) The name and address of the national committee;

(2) The name and address of the convention arrangements committee of the national committee or such similar committee in charge of the national convention;

(3) The name, address, and position of the officers and members of the convention arrangements committee;

(4) The name, address, and position of the party officials designated by the national committee to sign requests for payment;

(5) The name and address of the commercial bank to be used as the convention arrangement's committee depository;

(6) Signature cards, available from the Commission, signed by the designated party officials authorized to request payments;

(d) Any change in the information required by paragraph (c) of this section shall be reported to the Commission within a 10-day period following the change.

§ 121.2 Commission review.

Upon receipt of the application statement filed under § 121.1, the Commission shall within 30 days verify such statement and notify the Secretary of the Treasury to make available for payment the amount that such committee is eligible to receive under Part 122 of this chapter.

§ 121.3 Payment schedule.

After a national committee has qualified for funds, payments will be disbursed upon the receipt of a payment request in installments in the manner specified in paragraphs (a)-(e) of this section.

(a) *Initial payment.* (1) A written request for an initial payment shall

(i) Be signed by the authorized individual(s) whose name appears on the signature card;

(ii) Specify an amount to be received, not to exceed 30 percent of the aggregate amount to which the committee is entitled under Part 122 of this chapter;

(iii) Specify one or more accounts established solely for the purpose of depositing therein and drawing therefrom all public funds received for convention financing, or certify that such account(s) will be established;

(iv) Specify one or more accounts established solely for the purpose of depositing therein and drawing therefrom all private contributions earmarked to defray nonqualified convention expenses, or certify that such account(s) will be established if the national committee decides to receive such contributions; except that a minor party may, in addition, use such accounts for private contributions earmarked to defray qualified convention expenses; and

(v) Be supported by a statement projecting and describing estimated qualified convention expenses and those already incurred, if any, through and including December 31 of the current calendar year, except that projected expenditure categories need not be itemized in specific dollar figures.

(2) A request for an initial payment may be submitted to the Commission simultaneously with the application statement required under § 121.1 or at any time thereafter. A properly submitted payment request shall be reviewed and certified by the Commission to the Secretary for payment not later than 5 working days after being received by the Commission, or July 1 of the calendar year preceding the calendar year of the convention, whichever is later.

(b) *Quarterly payment requests.* (1) Requests for disbursements after the national committee has qualified and received its initial disbursement shall be submitted quarterly commencing with January 1 of the year in which the convention will be held.

(2) Such written requests shall

(i) Be signed by the authorized individual(s);

(ii) Be accompanied by a statement of projected qualified convention expenses estimated through the close of the quarterly period, except that no specific dollar figure need be assigned to the various expenditure categories; and

(iii) Specify an amount to be received which shall reflect the amount of such projected expenses.

(c) *Special certification for accelerated payment schedule.* The Commission may certify more than one disbursement per quarter where a showing is made that a deficit is likely to be incurred unless a further disbursement is

made. Any payment request for such further disbursement should be supported by a summary of actual qualified convention expenses previously incurred for the quarter, together with the projected qualified convention expenses which will occasion the deficit if a further disbursement is not forthcoming.

(d) *Amount of disbursement.* Each disbursement certification to the Secretary will be based upon the qualified convention expenses projected for the requesting period, subject to any deductions as the Commission may determine under paragraph (e) of this section and § 124.1 (f) of this chapter.

(e) *Post-convention disbursements.* (1) Notwithstanding the payment request for the last quarter preceding the convention, the Commission may in its discretion certify to the Secretary for payment an amount less than the amount requested, but in no case may the amount of such adjustment downward exceed 10 percent of the initial entitlement in that party's account.

(2) Funds withheld under this subsection, if any, shall be disbursed after the convention upon the proper submission of a post-convention payment request accompanied by the convention financing report required under § 109.3(a) of this chapter.

(3) Post-convention payments shall be subject to audit by the Commission and a deduction computed under § 124.1 (f) of this chapter in addition to other requirements imposed by law.

PART 122—ENTITLEMENT TO AND DISPOSITION OF PAYMENTS FROM THE FUND

Sec.
122.1 Major parties.
122.2 Minor parties.
122.3 Adjustment of entitlements.
122.4 Use of funds.
122.5 Investment of funds.

AUTHORITY: 26 U.S.C. 9008

§ 122.1 Major parties.

Subject to the provisions of this part, the national committee of a major party shall be entitled to receive payments under § 121.3 of this Chapter, with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed $2 million.

§ 122.2 Minor parties.

Subject to the provisions of this part, the national committee of a minor party shall be entitled to payments under § 121.3 of this Chapter, with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed an amount which bears the same ratio to the amount the national committee of a major party is entitled to receive under § 122.1, as the number of popular votes received by the candidate for President of the minor party, as such candidate, in the preceding presidential election bears to the average number of popular votes received by the candidates for President of the United States of the major parties in the preceding presidential election.

§ 122.3 Adjustment of entitlements.

The entitlements established by this part shall be adjusted in the same manner as expenditure limitations established by section 608(c) and section 608(f) of Title 18, United States Code, are adjusted pursuant to the provisions of section 608 (d) of such title.

§ 122.4 Use of funds.

Any payment made under § 121.3 of this chapter shall be used only;

(a) To defray qualified convention expenses, or

(b) To repay loans the proceeds of which were used to defray qualified convention expenses, or

(c) To restore funds (other than contributions received by such committee which were earmarked to defray qualified convention expenses) used to defray qualified convention expenses.

§ 122.5 Investment of funds.

Any investment of public funds or their use in any other way which generates income is permissible only if the income so generated is used for the purposes described in § 122.4, and such income will be applied against the national committee's entitlement.

PART 123—LIMITATION OF EXPENDITURES

Sec.
123.1 Major Parties.
123.2 Minor Parties.
123.3 Exception.

AUTHORITY: 26 U.S.C. 9008.

§ 123.1 Major parties.

Except as provided by § 123.3, the national committee of a major party may not incur qualified convention expenses with respect to a presidential nominating convention which, in the aggregate, exceed the amount of payments to which such committee is entitled under § 122.1, whether or not the national committee elects to receive any of its entitled funds.

§ 123.2 Minor parties.

Except as provided by § 123.3 the national committee of a minor party may not incur qualified convention expenses with respect to a presidential nominating convention which, in the aggregate, exceed the amount of the entitlement of the national committee of a major party under § 121.6 of this chapter, whether or not the national committee elects to receive any of its entitled funds.

§ 123.3 Exception.

The Commission may authorize the national committee of a major party or minor party to make expenditures for qualified convention expenses which, in the aggregate, exceed the limitation established by § 123.1 or § 123.2. Such authorization shall be based upon a determination by the Commission that, due to extraordinary and unforeseen circumstances, such expenditures are necessary to assure the effective operation of the presidential nominating convention by such committee. In no case, however, will such authorization entitle the national committees to receive public funds greater than the amount the national committees are entitled to under § 122.1 or § 122.2 of this chapter.

PART 124—POST-DISBURSEMENT PROCEDURES

Sec.
124.1 Repayments.
124.2 Notification of need for repayments.
124.3 Examination and audits.

AUTHORITY: 26 U.S.C. 9008.

§ 124.1 Repayments.

(a) If the Commission determines that any portion of the payments to the national committees under § 121.3 of this chapter was in excess of the aggregate payments to which the national committees were entitled, it shall so notify such national committees and such national committees shall pay to the Secretary an amount equal to such portion.

(b) If the Commission determines that the national committees incurred qualified convention expenses in excess of the aggregate payments to which the national committee of a major party was entitled, it shall notify such national committees of the amount of such excess and such national committees shall pay to the Secretary an amount equal to such amount.

(c) If the Commission determines that the national committee of a major party accepted contributions earmarked to defray qualified convention expenses (other than to defray the excess qualifed convention expenses with respect to which repayment is already required under paragraph (b) of this section or to meet the exception in § 123.3 of this chapter), it shall notify such national committees of the amount of the contributions so accepted, and such national committees shall pay to the Secretary an amount equal to such amount.

(d) If the Commission determines that any amount of any payment to the national committees under § 121.3 of this chapter was used for any purpose other than—

(1) To defray the qualified convention expenses with respect to which such payment was made; or

(2) To repay loans the proceeds of which were used to defray qualified convention expenses, or otherwise to restore funds (other than contributions received by such national committee which were earmarked to defray such expenses used to defray such qualified convention expenses.

It shall notify such national committees of the amount so used, and such national committees shall pay to the Secretary an amount equal to such amount.

(e) No repayment shall be required from the national committees under this section, when added to other repayments required from such national committees

under this section, exceeds the amount of payments received by such national committees under § 121.3 of this chapter.

(f) Subject to § 124.2, the Commission may obtain such repayment by authorizing the Secretary of the Treasury to deduct the repayable amount determined under paragraphs (a)–(e) of this section from the amount otherwise due the national committee for its next payment. All other repayments shall be made payable to the Secretary of the Treasury.

§ 124.2 Notification of need for repayment.

(a) If the Commission determines that repayment is required under § 124.1, it shall give written notification to the affected national committee of the amounts required to be paid and the reasons thereof.

(b) No notification shall be made by the Commission under this section more than 3 years after the last day of the presidential nominating convention.

§ 124.3 Examinations and audits.

The Commission may conduct such examinations and audits as it deems necessary in order to determine whether a repayment is required from the national committee.

Dated: October 24, 1975.

JOAN D. AIKENS,
Commissioner,
Federal Election Commission.

[FR Doc.75-29227 Filed 11-3-75;8:45 am]

FEDERAL ELECTION COMMISSION

[Notice 1975–66]

ADVISORY OPINIONS

The Federal Election Commission announces the publication today of Advisory Opinions 1975–26 thru 30 and 1975–74. The Commission's opinions are in response to questions raised by individuals holding Federal office, candidates for Federal office and political committees, with respect to whether any specific transaction or activity by such individual, candidate, or political committee would constitute a violation of the Federal Election Campaign Act of 1971, as amended, of Chapter 95 or Chapter 96 of Title 26 United States Code, or of sections 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18 United States Code.

Immediately following Advisory Opinion 1975–27 is the joint dissenting opinion of Commissioners Aikens and Tiernan who voted against the adoption of Advisory Opinion 1975–27.

The Commission points out that these advisory opinions should be regarded as interim rulings which are subject to modification by future Commission regulations of general applicability. In the event that a holding in either opinion is altered by the Commission's regulations, the persons to whom the opinions were issued will be notified.

ADVISORY OPINION 1975–26

CONTRIBUTION LIMITATIONS AS APPLIED TO EXCESS SENATORIAL CAMPAIGN FUNDS DEPOSITED WITH NATIONAL REPUBLICAN SENATORIAL COMMITTEE

This advisory opinion is issued under 2 U.S.C. 437f in response to a request submitted by the National Republican Senatorial Committee (NRSC) which was published as AOR 1975–26 in the August 20, 1975, FEDERAL REGISTER (40 FR 36532). Interested parties were given an opportunity to submit written comments relating to the request.

The NRSC in a letter from its chairman, Senator Ted Stevens, has requested a determination as to the applicability of the Federal Election Campaign Act Amendments of 1974 to the following factual situation.

In 1972, former Delaware Senator J. Caleb Boggs transferred $11,402 in leftover funds from his own campaign to NRSC with the request that the funds be held by NRSC for the use of the 1976 Republican Senatorial candidate from Delaware. In January 1973 NRSC acknowledged receipt of the funds and continues to regard them as earmarked for the Republican Senate candidate from Delaware pursuant to Mr. Boggs' instructions.

The specific issue raised is whether the contribution limitations established in 18 U.S.C. 608(b), as amended in 1974 (Pub. L. 93–443) and effective on January 1, 1975, with respect to elections occurring after that date (see AO 1975–5 and AO 1975–6 at 40 FR 31316), apply to this transaction and limit NRSC to distributing only $5,000 of the $11,402 to the Delaware Republican Senate candidate in 1976. If NRSC is not so limited a further issue is whether it may contribute an additional $5,000 to such candidate from its unearmarked funds.

In the narrow factual circumstances present in this specific case, one which may be confined to the transitional period marking the change over from the rules of the 1971 Act to those of the 1974 Amendments, the Commission is of the view that the entire $11,402 may be transferred to the Republican Senatorial candidate from Delaware who is nominated for the 1976 general election. The Commission emphasizes that the transactions underlying this request are subject to audit verification by the Commission. The Commission is further of the view that NRSC may contribute an additional sum from its general funds for the 1976 Republican Senatorial candidate from Delware subject to applicable limitations in 18 U.S.C. 608(b).

The Commission notes that when NRSC transmits these funds to the Senate candidate in 1976, it should indicate on the relevant report that the funds were earmarked for such candidate in 1973.

ADVISORY OPINION 1975–27

ATTORNEY'S OR ACCOUNTANT'S FEES AS EXPENDITURES

The Federal Election Commission renders this advisory opinion under 2 U.S.C. 437f in response to requests submitted by a candidate and a political committee. The requests were made public by the Commission and published in the FEDERAL REGISTER on August 20, 1975 (40 FR 36532). Interested parties were given an opportunity to submit comments relating to the requests.

The requesting parties seek an advisory opinion as to whether expenses incurred by a candidate or a committee for legal and accounting fees paid for the purpose of complying with the Federal Election Campaign Act of 1971, as amended, must be charged against the expenditure limitations of 18 U.S.C. 608. 18 U.S.C. 608 establishes expenditure limitations for candidates and committees with respect to any election for Federal office.

The term "expenditure" is specifically defined in 18 U.S.C. 591(f) to include and exclude certain types of transactions "made for the purpose of influencing" the nomination or election of a Federal candidate. This definition determines what transactions are subject to limit under 18 U.S.C. 608(c) and those which are not. Section 591(f)(4) enumerates several exclusions, including a fundraising exclusion up to 20 percent of the applicable spending limit. None of these exclusions, extend to amounts paid for accounting or legal services rendered to assist a Federal candidate in complying with the Act and applicable provisions in Title 18, United States Code. Expenditures for accounting or legal services are at least indirectly made to influence the election of Federal candidates since one's election is jeopardized by conduct that may violate the law. Furthermore, compliance clearly enhances one's candidacy and may with good reason be deemed to justify expenditures for the described professional services, even if the candidate must charge them against the applicable spending limit.

The Commission recognizes, however, that some disbursements to pay the described fees, while subject to disclosure, may under certain circumstances be outside the defined category of "expenditure" because they are not made for the purpose of influencing the election of a Federal candidate. For example, fees for accounting or legal services rendered in connection with preparing for or responding to formal compliance proceedings instituted against the candidate or committee by the Commission, would not be counted against the applicable spending limit. By contrast, however, accounting or legal fees paid to assure compliance generally, or to assist in a routine Commission audit, would be considered as expenditures subject to both disclosure and limitation.

This advisory opinion is issued on an interim basis pending promulgation by the Commission of rules and regulations or policy statements of general applicability.

DISSENTING OPINION OF COMMISSIONER JOAN D. AIKENS AND COMMISSIONER ROBERT O. TIERNAN TO ADVISORY OPINION 1975–27

In issuing Advisory Opinion 1975–27, the Federal Election Commission has ruled that expenses incurred by a candidate or committee for legal and accounting fees paid for the purpose of general compliance with the Federal Election Campaign Act of 1971, as amended, must be charged against the expenditure limitations of the Act, whereas such fees paid to prepare and respond to formal compliance actions will be exempted from the ceilings.

This Dissenting Opinion expresses the views of Commissioner Joan D. Aikens and Robert O. Tiernan who voted against Advisory Opinion 1975–27.

It is the view of Commissioners Aikens and Tiernan that expenditures for accounting and attorney fees which are made to assure adherence to the mandates of this complex new law at every stage of a campaign for federal office have an equal claim for an exemption from the expenditure limits of the Act, and should not merely be limited to the later point of defending against formal complaints. Early and timely preventive actions are the very essence of voluntary compliance; such efforts can easily be distinguished from political strategy and tactical advice. Good faith attempts to anticipate and meet the requirements of the Act well in advance of formal complaint actions should also be recognized and given strong encouragement and endorsement.

It should be noted that, to date, the Commission has received a significant input from numerous sources regarding this Advisory Opinion Request—all of which were unanimous in their support of the exclusion of all these expenses from the expenditure limitations.

The Chairmen of the Republican Senatorial and Democratic Senatorial Cam-

paign Committees in their comments regarding this Request stated,

> The burdens of complying with the Federal campaign laws and Commission regulations are far in excess of that anticipated by Congress when the 1974 Amendments were passed. Because of the complexity of the new law, nearly every Federal candidate will need an accountant and an attorney to strictly comply with its numerous requirements.

They went on to note, "The difficulties of compliance are particularly acute for non-incumbent challengers * * *"

The newcomer to politics, the volunteer campaign official, and the modestly funded candidate should not be dissuaded from entering the electoral arena because of difficulties in interpreting the Act; once involved in a political campaign, they should not be restrained in their actions or expressions because of uncertainty about the consequences of every deed. Expert professional legal and accounting advice is an integral part of a political campaign for federal office. This assistance should be available to every candidate, no matter whether it is used prospectively to guide a campaign within the boundaries of the Act, or subsequently to defend against formal complaints.

JOAN D. AIKENS,
Commissioner.
ROBERT O. TIERNAN,
Commissioner.

ADVISORY OPINION 1975-28

STATUS AND ACTIVITIES ALLOWED OF A POLITICAL COMMITTEE SUPPORTING A FORMER CANDIDATE FOR THE PRESIDENCY

This advisory opinion is issued pursuant to 2 U.S.C. 437f in response to a request by the Percy Committee, and published as AOR 1975-28 in the August 20, 1975, FEDERAL REGISTER (40 FR 36532). Interested parties were given an opportunity to submit written comments pertaining to the request. No comments were received.

In response to a number of requests and initiatives by friends and supporters of Senator Charles H. Percy of Illinois the Percy Committee (Committee) was established on February 9, 1973, to explore his possible candidacy for the Office of President. The Committee represents that the contributions received and expenditures made by it have been reported in accordance with the Federal Election Campaign Act of 1971. Apart from a final bill from the Committee's accountants, which has not yet been rendered, the Committe states that it is not aware of any outstanding obligations or anticipated contributions related to a possible presidential candidacy by Senator Percy in 1976. The Committee has approximately $9,000 of funds on hand, but is not and will not be soliciting additional contributions or making additional expenditures (with the exception of the bill referred to above) to pursue a possible presidential candidacy by Senator Percy in 1976. The Committee further indicates that Senator Percy is not and does not expect to be a presidential candidate for 1976.

The Percy Committee has requested an advisory opinion on several matters.

1. Will the Percy Committee cease to be a "political committee" established on behalf of a potential presidential candidate once the last expenditure related to a possible presidential candidacy has been made (which is expected to be the payment to the Percy Committee's accountant referred to above)?

The Committee must, of course, extinguish all debts and obligations relating to the possible presidential candidacy of Senator Percy before it may cease to be a political committee established on behalf of a potential presidential candidate. 2 U.S.C. 434. Since the Committee is or will be making ongoing expenditures relating to Senator Percy's other political activities, it should clearly indicate which expenditures are made to extinguish debts relating to the potential presidential candidacy. By clearly indicating the purpose of the expenditures, the Committee will prevent any confusion as to whether the expenditure should be charged against Senator Percy's senatorial expenditure limitation in 18 U.S.C. 608(c). The Commission notes that the Committee has recently filed an amended registration statement indicating that they do not intend to support a presidential candidate.

2. Since Senator Percy is expected to engage in political activity from time to time in Illinois and is also expected to seek reelection in 1978 and certain political expenses related to these activities can be expected in such regard from time to time, are the receipts and expenditures of and for the Percy Committee required to be recorded and reported in accordance with the law?

The Commission is currently in the process of preparing regulatidns regarding the allocation of expenditures incurred by an officeholder or candidate appearing on behalf of other candidates within his or her electoral district. These expenditures, as so allocated, as well as expenditures made with respect to the Senator's candidacy for reelection, will of course be charged against his expenditure limitation in 18 U.S.C. 608(c) and must be recorded and reported in accordance with 2 U.S.C. 431 et seq. It is to be noted that contributions to and expenditures made from funds established exclusively for the purposes of supporting the activity of a Federal officeholder are currently the subject of a draft Commission regulation, with respect to which there will be further public notice.

3. May the Percy Committee engage in general political fundraising and make expenditures related to Senator Percy's political activities as well as his expected reelection campaign?

As indicated, the Committee may engage in such activities but must continue to report all receipts and expenditures. Furthermore, any contribution received and expenditure made after January 1, 1975, is subject to limitation under 18 U.S.C. 608.

This advisory opinion is issued on an interim basis only pending promulgation by the Commission of rules and regulations or policy statements of general applicability.

ADVISORY OPINION 1975-29

LIMITATIONS ON CONTRIBUTIONS BY LOCAL POLITICAL PARTIES

This advisory opinion is issued pursuant to 2 U.S.C. 437f in response to a request submitted by Represenative Tom Railsback and published as AOR 1975-29 in the August 20, 1975, FEDERAL REGISTER (40 FR 36532). Interested parties were given an opportunity to submit written comments pertaining to the request. No comments were received.

Representative Railsback asks for an opinion as to the maximum contribution that a county central committee of a political party (an official subordinate organ of a State political party committee) may make to a candidate for the U.S. House of Representatives in the primary and the general elections.

There are two contribution limitations for political committees. Under 18 U.S.C. 608(b)(1), a person (including a political committee) is limited to a contribution of $1,000 per election (see 18 U.S.C. 591(a)) to a candidate for nomination or election to Federal office. Therefore, a political committee under 18 U.S.C. 608(b)(1) may contribute $1,000 with respect to the candidate's primary election and $1,000 with respect to the candidate's general election.

Contributions by a county central committee of a State political party are limited to $5,000 per candidate per election if the county committee meets the following criteria:

1. Has been registered as a political committee under 2 U.S.C. 433 for a period of 6 months;

2. Receives contributions from more than 50 donors;

3. Has contributed to 5 or more Federal candidates.

A county central committee which meets these criteria may then contribute $5,000 with respect to the Congressman's primary election and another $5,000 with respect to the general election. In the event of a run-off election, an additional contribution of $1,000 or $5,000 may be made (see definition of "election," 18 U.S.C. 591(a)).

Contributions by a county central committee must also be made without the direction or control of any other political committee or person. The conference report to the 1974 Amendments states that:

> * * * if a person exercises any direct or indirect control over the making of a contribution, then such contribution shall count toward the limitation with respect to such person * * * but it will not count toward a person's contribution limitation when it is demonstrated that such person exercised no direct or indirect control over the making of the contribution involved. (House Conference Report No. 93-1438, page 51)

Thus, if the State committee exercises control over any contribution by the county central committee, such contri-

bution will count as a contribution by the State committee. The Conference Report permits "the maximum contribution from each level of the organization if the decision or judgment to make such contributions is independently exercised within the separate levels of the organization."

In conclusion, the Commission notes parenthetically that under 18 U.S.C. 608(f)(3) a subordinate committee of a State party committee of a political party may make expenditures in connection with the general election campaign of a candidate for the House of Representatives. The total amount available for spending on behalf of a candidate for the House of Representatives by a State committee of a political party and its subordinate committees under 608(f)(3) is $10,000. Any desired allocation of this amount would be a matter for decision among the State and local committees. (See AO 1975-2, 40 FR 36092, August 18, 1975). In any event, expenditures under 608(f)(3) are not chargeable against any Federal candidate's spending limit under 18 U.S.C. 608(c).

This advisory opinion is issued on an interim basis only pending promulgation by the Commission of rules and regulations or policy statements of general applicability.

Advisory Opinion 1975-30

Use of campaign fund for newspaper subscriptions and travel expenses

This advisory opinion is rendered under 2 U.S.C. 437f in response to a request for an advisory opinion which was submitted by Congressman David R. Bowen, and published as AOR 1975-30 in the August 20, 1975, Federal Register (40 FR 36532). Interested parties were given an opportunity to submit written comments relating to the request. No comments received.

The request generally asks whether certain expenditures may be made by the principal campaign committee of a Member of Congress, under the Federal Election Campaign Act of 1971, as amended, and pertinent provisions in Title 18, United States Code. Specifically, it was asked whether a campaign fund may be used to:

(a) Purchase newspaper subscriptions; and

(b) Reimburse the Member for travel expenses incurred in connection with the Member's political appearances in his Congressional District.

The Act generally defines an expenditure both for the disclosure requirements (2 U.S.C. 431(f)) and the limitations on expenditures (18 U.S.C. 591(f)), as a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made for the purpose of influencing the nomination for election, or election of any person to Federal office. While the Act does provide that certain activities are not to be subject to the provisions providing for the reporting and limitation of expenditures (2 U.S.C. 431(f)(4) and 18 U.S.C. 591(f)(4)), the Act in no way limits the right of a candidate to make his own determination as to what expenditures should be made by his campaign. Thus any expenditure which a candidate or his principal campaign committee report as having been made for purposes of influencing a Federal election, will be treated accordingly and counted toward the approporiate limitations provided in 18 U.S.C. 608 (a) and (c).

Accordingly, it is the opinion of the Commission that expenditures may be made by a candidate or his principal campaign committee for the purpose of (a) purchasing newspaper subscriptions; (b) reimbursing a Member of Congress for travel expenses incurred in connection with the Member's political appearances in his Congressional district, and for any other purpose intended to influence a Federal election.

This advisory opinion is issued only on an interim basis pending the promulgation by the Commission of rules and regulations or policy statements of general applicability.

Advisory Opinion 1975-74

Contributions by individuals to national political parties in non-election years

This advisory opinion is rendered under 2 U.S.C. § 437f in response to a request submitted by the Republican National Committee (hereafter RNC) which was published as AOR 1975-74 in the October 1, 1975, Federal Register (40 FR 45294). Interested parties were given an opportunity to submit written comments relating to the request. No comments received.

The RNC request raises three questions as to the circumstances under which individual contributions in a non-election year must be carried over to a subsequent election year and charged against the contribution limitations applicable to that year. The three questions which, in effect, seek an interpretation of the second sentence of 18 U.S.C. 608(b)(3) will be discussed in turn.

A. The RNC asks first whether a contributor who in 1975 gives an unearmarked $25,000 contribution to the National Committee of a major political party (such as the Republican National Committee), must apply this against what the contributor may give the National Committee and/or any Federal candidate in 1976.

The Commission concludes that the answer to this question must be no.

18 U.S.C. 608(b)(3) states:

> No individual shall make contributions aggregating more than $25,000 in any calendar year. For purposes of this pargaraph, any contribution made in a year other than the calendar year in which the election is held with respect to which such contribution was made, is considered to be made during the calendar year in which such election is held.

The effect of this provision is to require that certain, non-election year contributions by an individual contributor (as discussed *infra*) must be subtracted from the $25,000 aggregate limitation applicable to the election year. The carry over or carry back effect applies to contributions in the year immediately preceding or following the election. It may in certain specific circumstances apply in other years as well.

Resolution of the question posed by the RNC necessarily turns on the meaning of the word contribution, as it is used in section 608(b)(3).

The Commission has already determined in AO 1975-4 (40 FR 29793) that the word contribution as it is defined in 18 U.S.C. 591(c) and as it is set forth in the first sentence of 608(b)(3) includes not only contributions which are earmarked[1] for furthering the election of a particular candidate(s), but in addition any contributions which are simply turned over to a political party committee for defraying party expenses generally. However, this broad definition is plainly constricted by the literal language of the second sentence of section 608(b)(3) which indicates that a contribution must be carried over or back to the year in which "the election is held" only if it is made "with respect to" that election. Since a contribution with respect to an election is tantamount to support of the candidate(s) who is running in that election, the scope of the quoted phrases from section 608(b)(3) must be narrowed to contributions which are either earmarked by the donor for the use of a particular candidate or candidates, or which the donor can reasonably expect will be earmarked by the donee committee. Other contributions are deemed to be for general party purposes and are excluded from the scope of the second sentence.

Further support for this view is found in the portion of the House-Senate Conference Report discussing the meaning of the language at issue herein. It was stated pertinently:

> any contribution to a campaign of a candidate in a year other than the calendar year in which the election to which such campaign relates is held shall be considered to be made during the calendar year in which such election is held

The Report makes it clear that the word contribution as referred to in section 608(b)(3) is intended to apply only to monies given to a campaign of a candidate—in short, it applies only to earmarked contributions.

Finally, if the word contribution, as it is set forth in the second sentence of section 608(b)(3) is construed in terms of the section 591(e) definition, the $25,000 ceiling on aggregate individual donations set forth in the first sentence of section 608(b)(3), would have to be construed in an unduly restrictive manner. Since every non-election year contribution would be subject to the carry-back/

[1] For the purposes of this advisory opinion the word "earmarked" should be construed to include any contribution directed to a particular Federal candidate by the donor or any other person (as the word is defined in 2 U.S.C. 431(h)) on his behalf. (See discussion, *infra*). Thus the term is used in a broader sense than the typical earmarking situation where a contribution is made through a conduit or intermediary to a particular Federal candidate.

carry-over effect and thus limited, this would mean that a donor could contribute up to the $25,000 ceiling annually only if the contributions were made in an election year and not in any other year. In short, there would be a chilling effect on contributions to political parties in non-election years. Surely, such a result was not intended by the framers of the statute.

It remains to be considered whether a contribution to the RNC which is not earmarked by the donor may nonetheless be construed as earmarked.

The Commission is of the view that if an unearmarked contribution is made by a donor to a political committee* which devotes the greater part of its resources to supporting a particular Federal candidate or a limited group of such candidates, then that contribution must be treated as earmarked by the donor and must be pro rated against his $1,000 per candidate contribution limit (18 U.S.C. 608(b)(1)) according to the number of candidates supported by the committee. In this situation there can be no question as to the ultimate destination of the contribution. Accordingly, regardless of the expressed wishes of the donor, his contribution must be construed as earmarked.

However, it should be noted that in the event the political committee comes within the scope of the specialized definition set forth in 18 U.S.C. 608(b)(2)—that is, "an organization registered as a political committee under Section 433, Title 2, United States Code, for a period of not less than 6 months which has received contributions from more than 50 persons and except for any State political party organization, has made contributions to 5 or more candidates for Federal office"—then all contributions to the committee will be construed as unearmarked in the absence of evidence to the contrary. An organization which meets these criteria may support a wide range of candidates and issues and thus cannot be automatically viewed as a mere conduit to the campaign(s) of a small group of Federal candidates. This does not mean that a small, multicandidate committee, which fully satisfies the criteria of 608(b)(2) can never be construed as earmarking its monies to a particular Federal candidate or candidates. However, because such cases will involve varying factual circumstances and will not be susceptible to a neat characterization, the Commission will deal with them as they arise.

With regard to the RNC—as the organization which "is responsible for the day-to-day operation of the * * * (Republican) Party at the national level" (18 U.S.C. 591(k)), it is plainly a multicandidate political committee within the meaning of the definition in 608(b). Because of the scope of the RNC's operations, the Commission assumes (unless there are facts to the contrary) that a contribution to it which is unearmarked by the donor cannot be construed as earmarked because of subsequent use. Thus an individual who donates $25,000 to the RNC in 1975 need not apply this against his 1976 aggregate spending limitation.

B. The second question raised by the RNC involves a situation where a contributor gives unearmarked monies to the RNC in 1975 and the RNC on its own initiative later contributes a sum in excess of $1,000 to a candidate which the contributor wishes to support in 1976. The question is whether the indivdual contributor is in violation of the law if he makes a further contribution to the same candidate in 1976.

The Commission concludes that the answer to the question is no.

As already noted in the discussion of the RNC's first question, an unearmarked individual contribution to a national political organization, such as the RNC, is exempt from the carry over/carry back provision of section 608(b)(3). This being true, it follows that any subsequent use of the contribution by the RNC cannot be attributed to the individual. Indeed, since all contributions are presumably commingled by the RNC it would not even be clear whether a contribution to a particular candidate could be attributed to a particular individual. A requirement that the RNC maintain records as to its use of each individual contribution would plainly be unreasonable.

It should also be noted that the Commission's conclusion herein would be different if the circumstances set forth in the second RNC question were reversed—that is, if an individual contributor gave $25,000, in $1,000 components, to particular candidates in 1975 for 1976 elections and then in 1976 wished to contribute to the RNC. In such a situation, the earmarked 1975 contributions would carry over to 1976 and would preclude the contributor from giving any money in that year.

C. The final question asked by the RNC is whether if a contributor gives $1,000 in 1975 to the 1976 primary of a Federal candidate and the candidate does not win the primary, the $1,000 contribution must be counted against the contributor's overall $25,000 limitation in 1976.

The Commission is of the view that this question is distinct from the other two asked by the RNC, since it involves a contribution made "with respect to" an election and the word election plainly encompasses primaries as well as general elections (See 18 U.S.C. 591(a)). The fact that the candidate involved did not win the election is immaterial; there is no requirement in section 608(b)(3) that in order for the carry over provision to be triggered, the contributor must support a victorious candidate. Indeed the relevant definition of candidate specifically states that the word refers to "an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected" (18 U.S.C. 591(b), emphasis added). Thus, the $1,000 contribution must be counted against the contributor's overall $25,000 limitation in 1976.

This advisory opinion is issued on an interim basis only pending promulgation by the Commission of rules and regulations or policy statements of general applicability.

Dated: October 24, 1975.

JOAN D. AIKENS,
Commissioner,
Federal Election Commission.

[FR Doc.75-29228 Filed 11-3-75;8:45 am]

[Notice 1975-67, AOR 1975-82—AOR 1975-86]

ADVISORY OPINION REQUESTS

In accordance with the procedures set forth in the Commission's Notice 1975-4, published on June 24, 1975 (40 FR 26660), Advisory Opinions Requests 1975-82 through 1975-86 are published today.

Interested persons wishing to comment on the subject matter of any Advisory Opinion Request may submit written views with respect to such requests on or before November 14, 1975. Such submission should be sent to the Federal Election Commission, Office of General Counsel, Advisory Opinion Section, 1325 K Street NW., Washington, D.C. 20463. Persons requiring additional time in which to respond to any Advisory Opinion Request will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered by the Commission before it issues an advisory opinion. The Commission recommends that comments on pending Advisory Opinion Requests refer to specific AOR number of the Request commented upon, and that statutory references be to the United States Code citations, rather than to the Public Law Citations.

AOR 1975-82: FUNDRAISING IN 1976 TO RETIRE 1974 CAMPAIGN DEBT (REQUEST EDITED AND PARAPHRASED BY THE COMMISSION)

GENTLEMEN: * * * Right now, (my committee) still owe(s) approximately $60,000 (with respect to my 1974 campaign). This amount will probably be reduced to $40,000 as of December 31, 1975.

During the early months of 1976, it will be necessary for my committee to conduct additional fundraising activities in order to finally wipe out this deficit.

* * * I would like a written opinion as to whether fundraising activities early in 1976 to pay off a 1974 campaign deficit would be charged against my 1976 re-election campaign fund limitation.

FRED RICHMOND,
House of Representatives.

Source: Honorable Fred Richmond, House of Representatives, 1533 Longworth House Office Building, Washington, D.C. 20515 (October 8, 1975).

AOR 1975-83: EXPENSES INCURRED DURING 1975 TO RETIRE 1974 CAMPAIGN DEBTS; PAYMENT IN 1976 OF BANK LOAN RELATING TO 1974 CAMPAIGN (REQUEST EDITED AND PARAPHRASED BY THE COMMISSION)

GENTLEMEN: On behalf of the above described committee and its chairman, Mr.

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* Political Committee is defined in 18 U.S.C. 591(d) as "any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000."

Robert L. Brock, we would respectfully request the following rulings in respect to the application of Commission Notices 1975–19 (40 FR 32952, August 5, 1975) and 1975–20 (40 FR 32950, August 5, 1975) to the situations described herein.

1. The Dr. Bill Roy for Senator Committee was the principal campaign committee of Dr. William R. Roy, Topeka, Kansas in the 1974 primary and general election campaigns for the office of United States Senator from Kansas. The committee was registered with the Secretary of the Senate in March, 1974 and has filed all required reports with the Secretary of the Senate. The committee completed the campaign with some substantial debts which have been duly reported on the filed reports.

2. On November 21, 1974, the committee borrowed $50,000 from the Fidelity State Bank, 600 Kansas Avenue, Topeka, Kansas 66603. The note was executed by the committee chairman, Mr. Robert L. Brock, 1533 Stratford Road, Topeka, Kansas 66604 and was personally guaranteed by him in his individual capacity. The entire proceeds of this note were disbursed within a few days to pay obligations of the 1974 campaign. The note was for 90 days and has been renewed by the bank with the most recent renewal being September 29, 1975, maturing December 19, 1975. The personal guarantee has been in effect throughout the term of the note. The loan was made by the bank in accordance with the applicable banking laws and regulations in the ordinary course of business.

3. The committee has conducted a fundraising campaign during 1975 intended to retire all of the outstanding debts including the above described bank loan. To this purpose the committee has incurred certain expenses in raising the funds. These expenses include salaries, postage, printing, telephone charges and like directly related expenses. No expenses have been incurred in direct campaigning for a subsequent election. Not directly related to fundraising but necessary to the committee is the interest expense on the above note. It now appears unlikely that sufficient funds will be raised to permit full repayment of the note and thus Mr. Brock will be required to pay the note from his personal funds.

4. On the basis of the above facts we respectfully request (an advisory opinion as to whether:)

(a) Expenses of the committee incurred after January 1, 1975, directly related to payment or continuation of outstanding obligations on January 1, 1975, may be paid out of funds solicited for and restricted to repayment of past campaign debts.

(b) Payment by Mr. Robert L. Brock of all or part of the bank note with date of origin November 21, 1974, under the obligation of his personal guarantee of the same date, will not be subject to the limitations of 18 U.S.C. 608(b)(1) and 18 U.S.C. 608(b)(3) notwithstanding the fact that such payment may be made after January 1, 1976.

DON R. PAXSON.

Source: Don R. Paxon, Treasurer, Dr. Bill Roy for Senator Committee, P.O. Box 42, Topeka, Kansas 66601 (September 29, 1975).

AOR 1975–84: COVERAGE OF AGENT'S FEES BY HONORARIUM LIMITATIONS (REQUEST EDITED BY THE COMMISSION)

DEAR MR. CHAIRMAN: As you know the Federal Election Campaign Act Amendments of 1974 establish a maximum $1000 per honorarium and maximum $15,000 per year in total honorariums. Many Members of Congress have entered into contracts with speaker's bureaus or agents whereby for a percentage of the honorarium, the bureau or agent obtains speaking engagements or appearances for the Member. Would you please advise as to whether the percentage fee is included in the $1,000 per engagement and $15,000 yearly total maximums or whether these maximums apply only to income actually received by the Member of Congress.

TOM RAILSBACK,
Member of Congress.

Source: Representative Tom Railsback, House of Representatives, 2431 Rayburn House Office Building, Washington, D.C. 20515 (October 5, 1975).

AOR 1975–85: APPLICATION OF HONORARIUM LIMITATIONS TO THE ACCEPTANCE OF AN AWARD (REQUEST EDITED BY THE COMMISSION)

MR. CHAIRMAN:

* * * * *

Facts: Senator Hubert H. Humphrey has been selected as one of the recipients for 1975 of the "Joseph Prize for Human Rights" which is given through the Anti-defamation League of B'nai B'rith. The prize includes a medal and a $5,000 monetary award. The Senator is not required to provide any service to the Anti-defamation League in order to receive the prize, i.e., he is not required to make an appearance, speech or prepare an article. It is likely, however, that he will accept the prize in person at the designated meeting of the ADL and will make some comments.

If permitted to accept this monetary award, Senator Humphrey intends to donate that amount of a charitable purpose.

Enclosed please find a statement of the basic principles of the Joseph Prize as prepared by the Anti-Defamation League.

Question: Does this prize fall within the definition of "honorarium of more than $1,000 * * * for any appearance, speech or article, "as that phrase is used in 18 U.S.C. Section 616(1)?

The basic principles of the Joseph Prize are as follows:

"* * * The Joseph Prize for Human Rights celebrates the efforts in our own day of those leaders who seek the establishment of human rights in the hope that they achieve the goal.

An international award, the Joseph Prize will be presented annually or as the occasion warrants to one whose life's work has been the improvement of human relations and the preservation or growth of human rights. The Prize reflects the concern of I. S. and Anna K. Joseph for the development of democratic institutions and practices that will lead to the fullest flowering of the human spirit.

The Prize has been established by a grant of $500,000 from the Joseph Foundation to the Anti-Defamation League of B'nai B'rith and will carry a monetary award and a gold medal to the laureate chosen by the Board of Trustees.

DAVID G. GARTNER.

Source: David G. Gartner, Administrative Assistant to Senator Hubert H. Humphrey, Washington, D.C. 20510 (October 3, 1975).

AOR 1975–86: EXTENT OF FEDERAL REGULATION OF LOCAL POLITICAL PARTY ACTIVITIES (REQUEST EDITED BY THE COMMISSION)

DEAR COMMISSIONERS:

* * * * *

The recent meeting of the Republican National Committee provided the opportunity to discuss with a number of state party organizations in interpreting and complying with the Federal Election Campaign Act. At the local level, e.g., county, district, city, ward, party officials all are volunteers. In few places are attorneys or accountants available to assist with the interpretation of the law and the filing of reports.

Furthermore, most of these party organizations have little to do with campaigning for Federal candidates. It may be possible for a large administrative burden to be lifted from the Commission, while obtaining substantial compliance with the law, if ground rules can be established for the operation of such local party organizations.

The Republican National Committee would like to propose that such local Republican Committees (and Democratic Committees) be permitted to:

1. Engage in ongoing Republican Party activities including registration drives, and

2. Receive corporate and other contributions permitted under state law,

3. Without the obligation to report to the Commission under 2 U.S.C. 432 or 437(a) or in any other manner be subject to the jurisdiction of the Commission: *Provided*, That the committee meets the following tests:

a. Such committees and local political party committees, e.g., county, district, city or ward, either independent of or subordinate to the state political party.

b. Such committees engage in day-to-day operations for the benefit of the (Republican) party as a whole, including registration, education, turn-out of the voters, conduct of polls, recruitment of workers, etc.

c. Such committees support local and state candidates but not Federal candidates.

d. Such committees do not receive contributions for Federal elections in excess of $1,000 nor spend on Federal elections in excess of $100.00.

e. If party officials in the local jurisdiction (county, district, city, ward) receive or spend for Federal elections, such activity is carried out by separate organizations with segregated bank accounts (A.O. 1975–2).

* * * * *

WILLIAM C. CRAMER.

Source: William C. Cramer, Republican National Committee, 485 L'Enfant Plaza, Suite 4100, Washington, D.C. 20024 (October 8, 1975).

Dated: October 24, 1975.

JOAN D. AIKENS,
Commissioner,
Federal Election Commission.

[FR Doc.75–29229 Filed 11–3–75;8:45 am]

[Notice 1975–70, AOR 1975–87, AOR 1975–97]

ADVISORY OPINION REQUESTS

In accordance with the procedures set forth in the Commission's Notice 1975–4, published on June 24, 1975 (40 FR 26660), Advisory Opinion Requests 1975–87 through 1975–97 are published today.

Interested persons wishing to comment on the subject matter of any Advisory Opinion Request may submit written views with respect to such requests within 10 calendar days of the date of the publication of the request in the Federal Register. Such submission should be sent to the Federal Election Commission, Office of General Counsel, Advisory Opinion Section, 1325 K Street, NW., Washington, D.C. 20463. Persons requiring additional time in which to respond to any Advisory Opinion Request will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered by the Commission before it

issues an advisory opinion. The Commission recommends that comments on pending Advisory Opinion Requests refer to specific AOR number of the Request commented upon, and that statutory references be to the United States Code citations, rather than to the Public Law Citations.

AOR 1975-87: Whether Costs of Republican Candidates Conference are Contributions by the Republican National Congressional Committee and/or Expenditures by Participating Candidates (Request Edited and Paraphrased by the Commission).

REQUEST

Dear COMMISSIONERS: The Natural Republican Congressional Committee, (hereinafter "NRCC") a political committee as defined in 2 U.S.C. § 431(d), hereby requests that the Federal Election Commission (hereinafter "FEC") issue an advisory opinion pursuant to 2 U.S.C. § 437f as to the legality of the transactions and activities described in this letter.

FACTS

In the past the NRCC, a multicandidate political committee as defined by 18 U.S.C. § 608(b)(2), has conducted the Republican Candidates Conference (hereinafter "Conference") biennially. The purpose of the Conference has been to assemble Republican staff personnel as well as candidates for the House of Representatives and the Senate, in order to provide them with general information on campaign strategy and current issues. The Conference has been held over a three or four day period sometime during the month of June in those years when general Congressional elections have taken place. Participants have included candidates for the Federal offices of Representative and Senator, their spouses and campaign staffs, as well as Members of Congress and their staffs. Except for Members of Congress, each participant has been charged a registration fee of One Hundred dollars.

The receipts from the payment of registration fees have been sufficient to cover the expenses incurred by the NRCC in conducting the Conference. These expenses include: the rental of Conference meeting rooms; the rental of hotel rooms which are used by the NRCC staff as offices or accommodations for the duration of the Conference; meals and receptions; local transportation; security personnel; printing and mailing; the rental of a copying machine; travel and lodging expenses of speakers and panelists; and room guarantees required by the hotel. The salaries of NRCC staff, who are full time employees but assigned to organize and operate the Conference, are not paid from the Conference receipts.

Each Conference participant has been responsible, in addition to the registration fee, for the payment of the cost of transportation to and from the Conference as well as the cost of lodging while in Washington, the site of every Conference. The NRCC has made the lodging arrangements with local hotels and has been able to arrange for the usual convention discount rate. Furthermore, if any of the meetings have taken place at a location other than the meetings have taken place at a location other than the Conference center, the NRCC has provided local transportation to those events.

The Conference participants have been given the opportunity to take part in seminars, lectures and workshops covering a wide variety of topics dealing with election campaigns. Non-incumbent participants have been able to have private meetings with Members of Congress in order to discuss the rigors of conducting a campaign for Federal office. Briefings on current issues have been led by administration personnel as well as other knowledgeable persons. Each participant has received a campaign manual and research materials compiled by the NRCC research staff. The cost of all meals for the Conference attendees is included within the registration fee.

The NRCC may conduct a Conference in 1976 which will be structured similarly to the past Conferences. For this reason, the NRCC requests that the FEC issue an advisory opinion * * * [as to whether] the cost of the Conference, including the time of NRCC employees, does not have to be included within the NRCC's permissible contribution to any candidate in any election. In other words, [does] the cost of the Conference * * * have to be allocated on a pro rata basis to each of the candidates attending the Conference thereby reducing by the pro rata cost the amount of monies which the NRCC could contribute to a candidate in any election [?]

Furthermore, * * * [do] the candidates and Members of Congress attending the Conference * * * have to consider the cost of the Conference on a pro rata basis, the registration fee or any of the services provided by the NRCC in conducting the Conference as expenditures under the Act [?]

* * * * *

STEVEN STOCKMEYER.

Source: Steven Stockmeyer, Executive Director, National Republican Congressional Committee, 512 House Office Building Annex, Washington, D.C. 20515. (October 8, 1975.)

AOR 1975-88: Use and Reporting of Excess Funds Raised To Pay 1974 Campaign Debts (Request Edited and Paraphrased by the Commission).

GENTLEMEN: I would like to seek a clarification and some guidance regarding the use and reporting of excess campaign funds.

* * * [The Dodd for Congress Committee has] raised this year in total receipts the sum of $25,750.51. Essentially, all of this was raised in an effort to pay debts remaining from the 1974 campaign. All such debts have now been paid. Additionally, we have paid some bills, totaling approximately $500, not attributable to the 1974 campaign but rather attributable to office type expenses incurred after January 1, 1975.

We have on hand at the present time in the checking account a total of $1,838.64.

It is with regard to that amount that I am seeking guidance * * *.

* * * * *

I would be very grateful if you could give me some advice as to how these funds should be used and reported. If they are to be returned to the donors as indicated in Advisory Opinion 1975-6, what procedure must be followed to return such funds to the donors? For example, must the funds be pro-rated and returned pro-rata to each donor?

THOMAS B. WILSON

Source: Thomas B. Wilson, Counsel, Dodd for Congress Committee, 1028 Poquonock Road, Groton, Connecticut 06340. (October 3, 1975.)

AOR 1975-89: Treatment of Honorariums Earned Though Not Yet Received (Request Edited by the Commission).

Dear Mr. CHAIRMAN: A question has arisen regarding section 616 of Title 18, United States Code, and I would appreciate an advisory opinion.

Section 616 states, in part, "(2) accepts honorariums * * * aggregating more than $15,000 in any calendar year; * * *". The question is whether honorariums accepted during a given calendar year include all honorariums actually received during that year, or whether they include all honorariums earned during that year (e.g. for speeches delivered during that year) even if some honorariums were actually received during the subsequent calendar year.

* * * * *

MIKE MCCORMACK,
Member of Congress.

Source: Honorable Mike McCormack, U.S. House of Representatives, 1503 Longworth House Office Building, Washington, D.C. 20515. (October 7, 1975.)

AOR 1975-90: Multicandidate Political Committee—Overhead Costs; Contributions Received in 1975; Expenditures Prior to Commitment of Support (Request Edited by the Commission).

Dear Sirs: I am writing as Chairman of the Executive Committee of The Fund for a Representative Congress—A Fund to Elect Black Republicans to Congress, which was recently incorporated in the District of Columbia and has been registered in your office by Samuel C. Jackson, Esq., Chairman. The Fund is a multi-candidate organization.

I am writing you at this time * * * to ask for an advisory opinion regarding specific problems about which we have questions:

(1) As a multicandidate committee, are we allowed to pay overhead costs of operation without attributing those costs to any candidate?

(2) Does a contribution to The Fund in 1975 count as part of the allowable contribution of the donor to any candidate supported by The Fund in the 1976 election?

(3) The Fund expects to spend some money in research, interviewing and screening candidates prior to commitment of support. Do these expenditures have to be charged to candidates? If so, how do we treat expenditures for candidates who are rejected?

* * * * *

DR. MAURICE A. DAWKINS.

Source: Dr. Maurice A. Dawkins, Chairman, Executive Committee, Fund For A Representative Congress, 1625 "I" Street NW., Suite 124-A, Washington, D.C. (October 10, 1975.)

AOR 1975-91: Expenditures by the Democratic National Committee and Other Political Committees To Defray Expenses of Delegates and Alternates To The Presidential Nominating Convention. (Request Edited by the Commission).

Dear COMMISSIONERS: On behalf of the Democratic National Committee, we would like to submit to the Commission a request for guidance with respect to certain questions arising under the provisions of 26 U.S.C. 9008.

* * * * *

26 U.S.C. 9008(c) provides that "no part of any payment made under subsection (b) shall be used to defray the expenses of any candidate or delegate who is participating in any presidential nominating convention." The Democratic National Committee may therefore undertake to defray expenses of delegates to its national convention only out of private funds, and only upon a determination by the Commission [under 26 U.S.C. 9008(d)(3)] that the expenditure of private funds for such purpose, due to extraordinary and unforeseen circumstances, is necessary to assure the effective operation of the Democratic convention.

We therefore request that the Commission indicate at this time whether expenditures from private funds to defray expenses of delegates would under any circumstances, be authorized under 26 U.S.C. 9008(d)

(3), and if so, what the nature of such circumstances would be.

The second question * * * relates to payments to defray expenses of delegates or alternates to the national convention which are made by political committees or groups other than the Democratic National Committee.

State and local party committees have traditionally made funds available to defray expenses of national convention delegates who could not otherwise afford to attend the convention. Such funds may be supplied from the general treasury of such party committees, or may be raised by special events or solicitations conducted solely for this purpose. Certain other membership organizations, such as voluntary political funds, may also undertake to defray expenses of their members who are selected as delegates or alternates to the national convention.

* * * We believe that payments made by party committees or other organizations to defray delegate expenses do not constitute contributions to or expenditures on behalf of the Democratic National Committee. We further believe that any such payments would not be treated as expenditures by the Democratic National Committee. We further believe that any such payments would not be treated as expenditures by the Democratic National Committee subject to the limitation on expenditures provided by 26 U.S.C. 9008(d).

SHELDON S. COHEN.

Source: Sheldon S. Cohen, Counsel, Cohen and Uretz, 1775 K Street, NW., Washington, D.C. 20006. (September 24, 1975.)

AOR 1975-92: Incorporation of a Separate Segregated Fund Organization Registered as a Political Committee (Request Edited by the Commission).

Dear Mr. CURTIS: The [American Apparel Manufacturers Political Action Committee (AAMPAC)] which we represent, is a nationwide organization formed to solicit political contributions from individuals and to make contributions to and expenditures on behalf of candidates for Federal office. AAMPAC has filed a statement of registration as required by 2 U.S.C. 433 and files regular reports on its activities with the proper authority. The Committee was organized by the American Apparel Manufacturers Association and has operated, since its formation, as an unincorporated separate segregated fund of the type described in 19 U.S.C. 610.

The trustees of the Committee propose that it be incorporated as a non-profit corporation. If incorporated AAMPAC would continue to operate in the same fashion as heretofore.

On behalf of AAMPAC, we hereby request an advisory opinion, in accordance with 2 U.S.C. 437f, as to the propriety, under the Federal Election Campaign Act of 1971, as amended, of the organization and operation of the Committee as a non-profit corporation. In particular, would the provisions of 18 U.S.C. 610 prohibit the Committee, as a corporation, from contributing funds to the campaign of a candidate for Federal office?

Further, would AAMPAC be required after incorporation to qualify as a new committee for the contribution limits allowed by section 608(b)(2) or would its pre-incorporation status under that section remain applicable?

WEBSTER, KILCULLEN & CHAMBERLAIN,
by Allen P. Bye.

Source: Alan P. Dye, Counsel, American Apparel Manufacturers Political Action Committee, 1747 Pennsylvania Avenue, NW., Washington, D.C. 20006. (October 13, 1975.)

AOR 1975-93: Date When Honorarium Received (Request Edited by the Commission).

Gentlemen: I hereby request an advisory opinion from the Commission regarding the following circumstances:

In 1974, I contracted for a speaking engagement at Chatham College for an honorarium of $2000. The engagement took place, as scheduled, in 1974, but the check in payment of the agreed upon honorarium was not transmitted to me until 1975. (The speech was given on November 16, 1974.)

Section 616 of Title 18, United States Code, prohibits any elected officer of the Federal Goevrnment from accepting any honorarium of more than $1000 and also prohibits the acceptance of honorariums aggregating more than $15,000 in any calendar year. * * *

The specific questions that I wish the Commission to address are:

1. May I accept the full $2000 honorarium without violating section 616?

2. Does this honorarium—whether I properly may accept $1000 or $2000—count against the $15,000 aggregate limit for 1975 established by section 616?

BELLA S. ABZUG.

Source: Honorable Bella S. Abzug, House of Representatives, Washington, D.C. 20515. (October 16, 1975.)

AOR 1975-94: Payment by Candidate of Out-of-Pocket Costs of Services Provided by Corporation; Use of Typing Services of Corporation Employee (Request Edited and Paraphrased by the Commission).

DEAR SIR: [I request an advisory opinion as to whether the exception from the definition of contributions for "the sale of any food or beverage by a vendor * * *" at cost, would carry over to sales by small corporations, such as a restaurant. * * * would this exception carry over to the corporate prohibition section, so that the sale at cost of a food or beverage to a candidate or a candidate's committee would not constitute a contribution by a corporation in violation of the statutory prohibition? * * * Could a small corporation which owns a restaurant allow a candidate to hold a cocktail party or dinner at the restaurant, so long as the candidate paid the actual out-of-pocket costs of the cocktail party or dinner without such constituting a corporate contribution?]

[I further request an advisory opinion as to] whether the use of equipment, with the candidate or committee paying the actual out-of-pocket for use of that equipment would generally constitute a contribution I [have] in mind specifically the use of an individual's airplane or of loaned typewriters or copying equipment, where the candidate or committee [pays] the costs of fuel and oil and other out-of-pocket costs on the airplane, or the actual costs of typewriter ribbons and supplies for use of the typewriter or copying machine. * * * [Would] such uses of equipment, with corresponding payment of actual out-of-pocket costs of such use (without any allocation of depreciation as a cost) * * * constitute a contribution? * * * If a corporation allowed a candidate or committee to use its typewriters, for example, and the candidate or committee reimbursed the corporation for any actual out of pocket costs, such as ribbons or typewriter supplies, would that constitute a contribution?

Could you also inform me whether a candidate or officer of a committee who is employed by a corporation, and who during normal working hours occasionally has his secretary do typing for the candidate or committee, must allocate any dollar value to such services, and report such as contribution?

* * * * *

DONALD E. KNICKREHM.

Source: Donald E. Knickrehm, Treasurer, Ken Pursley For Congress Committee, P.O. Box 862, Boise, Idaho 83701. (September 18, 1975.)

AOR 1975-95: Formation by the Colorado Republican State Central Committee of Separate Committees to Receive and Expend Federal and Non-Federal Funds (Request Edited by the Commission.).

Dear Sir: [the Colorado Republican State Central Committee (CRSCC)] has filed reports with the various supervisory officers since 1972 * * *. The following plan has now been agreed to by the Executive Committee of the CRSCC and [an advisory opinion] is hereby requested [as to whether] such plan will * * * violate the Federal Election Campaign Act of 1971, as amended.

1. The Colorado Republican State Central Committee is legally constituted under the Colorado Statutes as are county central committees and local precinct committees.

2. In the past, CRSCC reported for Federal purposes all funds received and expenditures made as the committee was state-wide and supported Federal, State and local candidates.

3. On June 23, 1975, a new committee, 1976 Legislative Campaign Committee, now known as Colorado Republican Committee (CRC) was registered with the Colorado Secretary of State to engage in state-wide and local political activities. The Committee has a chairman and treasurer, as well as a separate bank account and set of books. Since formation, the CRC has received funds and made expenditures, all of which are for non-Federal campaign purposes. Funds received by the CRSCC in July, 1975 * * * to be used for non-federal purposes. Expenditures for rent, salaries, telephone, etc., were made by CRSCC in July and August * * *. All other expenditures have been made by CRC and all funds have been received by that Committee other than the amount transferred in August. These amounts received and expended by CRC * * * will be used for non-federal purposes.

4. It is anticipated that the remaining cash balance of $3,102.13 now held by the CRSCC will be transferred to CRC prior to December 31, 1975 to be used for non-Federal campaign purposes. It is also anticipated that the December 31, 1975 quarterly report of CRSCC will show no further financial activities, other than the transfer of these funds and/or payment of any debts remaining which were previously incurred by CRSCC. It is further anticipated that the December 31, 1975 quarterly report will be a "termination report" for CRSCC and that the legally constituted committee will not carry on any further financial activities.

5. Before December 31, 1975, it is anticipated that a new Colorado Federal Campaign Committee will be organized to solicit and receive funds for Federal campaign purposes in 1976 and subsequent years. Such committee will have a chairman and treasurer, separate bank account(s) and a separate set of books. CFCC will register with the Federal Election Committee as soon as it is organized. CFCC will only solicit and expend funds in connection with Federal election campaigns and will be required to meet the reporting requirements, receipt and expenditure limitations of the Federal Election Campaign Act of 1971, as amended. The CRC will not be a subordinate committee and will not report to the Federal Election Com-

mittee because it will be solely engaged in non-Federal campaign activities; however, it will report to the Colorado Secretary of State under present Colorado Law, as will the new CFCC and as CRSCC has in the past.

6. The CFCC committee will pay to CRC appropriate charges for rent, utilities, services of bookkeeping, stationery, etc. in the form of a monthly or periodic overhead charge.

* * * it is anticipated the legally constituted Colorado Republican State Central Committee will be a non-financial entity with all financial matters separated between (1) the Colorado Republican Committee, organized for State and local campaign purposes and a non-reporting committee to the Federal Election Commission and (2) the Colorado Federal Campaign Committee, yet to be formed, which will limit itself to Federal election campaigns as far as soliciting and expending funds and will be a reporting committee to the Federal Election Commission. * * *

* * * * *

CARL M. WILLIAMS,
Chairman.

HUGH S. HATCHER,
Treasurer.

Source: Carl M. Williams, Chairman and Hugh S. Hatcher, Treasurer, Colorado Republican State Central Committee, 3955 East Exposition Avenue, Denver, Colorado 80209. (October 14, 1975.)

AOR 1975-96: State Party Committees—Solicitation of Funds for Federal Candidates; Administration Fee; Broad Support Expenditures; Expenditures by District and Local Committees (Request Edited by the Commission)

Dear Mr. CURTIS: As Minnesota's Republican State Finance Chairman I am writing you to clarify the impact of the new Federal laws on our system of raising funds in this state.

I am writing you this letter in order to request an advisory opinion. * * *

* * * * *

* * * Our State Party has traditionally helped fund the legislative and United States Congressional races as well as using its income to support a central staff, and a staff in the field at the congressional district level.

About 70 percent of the money raised by the State Party (which averages about $900,000 a year) is returned in the form of cash or services to many types of candidates (state, local and federal). Further, all of the funds raised by our State Party are contributed by approximately thirty thousand individual citizens with 80 percent of the total funds being received in amounts less than $100.00 per contributor. * * *

* * * Our party organization has a state central office in St. Paul. Each of the eight congressional districts is working toward having its own "district" office on an autonomous basis, but nonetheless being part of the state's Republican elected organization. Within each of the congressional districts there are either the traditional county organizations, or political sub-divisions based on Minnesota's state legislative boundaries. These county or legislative organizations are also becoming more autonomous, but nonetheless do "report" to the district leadership.

Since we use this three-level organization (state-wide, district, and local unit) to raise funds which are either merged at the state office or retained by the district or local unit, and since these funds can be used for statewide, congressional or local candidate funding, we have some very important questions of clarification as to how we can conform to the new federal laws for those portions of the funds which are used in support of congressional candidates (U.S., House and Senate).

The clarification of these points are important to us since the problem is compounded by the fact that a local Republican block worker, in the process of soliciting contributions, may ask his neighbor for a $30.00 contribution that may be later allocated to three separate levels of political activity (Federal, State and local).

In addition to this normal Republican volunteer fund-raising system, we have created a special volunteer committee to coordinate and encourage all employee political action programs. This committee will probably be called the Minnesota Republican Congressional Fund. Money for this fund will primarily be raised through employee payroll deduction or by solicitation within a company environment, and the individual contributor may often pre-designate personally that the money he is giving will be used only for the Minnesota Republican Congressional Fund. However the State Finance Committee may hold these designated funds in escrow until the Federal candidates actually need them. We would clearly be obligated to spend an amount equal to the amount received, although we anticipate there will be a modest fee of about 10 percent for administration which would allow us to file reports, keep required records and mail appropriate receipts.

* * * * *

1. Can Republican Volunteers solicit checks from employees or Employee Political Action Committees within a company's premises if the contributions are designated for Federal congressional support only?

2. Can the State Committee hold these designated funds in escrow until the Federal candidates actually need the funds, and charge a 10 percent fee for administration?

3. Can the State Committee spend these escrowed funds without limit in broad support of all Republican congressional candidates in Minnesota in either the primary or the general elections (i.e., for sample ballots or state-wide advertising sponsoring three or more Federal candidates)?

4. Can the State Committee spend these escrowed funds in behalf of each Republican congressional candidate to the extent of $10,000 in both the primary and the general elections under the qualification of "other committee"? These "independent congressional district committees" are already functioning and may hold district fund-raising events independent of state-wide fund raising programs.

6. Can one or more county volunteer committees or separate local sub-divisions from within that same congressional district make a $5,000 contribution in both the primary and the general elections to the same congressional candidate, which would be in addition to the state-wide committee's contribution and to the congressional district committee's contributions (above)?

7. When all of these above points are clarified and the committees which would be permitted under Federal law to give the amounts specified to House candidates, what would be the comparable amounts that could be given by these same committees in support of the United States Senate candidate?

* * * * *

R. L. MCELHENY,
Chairman, Minnesota Republican Finance Committee.

Source: R. L. McElheny, Chairman, Minnesota Republican Finance Committee, 555 Wabasha Street, St. Paul, Minnesota 55102. (October 13, 1975.)

AOR 1975-97: Volunteered Services of Entertainer for Campaign Fundraiser; Attribution of Entertainer's Travel Expenses (Request Edited by the Commission).

GENTLEMEN: Our campaign is planning a fund-raising event to be held on November 8. This event would be built around the performance of a well-known entertainer.

Assuming the entertainer is willing to donate his time and talent how do we handle this contribution under the new law? Is it proper to list only his out-of-pocket expenses, such as travel, hotel, food, as his campaign contribution?

Would this amount then be the amount included in the cost for purposes of determining how much of the price of the ticket should be listed as a campaign contribution by the person who purchases it? For example, if the cost of hiring a hall and paying the entertainer's expenses adds up to $3 per ticket and we sell the ticket for $10 is it assumed that the person who buys the ticket is making a campaign contribution in the amount of $7?

MARIA CARRIER.

Source: Maria Carrier, N. H. Udall '76 Committee, 146 Lowell Street, Manchester, N.H. 03104. (September 25, 1975.)

Dated: October 29, 1975.

THOMAS B. CURTIS,
Chairman for the Federal Election Commission.

[FR Doc.75-29509 Filed 11-3-75;8:45 am]

federal register

TUESDAY, NOVEMBER 4, 1975



PART IV:

CONSUMER PRODUCT SAFETY COMMISSION

■

MEETINGS; ADVANCE PUBLIC NOTICE, PUBLIC ATTENDANCE, AND RECORDKEEPING

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER A—GENERAL

PART 1001—ADMINISTRATION, PRACTICES, AND PROCEDURES

Procedural Policy on Meetings, Prior Public Notice, and Records of Proceedings; Deletion

The Consumer Product Safety Commission hereby deletes § 1001.60 of Title 16, Code of Federal Regulations, Part 1001 because, elsewhere in the FEDERAL REGISTER today, the Commission has published 16 CFR Part 1012, "Meetings: Advance Public Notice, Public Attendance, and Recordkeeping." Section 1001-.60 is therefore obsolete.

Dated: October 29, 1975.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.75-29517 Filed 11-3-75;8:45 am]

PART 1001—ADMINISTRATION, PRACTICES, AND PROCEDURES

PART 1012—MEETINGS: ADVANCE PUBLIC NOTICE, PUBLIC ATTENDANCE, AND RECORDKEEPING

Adoption of Meetings Policy

The purpose of this document is to promulgate the policy set forth below regarding requirements of the Consumer Product Safety Commission (CPSC) for advance public notice, public attendance, and records for meetings that are of substantial interest involving Commissioners and/or CPSC staff and outside parties. In developing a meetings policy, the Consumer Product Safety Commission has followed the principle that the public interest is best served when regulatory affairs are open to the fullest extent practicable. To that end, meetings and records will be open to the public unless they fall within exceptions required by law or established in this policy.

The Commission has explicitly detailed its requirements for advance public notice and its requirements that the public be permitted to attend meetings of substantial interest in order to make clear the conditions and exceptions that exist relative to this policy. In addition to the specified exceptions, the Commission acknowledges that extraordinary circumstances arise which might require either that advance notice cannot be given or that a meeting be closed or both. To ensure that no one claims the existence of such extraordinary circumstances without justification, the policy set forth below requires: (1) Approval from the Chairman whenever CPSC staff, other than personal staff of Commissioners, believe it necessary to hold or attend a meeting of substantial interest to the public without giving the advance public notice specified in §§ 1012.3, and 1012.4(c)(1) of this part and (2) approval from a majority of the Commission whenever CPSC staff, other than personal staff of Commissioners, believe it necessary to hold or attend a closed meeting of substantial interest.

BACKGROUND

In the FEDERAL REGISTER of October 24, 1974 (39 FR 37780), the Consumer Product Safety Commission proposed an interim and amended procedures policy (16 CFR 1001.60 through 1001.67) regarding public notification and disclosure of meetings to serve as its interim policy until finalized. Previously, on October 1, 1973 (38 FR 27214), the Commission had promulgated 16 CFR 1001.60 prescribing a basic procedural policy for meetings, prior public notice, and records of proceedings.

With the expansion of the material for procedural policy on meetings proposed October 24, 1974, from 16 CFR 1001.60 into 16 CFR 1001.60 through 1001.67, the material became an appropriate size and nature to constitute a part. Thus, the material is adopted below as 16 CFR Part 1012.

RESPONSE TO PROPOSAL

In response to the proposal of October 24, 1974, 16 comments were received from interested parties, including the Chemical Specialties Manufacturers Association, Inc.; Consumer Electronic Group of the Electronic Industries Association; the National Cash Register Co.; Glass Container Manuufacturers Institute; Power Tool Institute; J. I. Case; Walker Manufacturing Co.; Thomas K. Wilka, Public Interest Seminar, Georgetown University Law Center; Allen S. Saeks, consumer representative, Product Safety Advisory Council, Consumer Product Safety Commission; a consumer; and members of the CPSC staff reflecting experience with implementation of the proposal.

Two of the comments supported the proposal as published. The main issues raised in the remainder of the comments and the Commission's conclusions thereon are as follows:

1. *Definitions*—a. *Meeting.* Regarding proposed 16 CFR 1001.61(d) CPSC staff point out that the definition is too broad and ask for clarification and specificity.

The Commission believes the policy clearly indicates that the Commission does not intend that any everyday encounter of its staff with the public constitutes a "meeting" that would be of public interest. However, the Commission does not intend that substantive discussions between staff and the public not be construed as a meeting simply because they are held in a nonbusiness environment.

The Commission therefore has decided that "meeting" does not need to be redefined.

b. *Outside party.* Regarding proposed 16 CFR 1001.61(e), one industry comment suggests that in the definition of "outside party," the exemption of news media and not of all persons when they are acting in a news-gathering capacity is discriminatory. Another industry comment predicts that members of the news media will meet privately with Commission employees for news-gathering purposes and requests that industry representatives be allowed to attend.

The Commission believes that the public interest is best served when regulatory affairs are open to the fullest extent practicable. To that end, the Commission opens all its meetings to the public whenever possible. Since all interested persons are not able to attend these meetings, the Commission believes that the news media will make important aspects of the proceedings public knowledge. Consequently, the public will learn of Commission activities and be more able to assist the Commission in the goal of reducing the risks of injury associated with consumer products.

The Commission also recognizes that media may meet privately with Commission staff for news gathering. The Commission intended that the exemption provided for such meetings with the media should not be used to exclude any member of the public from attending. The term "news media" is intended by the Commission to include trade press. Therefore, the Commission declines to adopt the suggested changes.

An advisory council member contends that the definition does not make clear whether an individual member of a CPSC advisory council meeting with a Commissioner to discuss a substantial interest matter is an outside party. Another comment states that it is not clear whether an offeror, preparing a standard for CPSC, is a contractor or an outside party.

The Commission concludes that when advisory council members and offeror personnel are not acting in an official capacity, they are outside parties. Therefore, the definition at 16 CFR 1012.2(e) has been changed to clarify this matter.

A consumer comments that the definition of outside party is vague and dangerous because there is no definition of "inside party." The consumer asks about the status of people under contract who do work for the Commission. The Commission considers it unnecessary to define "inside party" because it has defined "outside party." The Commission considers contractors doing work for the Commission as not being within the scope of outside parties, therefore § 1001.63(e)(4)(i)(f) of the interim policy has been omitted for clarity, although 16 CFR 1012.2(e) has not been changed because contractors were specifically excluded from the term "outside party" in the interim policy.

c. *Substantial interest matter.* One individual's comment suggests redefining the term "substantial interest matter" in proposed 16 CFR 1001.61(f) to include any topic of discussion between CPSC staff or Commissioners and a party potentially subject to CPSC regulatory action and suggests requiring advance notice and a meeting summary for all meetings between CPSC personnel and an "outside party" as defined in proposed 16 CFR 1001.61(e).

The Commission believes that it is unnecessary to require advance notice for meetings between CPSC employees and

"outside parties" where nonsubstantial interest matters are discussed because such meetings are of minimal interest to the public. However, as indicated in § 1012.4(c)(1)(ii)(A) of this policy, such meetings are to be listed in advance on the public calendar where the public interest would be served.

Another comment from an individual points out that this definition includes more than pending matters and asks if this broad definition is intentional. The commenter is correct. The Commission intends that the definition of "substantial interest matter" be broad to ensure that meetings of substantial public interest be announced in advance and open to the public, when possible.

One industry and three staff comments urge the Commission to clarify the definition and/or expand the list of examples of meetings and activities that are not substantial matters. Although the Commission believes that the definition of "substantial interest" contained in the interim policy is sufficiently clear, additional examples of matters that are, and that are not, substantial interest matters have been included.

2. *Advance public notice.* A staff comment questions whether advance notice and meeting summaries are required for speeches given before outside parties.

The Commission concludes that speeches generally do not meet the definitions of substantial interest matters since they generally convey information about the status of matters before the Commission and do no involve significant discussion about such matters. However, the Commission encourages the staff to list notices of upcoming speeches in the public calendar for informational purposes. The regulation (16 CFR 1012.4(c)(1)(ii)(F) below) has been revised accordingly.

An industry comment urges the Commission to consider providing a period of overlap when the interim meetings policy is finalized during which the Commission's day-to-day meeting activities would be published in the FEDERAL REGISTER in addition to being listed in the public calendar.

The Commission has not used the FEDERAL REGISTER for the above purposes since October 1974, and provides the CPSC's public calendar regularly and free of charge to all those who request it. The Commission therefore concludes that the suggested accommodation is unnecessary.

The regulation (16 CFR 1012.3 below) accordingly has not been changed in this regard.

3. *Location of meetings between CPSC and outside parties.* Regarding proposed 16 CFR 1001.63(c), a comment suggests that the regulation would be more comprehensive if the requirements for meetings between Commissioners or CPSC staff and outside parties applied not only to meetings at CPSC premises and at the premises of outside parties, but also to other locations at which the Commissioners or CPSC staff would likely meet with outside parties.

The Commission intended the Regulations to cover such meetings. The regulations (16 CFR 1012.4(c) and 1012.3(a)(1) below) has been changed accordingly to clarify that it includes meetings between Commissioners or CPSC staff and outside parties at any location.

4. *Notice and public attendance requirements for section 15(b) notifications*—a. *Initial notifications.* Regarding proposed 16 CFR 1001.63(c)(1)(i)(b), an individual commenter objects to the exemption of initial section 15(b) notifications from the advance notice and open-meetings requirements.

The Commission finds that advance notice of and public attendance at meetings involving initial section 15(b) notifications would be impossible because with many initial notifications under section 15(b) of the Consumer Product Safety Act it is necessary for the CPSC staff to act immediately upon the notification in the interest of public safety. Also, exempting the initial notification will protect from adverse publicity parties who report possible hazards which, upon investigation, turn out not to require CPSC action. Subsequent meetings and negotiations, however, are not excepted from the notice requirement. The regulation (16 CFR 1012.4(c)(1)(ii)(B) below) has been revised to so state, but 16 CFR 1012.4(c)(2)(ii)(C) has not been changed.

b. *Subsequent meetings.* Regarding proposed 16 CFR 1001.63(c)(1)(i)(b), an individual commenter suggests that the exemption from advance notice and open-meeting requirements not be limited to meetings involving initial section 15(b) notifications. The commenter contends that the meetings following the initial section 15(b) notification meeting also require frank negotiations without the defensiveness and caution likely to be generated by the presence of outsiders. Another commenter believes subsequent meetings should be closed to the public because confidential information or trade secrets might be discussed.

The Commission believes that the suggested changes would be inappropriate since the intent of the regulation is to give public notice on substantial interest matters whenever practical. Since negotiations leading to the settlement of cases are open, the public should be given advance notice of such negotiations. The Commission will give all interested persons the opportunity to observe its regulatory affairs and exempts initial 15(b) notifications in the interest of speed and to permit frank exploratory reporting and discussion that may take place at that time. In addition, § 1012.4(c)(2)(ii)(A), already provides that portions of meetings at which proprietary data are to be discussed in a manner as to imperil their confidentiality are not open to the public. Accordingly the suggestion is not adopted.

5. *Attendance by the public*—a. *Proprietary data.* Regarding proposed 16 CFR 1001.63(c)(4)(i)(a), which provides for closed meetings to protect the confidentiality of proprietary data, a comment of an individual states that the concept of "proprietary data" is much broader than that of a trade secret and other material protected by law. The comment contends that unless the term "proprietary data" is defined in the regulation, the public could be excluded from many meetings.

The Commission recognizes that the term "proprietary data" may encompass various materials protected by law, including trade secrets. The Commission directs that its Office of the General Counsel shall determine whether materials are proprietary data and thereby fall within exceptions of the law or the subject regulation. The policy (16 CFR 1012.4(c)(2)(ii)(A) below) has been changed accordingly.

b. *Lack of space.* Regarding proposed § 1001.63(c)(4)(i)(b), a consumer objects to permitting a meeting, open to the press or other news media, to be otherwise closed due to lack of space. The commenter suggests that many meetings involving substantial interest matters could easily be closed to interested consumers by simply claiming there is room only for the press and news media.

The Commission when accepting invitations, requests that every effort be made to accommodate observers and when space is limited the public can be informed of details of the meeting by members of the press and media. The regulation (16 CFR 1012.4(c)(2)(ii)(B) below) therefore has not been changed.

c. *Initial section 15(b) notifications.* Regarding proposed 16 CFR 1001.63(c)(4)(i)(c), which provides for a closed first meeting dealing with initial 15(b) notifications, an industry comment suggests a definition be provided for the term "initial notification."

"Initial notification" is defined by the Commission's section 15(b) policy found at 16 CFR 1115. The Commission finds that open meetings involving initial section 15(b) notifications would be impossible because with many initial notifications under section 15(b) of the Consumer Product Safety Act it is necessary for the CPSC staff to act immediately upon the notification in the interest of public safety. Also, exempting the initial notification will protect manufacturers who may report potential possible hazards which will later turn out not to require CPSC action from injuring their business because of adverse publicity. Accordingly, the regulation (16 CFR 1012.4(c)(2)(ii)(C) below) has not been changed.

d. *Negotiations for settlement.* Proposed 16 CFR 1001.63(c)(4)(i)(d) provides for closed meetings held during the normal course of field surveillance, inspection, or investigation of a person or company, but not for negotiations leading to settlement of individual cases. The closed meetings are necessary for efficient enforcement of the Acts the Commission administers and to maintain the confidentiality of proprietary data such as formulations, design specifications and other information that could work to eliminate the firms' competitive advantage if disclosed to the public. Two

industry commenters suggest that the regulation be revised to exclude the public from the settlement negotiations. An industry commenter objects to public access to negotiations for settlement on the basis of imperiling the confidentiality of data and because the public presence would hamstring productive settlement discussion where offers may be held against the parties if the settlement does not work out.

The Commission believes that the right of the public to attend negotiations leading to the settlement of any case will not imperil the confidentiality of proprietary data because under 16 CFR 1012.4(c)(2)(ii)(A) the Office of the General Counsel will determine whether proprietary data will be discussed in such a manner as to imperil their confidentiality. Also, the Commission concludes that the concern that negotiations may be hamstrung is overridden by the need to have the public fully informed as to how and why settlements are reached. Therefore, the subject regulation (16 CFR 1012.4(c)(2)(ii)(D) below) has not been changed as suggested.

e. *Meetings with other government officials.* Regarding proposed 16 CFR 1001.63(c)(4)(i)(e), which provides for closed meetings held with other government agency officials when they request a closed meeting and when the CPSC employee involved finds that extraordinary circumstances so warrant, an individual commenter contends that the test of "extraordinary circumstances" does not delineate a clearly and narrowly drawn exception to the open meetings policy. Similarly, another individual commenter objects to such an exception in any "openness" policy. Several staff comments ask that specific meetings with other government agencies be exempt from the openness requirements.

The Commission believes that close working relationships are required with other government agencies be exempt federal, that often approximate the working relationship among members of CPSC's own staff. While it is the intent of the Commission to give public notice and open to the public all such meetings that it can, it recognizes that it is not practical to open meetings when the other agency requests that they be closed to protect the confidentiality of its information, when cooperative efforts of emergencies require meetings that cannot be anticipated, or when a CPSC or other agency position could be compromised. The regulation (16 CFR 1012.4(c)(2)(ii) below) has been changed in order to clarify these matters.

f. *Meetings between CPSC staff and outside parties.* Proposed 16 CFR 1001.63(c)(4)(i)(g) provides that a meeting between agency staff (other than Commissioners and their personal staff) and an outside party may be closed if a majority vote of the Commission determines that extraordinary circumstances so require and the reasons therefor are detailed in the public calendar. An industry commenter objects to the requirements that these reasons be detailed in the public calendar and suggests instead that the reasons be given in the public calendar in appropriate general terms. An individual commenter suggests that a test of "extraordinary circumstances" that delineates a clearly and narrowly drawn exception should be added.

The Commission does not agree with these suggestions. The Commission also finds no validity in one commenter's contention that it may be as damaging to a manufacturer as conducting an open meeting if the reasons for closing the meeting are detailed in the public calendar. For example, if the meeting is closed in order for a corporation to seek the views of CPSC staff with respect to the safety of a product, a short statement to this effect should not be damaging. The Commission believes it is able to determine on a case by case basis whether extraordinary circumstances warrant a closed meeting and therefore declines to change this requirement.

The regulation (16 CFR 1012.4(c)(2)(ii)(F) below) has, therefore, not been changed.

g. *Meetings between Commissioners and outside parties.* Proposed 16 CFR 1001.63(c)(4)(i)(h), permits a meeting between a Commissioner or his or her personal staff, and an outside party to be closed if the Commissioner finds that extraordinary circumstances so require and the reasons therefor are detailed in the public calendar. One industry comment suggests that the reasons be given in appropriate general rather than detailed terms in the public calendar.

For the reasons set forth in the previous paragraph of this Preamble, the Commission does not agree with the commenter's suggestion. The regulation (16 CFR 1012.4(c)(2)(ii)(G) below) has therefore has not been changed.

6. *Meeting summaries.* Regarding proposed 16 CFR 1001.64(a), which prescribes requirements for meeting summaries, one industry comment suggests that summaries of closed meetings be kept confidential. One industry and one staff comment suggest not requiring that summaries of authorized closed meetings be made available to the public.

The Commission intends that the regulation not require meeting summaries of closed meetings or portions of meetings that are closed to contain any proprietary data or information otherwise protected by law from disclosure to the public.

An industry commenter suggests that outside parties participating in open meetings be given an opportunity to review and comment on the meeting summary before it becomes part of the public record. He also suggested that meeting participants be permitted to submit their own meeting summary for the public record when they disagree with the Commission's meeting summary.

The Commission believes the suggested provisions unnecessary since all members of the public have the opportunity to communicate in writing with the Commission on matters before it and such correspondence becomes a part of the Commission's public record. Accordingly, the regulation (16 CFR 1012.5(a) below) has not been changed.

7. *News media.* Proposed 16 CFR 1001.-65 exempts the news media from the meetings policy requirements when meeting with Commission representatives to be informed of Commission activities. An industry comment complains that parties with a direct interest in a specific matter pending before the Commission should be informed about a decision by the Commission rather than by the news media.

The Commission agrees with this comment and will attempt to ensure that the Commission notifies a party with a direct interest in a Commission decision immediately after the decision is rendered.

Another industry comment suggests deleting from the regulation the exemption of the news media from the requirements of the meetings policy.

For reasons discussed under 1.b of this Preamble (exempting the news media from the definition of outside party) the Commission does not agree. The regulation (16 CFR 1012.6 below) therefore has not been changed to delete the exemption as suggested.

A third industry comment asks if the public will be excluded from planned interviews and briefings between the Commissioners, the staff, and the news media.

The Commission does not intend to exclude the public from planned briefings between the Commissioners and the news media, for reasons given in 1.b of this Preamble.

8. *Telephone conversations.* Regarding proposed 1 CFR 1001.66, which prescribes the meetings policy requirements on telephone conversations, an industry commenter suggests the regulations should be revised to eliminate the requirement that summaries of telephone conversations be made available to the public in cases where closed meetings are authorized.

The Commission believes that it is important that summaries of all meetings and telephone conversations involving substantial interest matters be available to the public. However, this meetings policy does not require summaries to contain any proprietary data or information otherwise protected by law from disclosure to the public. Therefore the regulation (16 CFR 1012.7 below) is not changed to adopt this suggestion.

Another industry commenter contends that a participating outside party should be permitted to review and comment on any summary of a telephone conversation before the summary is incorporated in the record.

The Commission finds such permission unnecessary because all members of the public have the opportunity to communicate in writing with the Commission on matters before it and such correspondence becomes a part of the Commission's public record.

An industry commenter suggests that proposed 16 CFR 1001.66(b) be modified so that it will not discourage the use of CPSC as a source of information.

The Commission does not intend nor expect the regulation to interfere with the availability of CPSC staff to discuss informational matters over the telephone. The regulation (16 CFR 1012.7 below) is thought to permit this exchange and is not changed.

In addition to the changes specified above, various portions of the proposed regulation have been changed for clarification.

Having considered the proposal, the comments received, and other relevant material, the Commission concludes that the proposed regulations, changed as described above, shall be promulgated as set forth below.

Accordingly, pursuant to provisions of the Consumer Product Safety Act (15 U.S.C. 2051–81), the Federal Hazardous Substances Act (15 U.S.C. 1261–74), the Flammable Fabrics Act (15 U.S.C. 1191–1204), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471–76), and the Refrigerator Safety Act (15 U.S.C. 1211–14), Title 16, Chapter II, Subchapter A, is amended by:

§ 1001.60 [Deleted]

1. Deleting § 1001.60

2. Adding a new Part 1012 as follows:

Sec.

1012.1 General policy considerations.
1012.2 Definitions.
1012.3 Forms of advance public notice of meetings; public calendar and FEDERAL REGISTER.
1012.4 Types of meetings; requirements for advance public notice and attendance by the public.
1012.5 Recordkeeping categories.
1012.6 The news media.
1012.7 Telephone conversations.
1012.8 Chart summary of meetings policy.

AUTHORITY: Consumer Product Safety Act (15 U.S.C. 2051–81), the Federal Hazardous Substances Act (15 U.S.C. 1261–1274), the Flammable Fabrics Act (15 U.S.C. 1191–1204), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471–76), and the Refrigerator Safety Act (15 U.S.C. 1211–14).

§ 1012.1 General policy considerations.

(a) In order for the Consumer Product Safety Commission to properly carry out its mandate to protect the public from unreasonable risks of injury associated with consumer products, the Commission must involve the public to the fullest possible extent in its activities.

(b) To guarantee public confidence in the integrity of its decisionmaking, the Commission must, to the fullest possible extent, conduct its business in an open manner which is free from any actual or apparent impropriety.

(c) To achieve the goals set forth in paragraphs (a) and (b) of this section, the Commission believes that, wherever practicable, it should notify the public in advance of all meetings involving matters of substantial interest held or attended by its personnel and permit the public to attend such meetings. Furthermore, to ensure the widest possible exposure of the details of such meetings, the Commission should keep records of them which are freely available for inspection by the public.

§ 1012.2 Definitions.

As used in this Part 1012, the following words shall have the meanings set forth:

(a) *Agency.* The entire organization which bears the title Consumer Product Safety Commission.

(b) *Agency staff.* Employees of the Agency other than the five Commissioners.

(c) *Commission.* The five Commissioners of the Consumer Product Safety Commission acting in an official capacity.

(d) *Meeting.* Any face-to-face encounter in which one or more employees, including Commissioners, of the Agency discuss any subject relating to the Agency or any subject under its jurisdiction.

(e) *Outside party.* Any person not an employee, not under contract to do work for the Agency, or not acting in an official capacity as a consultant to the Consumer Product Safety Commission, such as advisory committee members or offeror personnel. Examples of persons falling within this definition are representatives from industry, consumer groups and government. Members of the news media are not considered to be outside parties when acting in a newsgathering capacity. (See also § 1012.6.)

(f) *Substantial interest matter.* Any matter, other than that of a trivial nature, that pertains in whole or in part to any issue that is likely to be the subject of a regulatory or policy decision by the Commission. Pending matters, i.e., matters before the Agency in which the Agency is legally obligated to make a decision, automatically constitute substantial interest matters. Examples of pending matters are: scheduled administrative hearings; matters published for public comment; petitions under consideration; and mandatory standard development activities. The following examples do not constitute substantial interest matters: data collection; inquiries concerning the status of a pending matter; discussions relative to general interpretations of existing laws, rules, and regulations; inspection of non-confidential CPSC documents by the public; negotiations for contractual services; and routine CPSC activities such as recruitment, training, meetings involving consumer deputies, or meetings with hospital staff and other personnel involved in the National Electronic Injury Surveillance System.

§ 1012.3 Forms of advance public notice of meetings; public calendar and Federal Register.

Advance notice of Agency activities is provided to the public so that it may know of and participate in these activities to the fullest extent possible. The following two types of notices are utilized by the Agency.

(a) *Public calendar.* (1) The printed public calendar is the principal means by which the Agency notifies the public of its day-to-day activities. The public calendar provides advance notice of public hearings, Commission meetings, meetings with outside parties involving substantial interest matters, selected staff meetings, Advisory Committee meetings, and other events such as speeches, and participation in panel discussions, regardless of the location. The public calendar also lists recent CPSC FEDERAL REGISTER issuances and Advisory Opinions of the Office of the General Counsel.

(2) Upon request in writing to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, any person or organization will be sent the public calendar on a regular basis free of charge. In addition, interested persons may contact the Office of the Secretary to obtain information from a master calendar kept current on a daily basis.

(3) The master calendar, supplemented by meeting summaries, is intended to serve the requirements of section 27(j)(8) of the Consumer Product Safety Act.

(4) Commissioners and Agency staff are responsible for reporting meeting arrangements to the Office of the Secretary so that they may be published in the printed public calendar at least seven days before a meeting, except as provided in § 1012.4(c)(1). Such reports shall include the following information:

(i) Probable participants and their affiliations;

(ii) Date, time and place of the meeting;

(iii) Subject of the meeting (as fully and precisely designated as possible);

(iv) Who requested the meeting;

(v) Whether the meeting involves matters of substantial interest;

(vi) Notice that the meeting is open or reason why the meeting or any portion of the meeting is closed (e.g., discussion of trade secrets); and

(vii) Name and telephone number of the CPSC host or contact person.

(b) *Federal Register.* The FEDERAL REGISTER is the publication through which official notifications, including formal rules and regulations of the Agency, are made. Because the public calendar is the primary device through which the Agency notifies the public of its routine, daily activities, the FEDERAL REGISTER will be utilized only when required by law or when the Agency believes that the additional coverage it can provide is necessary to assist in notification to the public of important meetings.

§ 1012.4 Types of meetings: requirements for advance public notice and attendance by the public.

For the purpose of implementing the Agency's meeting policy, meetings which involve Agency staff or the Commissioners shall be classified in the following categories, and shall be held according to the procedures outlined within each category.

(a) *Hearings.* Hearings are public inquiries held by direction of the Commission for the purpose of fact finding or to comply with statutory requirements. The Office of the Secretary is responsible for providing transcription services at the hearings. Where possible, notice of forthcoming hearings will be published in the public calendar and the FEDERAL REGIS-

TER at least 30 days before the date of said hearings.

(b) *Meetings of the Commission.* Meetings of the Commission are held for the purpose of conducting the formal business of the Agency including the rendering of official decisions, and for the gathering of information by the Commission. Such meetings may be of the following types:

(1) *Executive sessions.* Executive Sessions are sessions at which policy and regulatory decisions are made by the Commission. They are attended solely by the Commissioners and are held by majority vote of the Commission and without advance notice. Formal minutes are the responsibility of the Commission.

(2) *Closed sessions.* Closed sessions are generally attended only by the Commissioners and members of the Agency staff. Closed sessions may be held at the direction of a majority vote of the Commission and without prior notice. The Office of the Secretary is responsible for the minutes.

(3) *Open sessions.* Open sessions are attended by the Commissioners, the Agency staff, and any other individual or group desiring to observe. Active participation of the public at these meetings is at the discretion of the Commission. Members of the public desiring to attend an open session are encouraged to contact the Office of the Secretary at least one day prior to the meeting. Notice of an open session will usually be furnished through the public calendar at least seven days prior to the session. The Office of the Secretary is responsible for the minutes.

(c) *Meetings between commissioners or agency staff and outside parties.* The following requirements shall apply to meetings between Commissioners or Agency staff and outside parties whether hosted or attended at Agency premises or at the premises of outside parties, or at any other location:

(1) *Notice* (i) (A) Notice of meetings with outside parties involving substantial interest matters shall be published in the public calendar at least 7 days in advance of the meeting. Any Agency employee planning to host or attend such a meeting must notify the Office of the Secretary as provided in § 1012.3(a)(4). Once notification has been made, Commission employees subsequently desiring to attend the meeting need not notify the Office of the Secretary.

(B) When there is no opportunity to give 7 days advance notice of a meeting, Agency staff (other than the personal staff of Commissioners) who desire to hold or attend such meeting must obtain the approval of the Office of the Chairman. Personal staff of Commissioners must obtain the approval of their respective Commissioners. If such approval is obtained, the Office of the Secretary must be notified in advance of the meeting to record the meeting on the master calendar. The Office of the Secretary shall publish notice of the meeting as an addendum to the succeeding public calendar. Because it could unduly compromise the independence of individual Commissioners, they need not obtain the permission of the Chairman to hold or attend an emergency unscheduled meeting. Listing of the meeting in the master calendar is still required.

(ii) *Exceptions.* The notice requirement shall not apply to:

(A) Meetings with outside parties not involving substantial interest matters (although such meetings should be listed where the public interest would be served).

(B) Initial notifications pursuant to section 15(b) of the Consumer Product Safety Act, however, subsequent meetings are not excepted from the notice requirement.

(C) Meetings held during the normal course of field surveillance, inspection or investigation of a person or company, including informal citation hearings under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act. However, advance notice is required for any negotiations leading to settlement of individual cases.

(D) Discussions with, or at the request of, members of Congress and their staffs, or the Office of Management and Budget relating to legislation or appropriation matters.

(E) Meetings with Department of Justice employees regarding litigation matters.

(F) Routine speeches given by CPSC personnel before outside parties. However, personnel are encouraged to submit advance notice of these speeches to the Office of the Secretary for inclusion in the public calendar, for information purposes.

(2) *Attendance by the public.* (i) Any person or organization may attend any meeting listed in the master calendar unless that meeting has been listed as a closed meeting. Generally, all meetings between Agency employees and outside parties are open to the public for the purpose of observation or participation, subject only to space limitations. Participation by the public may be permitted by the meeting chairperson. When feasible, a person or organization desiring to attend should give at least one day advance notice to the employee holding or attending such meeting.

(ii) The following meetings are not open to the public:

(A) Meetings, or, if possible, portions of meetings where the Office of the General Counsel has determined that proprietary data are to be discussed in such a manner as to imperil their confidentiality.

(B) Meetings held by outside parties at which limits on attendance are imposed by lack of space need not be open: *Provided*, That such meetings are open to the press or other news media.

(C) Initial notifications pursuant to section 15(b) of the Consumer Product Safety Act. All subsequent meetings shall be open to the public.

(D) Meetings held during the normal course of field surveillance, inspection, or investigation of a person or company, including informal citation hearings under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act. However, the public may attend any negotiations leading to settlement of individual cases.

(E) Meetings held with other government officials when they request that the meeting be closed, and, in the opinion of the Agency employees, extraordinary circumstances warrant closing the meeting.

(F) Meetings between Agency staff (other than Commissioners and their personal staff) and an outside party, when, by majority vote of the Commission, it is determined that extraordinary circumstances require that the meeting be closed. In such a case, the reasons for closing the meeting or a portion of the meeting shall be detailed in the public calendar.

(G) Meetings between a Commissioner, his or her personal staff, and an outside party, when in the opinion of the Commissioner extraordinary circumstances require that the meeting be closed. In such a case, the reasons for closing the meeting or a portion of the meeting shall be detailed in the public calendar.

(H) Discussions with members of Congress and their staffs or the Office of Management and Budget relating to legislation or appropriation matters.

(I) Meetings with Department of Justice employees regarding litigation matters.

(3) *Recordkeeping.* Any Commission employee who holds or attends a meeting involving a substantial interest matter must prepare a meeting summary as described in § 1012.5(a). However, only one meeting summary is required for each meeting, even if more than one CPSC employee holds or attends the meeting.

(d) *Staff meetings.* Staff meetings are attended only by members of the Agency as a general rule. At the discretion of the participants, such meetings may be listed on the public calendar and attendance by the public may be permitted. Recordkeeping is at the discretion of the participants.

(e) *Advisory committee meetings.* Meetings of the Agency's advisory committees are scheduled by the Commission. Notice will be given in both the public calendar and the FEDERAL REGISTER. Advisory committee meetings serve as a forum for discussion of matters relevant to the Agency's statutory responsibility with the objective of providing advice and recommendations to the Commission. The Agency's advisory committees are the National Advisory Committee for the Flammable Fabrics Act, the Product Safety Advisory Council, and the Technical Advisory Committee on Poison Prevention Packaging. The Office of the Secretary is responsible for the recordkeeping for such meetings. All meetings of advisory committees are open to the public except as provided in the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 7770; 5 U.S.C. App. I (Supp. I 1974) and the Commission regulations

under that Act (16 CFR Part 1013; 40 FR 43886, September 24, 1975)).

§ 1012.5 Recordkeeping categories.

Depending on the type and purpose of meetings, different kinds of recordkeeping are appropriate. The following is a list of the types of and requirements for the three categories of recordkeeping utilized by the Agency.

(a) *Meeting summaries.* (1) Meeting summaries are written records setting forth the issues discussed at all meetings with outside parties involving substantial interest matters. A meeting summary should detail the essence of all substantive matters relevant to the Agency, especially any matter discussed which was not listed on the public calendar and should describe any decisions made or conclusions reached regarding substantial interest matters. A summary should also indicate the date and the identity of persons at the meeting.

(2) A meeting summary or a notice of cancellation of the meeting, must be submitted to the Office of the Secretary, as described in § 1012.4(c)(3) within twenty (20) days after the meeting for which the summary is required. The Office of the Secretary shall maintain a public file of the meeting summaries in chronological order.

(b) *Commission minutes.* (1) Commission minutes document the decisions of the Commission. Minutes may be taken verbatim when necessary or desirable and may include attachments such as Commission opinions, briefing papers, or other documents presented at the meeting.

(2) Minutes recorded at executive session are subject to the final approval of the Commission. The Commission's final minutes constitute the official means of recording the decisions of the Commission and the votes of the individual Commissioners when filed with the Office of the Secretary.

(c) *Transcripts.* A transcript is a verbatim record of a meeting. Transcript records may include exhibits submitted to be part of the formal record of a meeting. Transcripts are generally taken at public hearings and certain public meetings when complex subjects indicate verbatim records are desirable. Copies of transcripts are placed on file for public inspection in the Office of the Secretary.

§ 1012.6 The news media.

The Agency recognizes that the news media occupy a unique position relative to informing the public of the activities of the Agency. It is believed that the inherently public nature of the news media requires that their activities be exempt from the requirements of this meetings policy whenever meetings are held with the news media for the purpose of informing them about Agency activities. Such meetings are not exempt in the event that any representative of the news media attempts to influence any Agency employee on a substantial interest matter.

§ 1012.7 Telephone conversations.

Telephone conversations present special problems regarding this meetings policy. It is recognized that persons outside the Agency have a legitimate right to information and to present their views regarding Agency activities. It is further recognized that such persons may not have the financial means to travel to meet with Agency employees. However, because telephone conversations, by their very nature, are not susceptible to attendance or participation by the public, care must be taken to ensure that they are not utilized to circumvent the meetings policy. Two basic rules apply to telephone conversations:

(a) Any telephone conversation in which substantial interest matters are discussed with outside parties must be detailed in a meeting summary which meets the requirements of § 1012.5(a)(1). A summary detailing telephone conversations must be submitted by the CPSC employee involved to the Office of the Secretary within 20 days after the telephone call for which a summary is required. The Office of the Secretary shall maintain a public file of telephone call summaries in chronological order.

(b) All Agency personnel must exercise sound judgment in discussing substantial interest matters during a telephone conversation and in the exercise of such discretion, should not hesitate to terminate a telephone conversation and insist that the matters being discussed be postponed until a meeting with appropriate advance public notice may be scheduled or until the matter is presented to the Agency in writing if the outside party is financially or otherwise unable to meet with the Agency employee.

§ 1012.8 Chart summary of meetings policy.

The following is a chart summary of the meetings policy contained in this Part 1012:

Chart summary of meetings policy

Meeting category	Notice			Attendance		Records		
	Federal Register	Public Calendar	No advance notice	Open	Closed	Minutes	Transcript	Meeting summary
Public hearing	X	X		X			X	
Involving Commission:								
Executive session			X		X	X		
Closed session			X		X	X		
Open session		X		X		X		
Involving outside parties		[1] X		[2] X	[3] X			[3] X
Advisory committee	X	X		X			X	
Staff meetings		[4] X			[4] X			[4] X

[1] Notice in the Public Calendar is required for all meetings between Commissioners for Agency staff, and outside parties, involving matters of substantial interest, except as described in 16 CFR 1012.4(c)(1)(ii).
[2] Meetings between Commissioners or Agency staff and outside parties are open to the public, except as described in 16 CFR 1012.4(c)(2)(ii).
[3] Meeting summaries are required for meetings where matters of substantial interest are discussed.
[4] At the discretion of participants.

Effective date: This Part 1012 becomes effective on December 4, 1975.

Dated: October 29, 1975.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.75-29518 Filed 11-3-75;8:45 am]

federal register

TUESDAY, NOVEMBER 4, 1975



PART V:

PENSION BENEFIT GUARANTY CORPORATION

■

PENSION PLANS

Allocation of Assets and Limitations on Guaranteed Benefits

PENSION BENEFIT GUARANTY CORPORATION

[29 CFR Part 2608]

ALLOCATION OF ASSETS

Proposed Determination of Payable Benefits

Section 4044 of the Employee Retirement Income Security Act of 1974 (hereinafter "the Act") requires that upon the termination of a defined benefit pension plan the assets of such plan be allocated among six priority categories. The allocation of plan assets affects the determination of what benefits are funded by plan assets, whether a terminating plan covered by the insurance provisions of Title IV of the Act has sufficient assets to pay all benefits guaranteed by such insurance provisions, the amount which the PBGC must pay from its insurance funds to cover guaranteed benefits, and consequently the amount of liability which will be imposed on the sponsoring employer under section 4062 or 4064 of the Act.

Notice is hereby given that the Pension Benefit Guaranty Corporation (hereinafter "the PBGC") proposes to amend Chapter XXVI of Title 29, Code of Federal Regulations, to add a new Part 2608, set forth below, which implements section 4044 of the Act.

This proposed regulation was prepared by the staff of the Pension Benefit Guaranty Corporation at the request of the Board of Directors of the Corporation. With the understanding that this is a staff document without the Board's endorsement of the policies underlying it, the Board authorized publication of this proposed regulation in the FEDERAL REGISTER to invite public comments and suggestions that will assist the Board in its consideration of the regulation to be finally adopted.

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments to the Office of the General Counsel, Pension Benefit Guaranty Corporation, Room 7200, 2020 K Street NW., Washington, D.C. 20006. Each person submitting comments should include his name and address, identify this notice, and give reasons for any recommendations. Comments should be submitted on or before December 4, 1975. Copies of written comments will be available for examination for a reasonable period by interested persons in the Office of Communications of the PBGC, Room No. 7100, 2020 K Street NW., Washington, D.C. 20006, between the hours of 9 a.m. and 4 p.m. This proposal may be changed in light of the comments received.

STATUTORY PURPOSES

The proposed regulation is based on the PBGC's view that section 4044 requires that the assets of a terminating plan be allocated so as (a) to provide that the value of a participant's voluntary contributions be protected by first allocating assets to those contributions, (b) to provide that the remaining assets be allocated sequentially to the remaining priority categories listed in section 4044(a) of the Act, and (c) to discourage plans from being structured in a manner intended to unreasonably divert assets away from guaranteed benefits to non-guaranteed benefits.

BASIC APPROACH

First, the total benefits payable under the plan with respect to each participant are divided among the priority categories established in section 4044 of the Act.

Next, each participant's benefit assigned to a priority category is divided between (1) that portion of the benefit which would be guaranteeable under the guaranteed benefits regulation contained in Part 2605 of this chapter if the insurance limitations contained in section 4022(b) of the Act which are incorporated in that regulation did not apply, and (2) that portion of the benefit which could not be guaranteed even if the insurance limits were disregarded. The guaranteeable portion of the benefit is called a "basic type benefit" and the portion not guaranteeable a "non-basic type benefit." The purpose of this division of a participant's benefit assigned to a priority category between basic and non-basic type benefits is twofold. First, it allows the values of the same type benefits assigned to a higher priority category to be subtracted from the value of such benefits assigned to a lower priority category in accordance with section 4044 (b)(1) of the Act which provides that the amount allocated under one priority category shall be adjusted for any allocation of assets with respect to that benefit under a prior category. Second, it enables the identification of those types of benefits which would be guaranteed under Part 2605 of this chapter so that one can determine whether the plan is sufficient, i.e., has adequate assets to pay all guaranteed benefits, or, if it is insufficient, the amount of the liability for payment of guaranteed benefits.

After a participant's benefits have been divided into basic and non-basic types, the value of each type of benefit in each priority category is computed according to the valuation factors prescribed by the PBGC. Then, the total value of the benefits assigned to a priority category is determined by summing the values of all benefits assigned to that priority category.

Next, the assets of the plan are allocated sequentially to each priority category. If the assets allocated to a priority category are insufficient to satisfy in full all benefits in that category, such assets are allocated pro-rata among the benefits of participants in such category based on the ratio that the sum of the value of all of a participant's benefits in that category bears to the total value of the benefits in such category. This will accomplish the first purpose of section 4044 which is to assure that assets are allocated in order to the priority categories, and within those categories, divided proportionately among the benefit values of the participants.

Although the assets allocated to priority categories 1 through 4 and priority category 6 are to be allocated pro-rata among the benefits of the participants, a special rule is establish in section 4044 (b)(3) of the Act for assets allocable to priority category 5. Under this special rule, which is embodied in § 2608.4(d)(2) of the proposal, assets allocable to priority category 5 are distributed first to those participant's benefits which would have been allocated to priority category 5 on the basis of the plan's provisions which were in effect at the beginning of the 5 year period ending on the date of termination. If the assets so allocated are sufficient to pay all such benefits, the assets are allocated on the basis of the participant's benefits which would be in category 5 taking into account the first plan amendment during the 5 year period. This process is repeated for subsequent amendments during the 5 year period ending on the date of plan termination until either all assets allocable to category 5 are exhausted or all plan amendments within the 5 year period are included in the computation. If the plan assets are exhausted before all benefits are assigned under plan amendments, the assets allocable to the plan amendment for which benefits were being assigned when the assets were exhausted are allocated pro-rata among the benefits of participants under that amendment.

Once the assets are allocated to each participant's benefits in a priority category, they are first applied to his basic type benefits, and any remainder is then applied to his non-basic type benefit. For example, assume a plan with participants, A and B, each having a benefit valued at $10,000 in priority category 3. However, $5,000 of participant A's benefit is the result of a non-basic temporary annuity, while all of participant B's benefit is a basic type of benefit which would be fully guaranteed. If there is a total of $16,000 in plan assets allocable to priority ctegory 3, $8,000 in assets would be allocable to each participant's benefit. Under the approach in the proposal participant A would receive $8,000 from the plan and nothing from the PBGC because the $2,000 benefit not payable from plan assets is a non-basic type benefit. Participant B, on the other hand, would receive a total benefit of $10,000, $8,000 from the plan and $2,000 from the PBGC. This will prevent diversion of PBGC funds to non-guaranteed benefits by plans which attempt to build up the non-basic type benefit which would be in priority category 2 or 3.

Finally, all of the assets allocated to the value of a participant's basic type benefits throughout the priority categories are added, and the total substracted from the participant's guaranteed benefit, calculated under the regulations of the PBGC, to determine the amount, if any, by which the plan assets are insufficient to provide that participant his guaranteed benefit. The total plan asset insufficient is equal to the sum of the insufficiencies with respect to each participant.

PRIORITY CATEGORY 1

VOLUNTARY EMPLOYEE CONTRIBUTIONS

Voluntary employee contributions consist of contributions to a plan by an employee which are not required. Under the Act, benefits attributable to such contributions are treated as benefits derived from a separate individual account plan, and, as such, pursuant to section 4021(b)(12), are not guaranteeable. Section 2608.6 of the proposal provides that the value of the benefits derived from voluntary employee contributions is equal to the separate account maintained in the pension plan for such contributions, or, if no such separate account is maintained, the total of such contributions.

PRIORITY CATEGORY 2

MANDATORY EMPLOYEE CONTRIBUTIONS

Section 2608.7 of the proposal establishes the rules for determining the value of accrued benefits derived from mandatory employee contributions. It deals with two distinct situations. First, plans which are subject to section 204(c) of the Act which prescribes the method of determining that portion of an accrued benefit that is derived from mandatory employee contributions and that portion that is derived from employer contributions, and, second, plans which are not subject to section 204(c) of the Act. These latter plans are comprised of plans which terminated or will terminate before section 204(c) of the Act becomes applicable to them.

Under the Act it is contemplated that the value of a participant's benefits derived from his mandatory contributions should be protected to the greatest extent possible, and that his accrued benefit derived from his own contributions will have a value at least equal to the aggregate of those contributions. Accordingly, under both major subsections of proposed § 2608.7, setting forth the manner of determining the value of a participant's accrued benefits derived from his mandatory contributions, the value of such benefit is under all circumstances equal to the participant's accumulated mandatory contributions.

As previously noted, proposed § 2608.7(a) applies to plans subject to section 204(c) of the Act, and accordingly accumulated employee contributions are determined on the basis set forth in section 204(c), except that, as provided in section 4044(b)(5), distributions to an employee from the plan are deducted in determining his mandatory contributions for purposes of allocating the assets of a terminated plan. Thus, under proposed § 2608.7(a)(1) accumulated employees contributions are equal to the total mandatory employee contributions plus applicable interest on such contributions less any distributions of benefits under the plan before the date of termination. Total accumulated contributions equals the total mandatory contributions of the employee plus interest, if any, provided by the plan before the effective date of section 204(c) of the Act plus employee contributions made after that date and interest of 5 percent on the total accumulated mandatory employee contributions in the plan compounded annually for all years after section 204(c) becomes effective for that plan. Any benefits distributed under the plan plus interest (computed for each year at the rate applicable to employee contributions) on such benefits is subtracted from the above total to determine an employee's accumulated contribution. Using the accumulation rules, conversion factors, and related limitations developed by the Internal Revenue Service under the Act, the PBGC will determine the benefit accrued for normal age retirement derived from employee contributions. The value of this benefit constitutes the value of the basic type category 2 benefit. Its value is likely to be significantly less than the employee's accumulated contributions as of the date of termination when valued under PBGC valuation standards because the interest rates used by the PBGC in the foreseeable future will likely be higher than the interest rates prescribed under section 204(c), and because the PBGC valuation of the employees' derived benefits is discounted for mortality before normal retirement age as well as after such age. The value attributable to these differences constitutes the non-basic type benefit in priority category 2.

Internal Revenue Service conversion factors have been used because otherwise there would be a difference in the annuity derived from employee contributions for employees who left the plan before it terminated and employees who left the plan after it terminated. Since the purpose of determining that annuity is to calculate the amount of benefit derived from employee contributions in which an employee is vested, if the PBGC used different factors than the Internal Revenue Service for determining the annuity derived from an employee's own contributions, two employees each with the same accumulated contributions and service would receive different vested benefits if one retired before plan termination and the other retired after plan termination, a result not consonant with the intent of Act.

Proposed § 2608.7(b) applies to plans terminated before section 204(c) of the Act becomes applicable to them. Because section 204(c) of the Act does not apply to such plans for determining that portion of an employee's accrued benefit which is attributable to his own contributions, proposed § 2608.7(b) contains another approach for determining that benefit. Since plans which require employee contributions generally vest the employee in his own contributions, any accrued benefit derived from such contributions is a basic type benefit. The amount of accumulated employee contributions available to pay for that benefit shall be determined by deducting the value of any death benefit in the form of a return of employee contributions from the value of the accumulated contributions. Since the death benefit is not guaranteeable under Part 2605 of this Chapter, it is a non-basic type benefit. Thus, this approach differs from that for plans covered by section 204(c), but the value of a participant's benefits in priority category 2 still equals his accumulated mandatory contributions.

Proposed §§ 2608.7(b)(3) and (b)(4) provide, respectively, that the value of the participant's accrued basic type benefit and his vested basic type benefit be computed. If after deducting the value of the death benefit, the remaining amount of the participant's contributions would pay for more than his accrued benefit under the plan, the value of the accrued benefit is a basic type benefit, and any excess is a non-basic type benefit as is the death benefit. Under proposed § 2608.7(b)(6), if the value of an employee's accrued benefit exceeds his accumulated mandatory contributions less the value of the death benefit, those contributions could only provide some of his accrued benefit. Accordingly, the value of his non-basic type priority category 2 benefit is the value of the death benefit discussed above, and the remainder of the participant's accumulated contributions is the value of such participant's basic type priority category 2 benefit.

PRIORITY CATEGORY 3

Two types of benefits payable as annuities are allocable to priority category 3. The first type covered in proposed § 2608.8(a)(1) is an annuity which has been in pay status for at least the 3 year period ending on the date of plan termination. The second type, covered in proposed § 2608.8(a)(2) is an annuity which could have been in pay status for that 3 year period. With respect to annuities which have been in pay status for the required period, the amount of annuity payments assignable to priority category 3 is determined on the basis of the plan's provisions which were in effect at any time during the 5 year period ending on the date of plan termination under which such annuity would be the least. Additionally, the level of such benefits is limited to the lowest level which was in pay status during that 3 year period. Thus, cost-of-living adjustments during such 3 year period due to escalator provisions which were contained in the plan for the entire 5 year period ending on the date of plan termination are disregarded in determining the level of benefits assignable to priority category 3.

With respect to annuities which could have been in pay status for the required 3 year period, the type of annuity which is assignable to priority category 3 is computed on the basis of the plan's provisions in effect during the 5 year period ending on the date of plan termination under which the annuity would be the least. However, for purposes of computing the amount of the annuity, but not whether a participant was entitled to that particular form of annuity, the participant's age, service, salary and any other factors relevant under the plan formula to compute the amount of the annuity are determined as of the date of termination. Thus, if a participant was

entitled to an early retirement benefit at the beginning of the 3 year period ending on the date of plan termination, under proposed § 2608.8(a)(2) that benefit is assignable to priority category 3. If the reduction provided for in the plan were 5 percent a year for each year the participant retired before his normal retirement age, and 3 years before the plan terminated the reduction would be 25 percent, under the proposal the reduction would only be 10 percent because the participant would be credited with the extra 3 years of service for purposes of determining the amount of the benefit. If, however, under that same plan the participant became eligible for a special unreduced early retirement benefit 2 years before plan termination, under the proposal the special early retirement benefit would not be assigned to priority category 3 because the participant could not have taken it 3 years before the plan terminated. Thus, under the proposal a higher claim on assets is given both to benefits which have been in pay status for the 3 years ending on the date of plan termination and those which could have been in pay status for such period. Therefore, under the proposal a participant's reasonable expectation based on the benefit he was entitled to 3 years before plan termination is protected.

To avoid double counting of participants' benefits under a plan, under proposed § 2608.8(b) the value of the basic type annuity in category 3 is reduced by the value of the basic type benefit derived from participants' contribution in priority category 2. However, because the non-basic form of benefit in priority category 3 would be a nonguaranteeable annuity, and the non-basic benefit in priority category 2 is not an annuity it is not subtracted from the non-basic type benefit in priority category 3, because it is not the same type of benefit.

PRIORITY CATEGORY 4

Proposed § 2608.9 covers benefits in priority category 4. Such benefits consist of (1) all other benefits guaranteed under Part 2605 of this chapter which have not been allocated to a higher priority category, and, (2) benefits which would be guaranteed if the insurance limits on benefits payable to one person with respect to more than one participant or from more than one terminated plan, and the insurance limits on benefits payable to a substantial owner (sections 4022(b)(5) and 4022(b)(6) of the Act, respectively) were not applicable. Because the benefits in priority category 4 are all basic type benefits, the value of the basic type benefits in priority categories 2 and 3 are subtracted from the value of the basic type benefits which would otherwise belong in priority category 4 to determine the value of benefits in that priority category.

PRIORITY CATEGORY 5

Proposed § 2608.10 covers benefits in priority category 5. Those benefits consist of all other nonforfeitable benefits, exclusive of benefits derived from voluntary employee contributions, provided by the plan that were not allocated to a higher priority category. Since the benefits in priority categories 2 through 4 nonforfeitable, whether basic or nonbasic type, the total value of such benefits with respect to each participant is subtracted from the total value of that participant's nonforfeitable benefits under the plan to determine the value of the participant's nonforfeitable benefits in priority category 5. Proposed § 2608.10 also contains special rules for subdividing the benefits in priority category 5. These rules only apply if there are plan assets available for benefits in priority category 5, but such assets are not sufficient to cover all priority category 5 benefits so that the special rules which were discussed above required by the Act by allocating assets to benefits in that category apply.

PRIORITY CATEGORY 6

Priority category 6, covered in proposed § 2608.11, contains all plan benefits with respect to a participant not assigned to priority categories 1 through 5. Thus, priority category 6 will contain the value of accrued forfeitable benefits of a participant.

EXCESS ASSETS

Section 4044(d) of the Act provides that any assets which remain after all plan benefits actually have been paid may be returned to the employer or otherwise distributed in any lawful manner provided in the plan. However, that section also requires that any excess assets attributable to employee contributions must be returned to the employees. The PBGC is currently considering how to implement section 4044(d) and invites suggestions on the method for implementing such section. The regulation contained in this proposal will be amended at a later date to incorporate rules for implementing section 4044(d) of the Act.

In consideration of the foregoing, it is proposed that Chapter XXVI of Title 29, Code of Federal Regulations be amended by adding a new Part 2608 to read as follows:

PART 2608—ALLOCATION OF ASSETS

Sec.

2608.1 Purpose and Scope.
2608.2 Definitions.
2608.3 General Rule.
2608.4 Manner of Allocation.
2608.5 Violations.
2608.6 Priority Category 1 Benefits.
2607.7 Priority Category 2 Benefits.
2608.8 Priority Category 3 Benefits.
2608.9 Priority Category 4 Benefits.
2608.10 Priority Category 5 Benefits.
2608.11 Priority Category 6 Benefits.

AUTHORITY: Secs. 4002(b)(3), 4044, Pub. L. 93-406, 88 Stat. 1004, 1025-27 (29 U.S.C. 1302(b)(3), 1344)

§ 2608.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish the procedure for allocating a plan's assets in accordance with section 4044 of the Act upon the plan's termination.

(b) *Scope.* This part applies to the termination of a plan covered by section 4021 of the Act which occurs on or after September 2, 1974.

§ 2608.2 Definitions.

For purposes of this part:

"Act" means the Employee Retirement Income Security Act of 1974.

"Annuity" means a series of periodic payments to a participant or a surviving beneficiary for a fixed or contingent period.

"Basic type benefit" means a type of benefit which is, or would be, guaranteed under the provisions of Part 2605 of this chapter, if the insurance limits contained in § 2605.4(b) of this chapter did not apply.

"Mandatory employee contributions" means amounts contributed to the plan by a participant which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

"Non-basic type benefit" means any benefit provided by a plan other than a basic type benefit.

"Nonforfeitable benefit" means a benefit payable with respect to a participant if on the date of termination of the plan the participant has satisfied all of the conditions required of him under the provisions of the plan to establish entitlement to the benefit, except the submission of a formal application, retirement, or the completion of a required waiting period. Benefits that become nonforfeitable solely as a result of the termination of a plan will be considered forfeitable.

"Normal retirement age" means the age specified in the plan as the normal retirement age, which age with respect to each participant cannot exceed the later of age 65 or the age attained after 10 years of participation in the plan or, if no normal retirement age is specified in the plan, age 65.

"Plan" means a defined benefit plan.

"Plan assets" means the dollar value of the assets available to pay plan benefits determined in the manner prescribed by the Pension Benefit Guaranty Corporation.

"Priority categories" or "Priority category" means the categories contained in 4044(a)(1) through 4044(a)(6) of the Act setting forth the order in which plan assets are to be allocated upon termination.

"Value of plan benefits" means the value, stated in dollars and cents, as of the date of plan termination, of the benefits to be provided by the plan, calculated on the basis of interest (including costs of administration) and mortality rates prescribed by the Pension Benefit Guaranty Corporation.

"Voluntary employee contributions" means amounts contributed to a plan pursuant to the provisions of the plan by an employee which are not mandatory employee contributions.

§ 2608.3 General rule.

Upon the termination of a plan to which this part applies, the assets of

such plan shall be allocated to benefits provided by the plan in the manner prescribed by this part.

§ 2608.4 Manner of allocation.

Assets shall be allocated by using the following procedure:

(a) *Allocation of benefits.* Benefits payable with respect to each participant under the plan after the date the plan terminates shall be divided among the six priority categories contained in section 4044 of the Act and the value of that portion of a participant's benefit assigned to each priority category shall be determined in accordance with §§ 2608.6 through 2608.11.

(b) *Value of benefits in each priority category.* The total value of the benefits assigned to each priority category shall be computed by adding together the values of the benefits assigned to such category.

(c) *Allocation of assets to priority categories.* The assets of the plan shall be allocated to each priority category in succession, beginning with the first priority category. If the plan has sufficient assets to satisfy in full the value of all benefits assigned to a priority category, the remaining assets shall then be allocated to the next lower priority category. This process shall be repeated until all assets of the plan have been allocated to priority categories.

(d) *Allocation of assets to benefits within priority categories.* (1) Except for benefits assigned to the fifth priority category, if the plan assets allocable to any priority category are insufficient to satisfy in full the value of the benefits assigned to that category, the plan assets shall be allocated to the value of the benefits assigned to such category of each participant by multiplying the plan assets allocated to the category by a fraction, the numerator of which shall be the value of the participant's benefits assigned to such category and the denominator of which shall be the value of all benefits assigned to such category.

(2) If the plan assets allocable to priority category 5 are insufficient to cover the benefits assigned to such category, the following allocation procedure shall apply:

(i) The assets allocable to priority category 5 shall first be allocated to the value of the nonforfeitable benefits of plan participants computed on the basis of the provisions of the plan which were in effect at the beginning of the five (5) year period ending on the date of plan termination.

(ii) If the assets available for allocation under paragraph (d)(2)(i) of this section are sufficient to satisfy in full the benefits described in such subparagraph, the remaining plan assets allocable to category 5 shall be allocated to the benefit changes applicable to each participant under the earliest amendment of the plan during the five year period ending on the date of plan termination which was effective during such period. If the plan assets allocable to such amendment are sufficient to satisfy in full the value of the benefits of plan participants under such amendment, any remaining plan assets shall be similarly allocated to the next succeeding amendment. This process shall be repeated until all plan assets allocable to priority category 5 have been exhausted. In the event that the plan assets are insufficient to satisfy in full the benefits attributable to any sub-category of priority category 5, the assets allocable to such sub-category shall be distributed among participants' benefits in such sub-category on the basis of the ratio that each participant's benefits assigned to such sub-category bears to the total benefits assigned to such sub-category.

(3) The assets allocated to each participant within each priority category shall first be applied to satisfy the value of the participant's basic type benefit assigned to such category. Any remaining assets shall then be applied to the value of such participant's non-basic type benefit assigned to that priority category.

(4) If the plan assets allocable to a participant's basic type benefit in all priority categories are not sufficient to satisfy in full the value of the participant's benefits guaranteed under Part 2605 of this chapter, the amount of the difference, but not less than zero, between the assets so allocated and the value of such benefits shall constitute the amount of asset deficiency with respect to that participant. The sum of such differences with respect to all plan participants shall constitute the plan asset deficiency of section 4062(b)(1) of the Act.

§ 2608.5 Violations.

It shall be a violation of the Act to allocate plan assets other than as prescribed in section 4044 of the Act and this part, except as may be required under section 4044(b)(4) of the Act. Where a distribution, transfer or allocation of assets is made to a participant in contemplation of plan termination it shall be treated as an allocation of plan assets upon termination of the plan.

§ 2608.6 Priority Category 1 Benefits.

The benefits assigned to priority category 1 consist of accrued benefits of participants which derive from voluntary employee contributions. The value of such benefits is the balance of the participant's account if the plan maintains a separate account for contributions from a participant. If the plan does not maintain such a separate account, the value of such benefits is the total of the participant's voluntary contributions. Benefits assigned to priority category 1 are non-basic type benefits.

§ 2608.7 Priority Category 2 Benefits.

(a) *Plans subject to section 204(c) of the Act.* The present value of priority category 2 benefits for plans subject to the provisions for allocating accrued benefits between employer and employee contributions contained in section 204(c) of the Act, shall be computed as follows:

(1) Compute each participant's accumulated contributions as of the date of termination by:

(i) Adding:

(A) The total of the participant's mandatory contributions to the plan, plus

(B) Interest, if any, under the plan to the end of the last plan year to which section 204(c) of the Act does not apply, and

(C) Interest on the sum of the amounts determined under paragraphs (a)(1)(i)(A) and (B) of this section compounded at 5 percent per annum from the beginning of the first plan year to which section 204(c) of the Act applies to the earlier of the participant's retirement date or the date of plan termination; and

(ii) Substracting from the total of paragraphs (a)(1)(i)(A), (i)(B) and (i)(C) of this section:

(A) Any payments or distributions from the plan to the participant or to his beneficiary; and

(B) Interest payable under paragraphs (a)(1)(i)(B) and (1)(i)(C) of this section on the amounts which are described in paragraph (a)(1)(ii)(A) of this section paid prior to the participant's retirement date, calculated from the date of such payments until the earlier of the participant's retirement date or date of termination.

(2) Compute the value of each participant's benefits assignable to priority category 2 as follows:

(i) For participants who have not retired and who have not reached normal retirement age as of the date of plan termination:

(A) Add accumulated employee contributions computed under paragraph (a)(1) of this section and interest on such contributions compounded at 5 percent per annum from the date of plan termination to the date on which the participant would attain normal retirement age.

(B) Using the Internal Revenue Service factors in effect for such purposes, convert the amount determined under paragraph (a)(2)(i)(A) of this section to the normal form of the accrued benefit payable at normal retirement age under the plan that is attributable to accumulated employee contributions.

(C) Compute the value of the benefit determined under paragraph (a)(2)(i)(B) of this section using the valuation factors established by the Pension Benefit Guaranty Corporation for such purpose which are applicable to the date of plan termination.

(D) The value of the basic type priority category 2 benefit is equal to the value of the benefit computed under paragraph (a)(2)(i)(C) of this section. The value of the non-basic type priority category 2 benefit is equal to the difference between the value of accumulated employee contributions computed according to paragraph (a)(1) of this section and the value of the basic type priority category 2 benefit computed under this subparagraph, which difference shall not be less than zero.

(ii) For participants who have retired before the date of plan termination or have attained normal retirement age on such date:

(A) Using the Internal Revenue Service factors in effect for such purposes, convert the accumulated employee contributions computed under paragraph (a)(1) of this section to the normal form of the accrued benefit payable at normal retirement age under the plan that is attributable to accumulated employee contributions.

(B) Compute the value of the benefit determined in paragraph (a)(2)(ii)(A) of this section using the valuation factors established by the Pension Benefit Guaranty Corporation for such purpose which are applicable to the date of plan termination.

(C) The value of the basic type priority category 2 benefit is equal to the value of the benefit computed under paragraph (a)(2)(ii)(B) of this section. The value of the non-basic type priority category 2 benefit is equal to the difference between the value of the accumulated employee contributions computed according to paragraph (a)(1) of this section and the value of the basic type priority category 2 benefit computed under this subparagraph, which difference shall not be less than zero.

(b) *Plans not subject to section 204(c) of the Act.* (1) Compute the accumulated mandatory contributions, which shall not be less than zero, of each employee as of the date of plan termination pursuant to § 2608.7(a)(1)(i)(A) adding such interest on employee contributions as may be provided by the plan, and subtracting any payments or distributions from the plan to the participant or his beneficiary before the date of plan termination including interest on such distributions to such date.

(2) Compute the value of any death benefits under the plan, not payable as a result of death before the date of plan termination, which are attributable to the refund of employee contributions as determined under the plan in the event of the death of the participant prior to the commencement at normal retirement age of benefit payments under the plan. The value of such benefit is to be computed using the valuation factors applicable to the date of plan termination established by the Pension Benefit Guaranty Corporation.

(3) Determine the value of the participant's accrued basic type benefit under the plan payable in the normal form provided by the plan for retirement at the normal retirement age, and compute its value using the valuation factors which are applicable to the date of plan termination established by the Pension Benefit Guaranty Corporation.

(4) Determine the value of the participant's basic type accrued vested benefit by multiplying the actuarial value of the participant's accrued benefit determined under paragraph (b)(3) of this section by the percentage of his accrued benefit in which a participant is vested under the plan's vesting provisions.

(5) If the difference between the accumulated employee contributions computed under paragraph (b)(1) of this section and the value of the death benefits computed under paragraph (b)(2) of this section is equal to or greater than the value of the participant's total accrued basic type benefits computed under paragraph (b)(4) of this section:

(i) The value of the basic type priority category 2 benefit is the total value of the participant's accrued basic type benefit computed under paragraph (b)(4) of this section; and

(ii) The value of the non-basic type priority category 2 benefit is the difference between the value of the employee's accumulated contributions computed under paragraph (b)(1) of this section and the amount computed under paragraph (b)(4) of this section.

(6) If the difference between the accumulated employee contributions computed under paragraph (b)(1) of this section and the value of the employee death benefits computed under paragraph (b)(2) of this section does not exceed the value of the participant's accrued basic type benefit computed in accordance with paragraph (b)(4) of this section.

(i) The value of the basic type priority category 2 benefit is the difference between the value of the employee contributions computed under paragraph (b)(1) of this section and the value of the death benefits computed under paragraph (b)(2) of this section; and

(ii) The value of the non-basic type priority category 2 benefit is the value of the death benefits computed under paragraph (b)(2) of this section.

§ 2608.8 Priority Category 3 Benefits.

(a) *Definition.* Priority category 3 benefits consist of:

(1) Benefits payable as an annuity under the terms of the plan which have been in pay status for the 3 year period ending on the date of plan termination at the lowest level in pay status during such period; computed on the basis of the plan's provisions in effect during the 5 year period ending on such date under which the amount of such annuity would be the least, valued in accordance with paragraph (b)(1) of this section; or

(2) Benefits payable as an annuity on or after the date of plan termination calculated on the basis of the benefits which would have been payable in the normal form of payment under the plan at the beginning of the 3 year period ending on the date of plan termination with respect to a participant who was entitled to retire before the beginning of such period, computed on the basis of the plan's provisions in effect during the 5 year period ending on the date of plan termination under which the amount of such annuity would be the least, valued in accordance with paragraph (b)(2) of this section. The amount of the annuity, but not entitlement to an annuity, shall be determined using the age, service and other revelant factors for computing the annuity under the plan with respect to the participant as of the date of plan termination.

(b) *Valuation.* The value of priority category 3 benefits shall be computed separately with respect to each participant as follows:

(1) With respect to annuities which were in pay status for the 3 year period ending on the date of plan termination—

(i) First, determine the lowest annuity which was payable during such 3 year period in accordance with paragraph (a)(1) of this section, and compute its value using the valuation factors applicable to the date of plan termination established by the Pension Benefit Guaranty Corporation;

(ii) Second, determine that portion of the annuity derived under the preceding subparagraph which is, or would be, a basic type benefit, and compute its value using the valuation factors applicable to the date of plan termination established by the Pension Benefit Guaranty Corporation;

(iii) Third, determine the value of the non-basic type benefit by subtracting the value of the basic type annuity determined under paragraph (b)(1)(ii) of this section from the value of the annuity which was in pay status determined under paragraph (b)(1)(i) of this section; and

(iv) Fourth, subtract from the value of the basic type benefits with respect to the participant computed under paragraph (b)(1)(ii) of this section the value of the basic type benefits derived from mandatory employee contributions with respect to that participant computed under §§ 2608.7(a) and 2608.7(b), whichever is appropriate, to determine the value, but not less than zero, of the participant's basic type benefits which were in pay status for 3 years attributable to priority category 3.

(2) With respect to annuities which could have been in pay status for the 3 year period ending on the date of plan termination:

(i) First, determine the lowest annuity which would have been payable in accordance with paragraph (a)(2) of this section, and compute its value using the valuation factors applicable to the date of termination established by the Pension Benefit Guaranty Corporation;

(ii) Second, determine that portion of the annuity derived under the preceding subparagraph which is, or would be, a basic type benefit, and compute its value using the valuation factors applicable to the date of plan termination established by the Pension Benefit Guaranty Corporation;

(iii) Third, determine the value of the non-basic type benefit to be assigned to priority category 3 by subtracting the value of the basic type annuity determined under paragraph (b)(2)(ii) of this section from the value of the annuity which could have been in pay status determined under paragraph (b)(2)(i) of this section; and

(iv) Fourth, subtract from the value of the basic type benefits with respect to the participant computed under paragraph (b)(2)(ii) of this section the value of the basic type benefits with respect to that participant computed under § 2608.7(a) or § 2608.7(b), whichever is appropriate, to determine the value, but not less than zero, of the participant's basic type benefits which

could have been in pay status to be assigned to priority category 3.

(c) *Participant's benefits attributable to priority category 3.* (1) The value of a participant's basic type benefit attributable to priority category 3 shall be either:

(i) The value of his basic type benefits computed under paragraph (b)(1)(iv) of this section; or

(ii) The value of his basic type benefits computed under paragraph (b)(2)(iv) of this section.

(2) The value of the participant's nonbasic type benefit attributable to priority category 3 shall be either:

(i) The value of the participant's nonbasic type benefit computed under paragraph (b)(1)(iv) of this section; or

(ii) The value of the participant's nonbasic type benefit computed under paragraph (b)(2)(iii) of this section.

(3) The value of each participant's benefit attributable to priority category 3 is the sum of values determined under paragraphs (c)(1) and (c)(2) of this section.

§ 2608.9 Priority Category 4 Benefits.

(a) *Definition.* The benefits in priority category 4 consist of all basic type benefits which do not exceed the limitations on the guarantee of benefits set forth in sections 4022(b)(1), 4022(b)(2), 4022(b)(3), 4022(4), 4022(b)(7) and 4022(b)(8) of the Act as implemented by Part 2609 of this chapter, valued in accordance with paragraph (b) of this section.

(b) *Valuation.* The value of the benefit of each participant or beneficiary who receives a benefit attributable to priority category 4 shall be computed separately with respect to each participant as follows:

(1) First, determine the value of the benefits in this priority category with respect to each participant using the valuation factors applicable to the date of plan termination established by the Pension Benefit Guaranty Corporation.

(2) Second, subtract from the value of each participant's benefit computed under paragraph (b)(1) of this section, the value of that participant's basic type benefits assigned to priority category 2 computed under § 2608.7(a) or §2608.7(b), whichever is appropriate, and the value of that participant's basic type benefits assigned to category 3 computed under § 2608.8(c)(1) to determine the value, but not less than zero, of such participant's benefits assigned to priority category 4.

§ 2608.10 Priority Category 5 Benefits.

(a) *Definition.* Priority category 5 benefits consist of all nonforfeitable benefits, exclusive of benefits derived from voluntary employee contributions assigned to priority category 1, payable with respect to a participant in a plan, valued in accordance with paragraph (b) of this section.

(b) *Valuation.* The value of such benefits shall be computed separately with respect to each participant as follows:

(1) Compute the value of all of a participant's nonforfeitable benefits under the plan as of the date of plan termination using the valuation factors applicable to the date of plan termination established by the Pension Benefit Guaranty Corporation.

(2) Subtract from the value computed under paragraph (b)(1) of this section, the sum of the values of the benefits assigned to priority categories 2 through 4 to determine the value, but not less than zero, of the benefits assigned to priority category 5.

(3) If there are plan assets available to allocate to benefits in priority category 5 but such assets are not sufficient to satisfy in full the values of the benefits assigned to priority categories 1 through 5:

(i) First, determine with respect to each participant the benefits which would be payable and nonforfeitable under the provisions of the plan as in effect at the beginning of the 5 year period ending on the date of plan termination;

(ii) Second, compute the value of such benefits using the valuation factors applicable to the date of plan termination established by the Pension Benefit Guaranty Corporation;

(iii) Third, subtract from the value computed under the preceding subparagraph, the sum of the values of all benefits assigned to priority categories 2, 3, or 4. This yields the value of the benefits assigned to § 2608.4(d)(2) for purposes of allocating assets.

(iv) Fourth, if the assets allocable to benefits assigned to § 2608.4(d)(2) are sufficient to satisfy in full all such benefits, determine the change in the benefits payable and nonforfeitable under the plan with respect to each participant under the provisions of the plan as amended by the first plan amendment which was effective during the 5 year period ending on the date of plan termination;

(v) Compute the value of the benefit changes determined under the preceding paragraph using the valuation factors applicable to the date of plan termination established by the Pension Benefit Guaranty Corporation. This yields the value of the benefit changes due to the first plan amendment within the 5 year period ending on the date of termination; and

(vi) Repeat the procedure of subparagraphs (b)(3)(iv) and (3)(v) of this section until all assets of the plan have been exhausted or all plan amendments have been allocated, whichever occurs first.

§ 2608.11 Priority Category 6 Benefits.

(a) *Definition.* The benefits of priority category 6 consist of all benefits provided by a plan, other than benefits assigned to priority categories 1 through 5.

(b) *Valuation.* The value of the benefits in this category shall be computed as follows:

(1) First, determine all the benefits provided by a plan, forfeitable or nonforfeitable, with respect to a participant; and

(2) Second, determine the value, but not less than zero, of the benefits determined under the preceding subparagraph using the valuation factors applicable to the date of plan termination established by the Pension Benefit Guaranty Corporation and subtract therefrom the value of the benefits with respect to that participant in priority category 1 through 5.

Issued in Washington, D.C., on this 30th day of October 1975.

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[29 CFR Part 2609]

GUARANTEED BENEFITS

Proposed Limitations

Section 4022(b) of the Employee Retirement Income Security Act of 1974 (hereinafter "the Act"), 29 U.S.C. 1322(b), sets forth limitations on the guarantee of benefit payments by the Pension Benefit Guaranty Corporation (hereinafter "PBGC"). These limitations apply to those benefits described in Part 2605 of Chapter XXVI of Title 29, Code of Federal Regulations. PBGC now proposes to amend Chapter XXVI of Title 29, Code of Federal Regulations, by adding a new Part 2609 setting forth the regulations implementing the guarantee limitations.

This proposed regulation was prepared by the staff of the Pension Benefit Guaranty Corporation. With the understanding that this is a staff document without the Board's endorsement of the policies underlying it, the Board of Directors of the Corporation authorized publication of this proposed regulation in the FEDERAL REGISTER to invite public comments and suggestions that will assist the Board in its consideration of the regulation to be finally adopted.

Interested persons may participate in this proposed rulemakinig by submitting written data, views, or arguments to the Office of the General Counsel, Pension Benefit Guaranty Corporation, Room 7200, 2020 K Street NW., Washington, D.C. 20006. Each person submitting comments should include his name and address, identify this notice, and give reasons for any recommendations. Comments should be submitted on or before December 4, 1975. Copies of written comments will be available for examination for a reasonable period by interested persons in the Office of Communications of the PBGC, Room No. 7100, 2020 K Street NW., Washington, D.C. 20006, between the hours of 9 a.m. and 4 p.m. This proposal may be changed in light of the comments received.

The basic rule of the guarantee limitations, as provided in section 4022(b)(3)

[1] Issued on the date set forth above, pursuant to a resolution of the Board of Directors approving the publication of these proposed regulations and authorizing its Executive Director to issue same.

of the Act and implemented by proposed § 2609.3(a), is one which ties the maximum guarantee to a specific form of benefit payable at a specified age in a specified amount. That is, the value of the benefits guaranted by PBGC cannot exceed the value of a single life annuity payable in monthly installments commencing at age 65 in the lesser amount of: (1) A figure based on the participant's highest average compensation during a 5-year period, or (2) $750 adjusted for changes in the Social Security contribution and benefit base. The current adjusted amount is $801.14. Moreover, as provided in proposed § 2609.3(b), the maximum guaranteed payments made by PBGC from its funds to any person or with respect to any participant cannot exceed the guarantee maximum set forth in § 2609.3(a) based on the adjusted $750 figure.

Many pension plans provide benefits in forms other than a single life annuity and the benefits may be payable at ages younger than 65. The value of a given monthly benefit in a form other than a single life annuity is usually more than the value of the same monthly benefit payable as a single life annuity, and thus the guarantee maximum set forth in proposed § 2609.3(a) (which is based on a single life annuity) must be reduced to reflect the greater values of such other benefit forms. For example, a period certain and continuous annuity under which a benefit is payable to a participant for his life, but for not less than a specified period of time whether or not the participant dies during that period, has a greater value than a single life annuity where payments cease upon the participant's death, whenever it occurs. Similarly, a benefit payable at an age younger than 65 has a greater total value then one commencing at age 65.

Therefore, proposed § 2609.4 sets forth various factors to be applied to the monthly amount computed under § 2609.4 monthly amount computed under § 2609.3(a) in order to determine the maximum amount of the monthly benefit which is guaranteeable. Proposed § 2609.4(c) contains the age adjustment factors which reduce the maximum guarantee when a benefit becomes payable at an age lower than 65. It should be noted that this adjustment will reduce substantially the maximum guaranteeable benefit, and thus may sharply curtail the guaranteed monthly benefit of a disabled retiree who begins receiving his pension benefit at an age below 65. Likewise, the guaranteed benefit of a surviving spouse would be reduced greatly if the survivor were much younger than the deceased participant. There would be a similar result in the case of a lifetime benefit payable to a surviving child. However, if the benefit to the surviving child is payable only until he reaches an age specified in the plan, substantially higher guaranteed benefits are payable. Such a benefit is a temporary life annuity, and PBGC will provide the appropriate adjustment factors on a case-by-case basis.

It is also necessary, in the case of a benefit payable to a participant and his beneficiary, to adjust the guarantee maximum to reflect differences in age between the participant and beneficiary. Proposed § 2609.4(e) provides the factors to be used to adjust for age differences.

Proposed § 2609.4(d) sets forth the adjustment factors applicable for several of the most common benefit forms payable in monthly installments. Covered by this paragraph are period certain and continuous annuities, joint and survivor annuities and step-down life annuities. PBGC will provide the appropriate adjustment factors, when needed, for benefit forms not covered in this paragraph.

The other principle guarantee limitation contained in section 4022(b) of the Act applies to benefit increases that have been in effect for less than five years with respect to participants other than substantial owners (as defined in section 4022(b)(6) and to all benefits that have been in effect for less than 30 years with respect to participants who are substantial owners. The definition of "benefit increase" contained in proposed § 2609.2 includes not only increases in the amount of the benefit payable, but also advances in the participants' entitlement to the benefit. The latter types of increase, such as a reduction in the normal retirement age under the plan or a liberalization of the plan's vesting provisions, increase the value of the benefit to the participant by, in the examples given, enabling him to receive his benefit at an earlier age or entitling him to receive a greater percentage of the benefit accrued under the plan. Inasmuch as the guarantee limitations are keyed to the value of benefits, plan amendments which produce increases in value are treated as benefit increases.

Proposed § 2609.5(c) sets forth the method for computing benefit increases. Because a benefit increase may result from a plan amendment which changes the form of the benefit payable, the formula for determining the benefit increase converts the old benefit form to the new benefit form. This enables one to determine any increase in value created by the change in benefit form. For plans under which there have been multiple benefit increases, the amount of each increase is to be expressed in the form of the benefit provided by the plan at the date of plan termination, calculated in accordance with proposed § 2609.5(d). Because increases in benefits due solely to increases in credited service do not constitute a "benefit increase" as defined in § 2609.2, all calculations under proposed § 2609.5 (c) and (d) are based on the participant's total credited service to the date of plan termination.

Proposed § 2609.6 sets forth the phase-in rule for benefit increases payable with respect to participants other than substantial owners (as defined in section 4022(b)(6) of the Act). Under this rule, the amount of a benefit increase that is guaranteed depends on the number of full years prior to plan termination that the benefit increase has been in effect. In all cases benefit increases subject to phase-in will be fully guaranteed after they have been in effect for 5 years. The guarantee is phased-in at an annual rate of 20 percent of the amount of the increase or $20 per month, whichever is greater. To the extent that a benefit increase causes the total benefit to exceed the guarantee maximum set forth in proposed § 2609.3(a), that portion of the benefit increase is not included in calculating the amount of the benefit increase subject to the phased-in guarantee. If there are multiple benefit increase within any 12-month period preceding the date of plan termination, those increases are aggregated for the purpose of applying the phase-in formula, pursuant to proposed § 2609.6(d).

Proposed § 2609.7 sets forth the phase-in rule for all benefits payable with respect to a participant who is a substantial owner. Under this rule, the guarantee of benefits payable with respect to such a participant under a plan in which there has never been a benefit increase (other than that arising from the adoption of the plan) is phased-in over a 20-year period. Further, the guarantee of any subsequent benefit increase payable with respect to a participant who is a substantial owner is also phased-in over a 30-year period, commencing with the effective date of the increase, and the guarantee of all such benefit increases cannot exceed the guarantee of the benefits provided under the original plan. Finally, as under the 5-year phase-in rule a benefit increase that causes the total benefit to exceed the guarantee maximum set forth in proposed § 2605.17 (a) is not guaranteed.

In consideration of the foregoing, it is proposed to amend Chapter XXVI of Title 29, Code of Federal Regulations, by adding a new Part 2609 to read as follows:

PART 2609—LIMITATIONS ON GUARANTEED BENEFITS

Sec.
2609.1 Purpose and scope.
2609.2 Definitions.
2609.3 Maximum guaranteeable benefit.
2609.4 Computation of maximum guaranteeable benefits.
2609.5 Benefit increases.
2609.6 Five-year phase-in of benefit guarantee for participants other than substantial owners.
2609.7 Phase-in of benefit guarantee for participants who are substantial owners.
2609.8 Effect of tax disqualification.

AUTHORITY: Secs. 4002(b)(3), 4022(b), Pub. L. 93-406, 88 Stat. 1004, 1016-18 (29 U.S.C. 1302(b)(3), 1322(b)).

§ 2609.1 Purpose and scope.

(a) The purpose of this part is to describe the limitations on benefits guaranteed under Part 2605 of this chapter and to provide the methods for applying such limitations.

(b) This part applies to each plan providing benefits guaranteed under Part 2605 of this chapter.

§ 2609.2 Definitions.

As used in this part:

"Act" means the Employee Retirement Income Security Act of 1974.

"Annuity" means a series of periodic payments to a participant or surviving

beneficiary for a fixed or contingent period.

"Benefit" means a benefit described in Part 2605 of this chapter.

"Benefit increase" means any benefit arising from the adoption of a new plan or an increase in the value of benefits payable arising from an amendment to an existing plan. Such increases include, but are not limited to, a scheduled increase in benefits under a plan or plan amendment, such as a cost-of-living increase, and any change in plan provisions which advances a participant's or beneficiary's entitlement to a benefit, such as liberalized participation requirements or vesting schedules, reductions in the normal or early retirement age under a plan, and changes in the form of benefit payments. In the case of a plan under which the amount of benefits depends on the participant's salary and the participant receives a salary increase the resulting increase in benefits to which the participant becomes entitled will not, for the purpose of this part, be treated as a "benefit increase." Similarly, in the case of a plan under which the amount of benefits depends on the participant's age or service, and the participant becomes entitled to increased benefits solely because of advancement in age or service, the increased benefits to which the participant becomes entitled will not, for the purpose of this part, be treated as a "benefit increase."

"Cash refund annuity" means annuity under which if the participant dies prior to the time when he has received pension payments equal to a fixed sum specified in the plan, then the balance is paid as a lump-sum death benefit.

"Installment refund annuity" means an annuity under which if the participant dies prior to the time he has received pension payments equal to a fixed sum specified in the plan, then the balance is paid as a death benefit in periodic installments equal in amount to the participant's periodic benefit.

"Joint and survivor annuity (joint basis)" means an annuity which is payable in periodic installments to a participant and upon his death or the death of hs beneficiary is payable to the survivor for the survivor's life in the same or in a reduced amount.

"Joint and survivor annuity (contingent basis)" means an annuity which is payable in periodic installments to a participant for his life and upon his death is payable to his beneficiary for the beneficiary's life in the same or in a reduced amount.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Period certain and continuous annuity" means an annuity which is payable in periodic installments for the participant's life, but for not less than a specified period of time whether or not the participant dies during that period.

"Step-down life annuity" means an annuity payable in a certain amount for the life of the participant plus a temporary additional amount payable until the participant attains an age specified in the plan.

"Successor plan" means a plan which covers substantially the same employees and provides substantially the same benefits as a previously established plan.

§ 2609.3 Maximum guaranteeable benefit.

(a) *General limitation.* Benefits payable with respect to a participant under a plan shall be guaranteed only to the extent that such benefits do not exceed the actuarial value of a benefit in the form of a life annuity payable in monthly installments, commencing at age 65 equal to the lesser of the amounts computed in paragraphs (a) (1) and (2) of this section.

(1) One-twelfth of the participant's average annual gross income from his employer during either his highest-paid 5 consecutive calendar years in which he was an active participant under the plan, or if he was not an active participant throughout the entire such period, the lesser number of calendar years within that period in which he was an active participant under the plan.

(i) As used in this paragraph, "gross income" means "earned income" as defined in section 911(b) of the Internal Revenue Code of 1954, determined without regard to any community property laws.

(ii) For the purposes of this paragraph, if the plan is one to which more than one employer contributes, and during any calendar year the participant received gross income from more than one such contributing employer, then the amounts so received shall be aggregated in determining the participant's gross income for the calendar year.

(2) $750 multiplied by the fraction $\frac{x}{\$13,200}$, where "x" is the Social Security contribution and benefit base determined under section 230 of the Social Security Act in effect at the date of termination of the plan.

(b) *Aggregate payments limitation.* If a person is entitled to benefits under two or more plans or with respect to two or more participants, or if more than one person is entitled to benefits payable with respect to one participant, the aggregate benefits payable by PBGC from its funds shall be limited to the extent set forth in paragraph (a) of this section computed without regard to the provisions of paragraph (a)(1) of this section. The limitation contained in paragraph (a) of this section shall be applied separately to each plan at the date of its termination, and the amounts payable by PBGC under each plan shall be aggregated up to the limitation contained in this paragraph.

§ 2609.4 Computation of maximum guaranteeable benefits.

(a) *General.* Where a benefit is payable in any manner other than as a monthly benefit payable for life commencing at age 65, the maximum guaranteeable monthly amount of such benefit shall be computed by applying the applicable factor or factors set forth in paragraphs (c)–(e) of this section to the monthly amount computed under § 2609.3(a). In the case of a step-down life annuity, the maximum guaranteeable monthly amount of such benefit shall be computed in accordance with paragraph (f) of this section.

(b) *Application of adjustment factors to monthly amount computed under § 2609.3(a).* (1) Each percentage increase or decrease computed under paragraphs (c), (d), and (e) of this section shall be added to or subtracted from a base of 1.00, and the resulting amounts shall be multiplied.

(2) The monthly amount computed under § 2609.3(a) shall be multiplied by the product computed pursuant to paragraph (b)(1) of this section in order to determine the participant's and/or beneficiary's maximum benefit guaranteeable.

(c) *Annuitant's age factor.* If a participant or the beneficiary of a deceased participant is entitled to and chooses to receive his benefit at an age younger than 65, the monthly amount computed under § 2609.3(a) shall be reduced by the following amounts for each month up to the number of whole months below age 65 that corresponds to the later of the participant's age at the date of plan termination or his age at the time he begins to receive the benefit:

For each of the 60 months immediately preceding the 65th birthday, the reduction shall be 5/12 of 1 percent;
For each of the 60 months immediately preceding the 60th birthday, the reduction shall be 1/12 of 1 percent;
For each of the 120 months immediately preceding the 55th birthday, the reduction shall be 2/12 of 1 percent; and
For each succeeding 120 month period, the monthly percentages reduction shall be 1/2 of that used for the preceding 120 month period.

(d) *Factor for benefit payable in a form other than as a life annuity.* When a benefit is in a form other than a life annuity payable in monthly installments, the monthly amount computed under § 2609.3(a) shall be adjusted by the appropriate factors on a case-by-case basis by PBGC. This paragraph sets forth the adjustment factors to be used for several common benefit forms payable in monthly installments.

(1) *Period certain and continuous annuity.* The monthly amount computed under § 2609.3(a) shall be reduced by the following amounts for each month of the period certain subsequent to the date of plan termination:

For each month up to 60 months deduct 1/24 of 1 percent;
For each month beyond 60 months deduct 1/12 of 1 percent.

(i) A cash refund annuity shall be treated as a benefit payable for a period certain and continuous. The period of certainty shall be computed by dividing the amount of the lump-sum refund by the lesser of the maximum monthly amount guaranteeable under § 2609.3(a), computed without regard to the provisions of this paragraph, and the monthly amount to which the participant is entitled under the terms of the plan.

(ii) An installment refund annuity shall be treated as a benefit payable for a period certain and continuous. The period of certainty shall be computed by dividing the amount of the remaining refund by the lesser of the maximum monthly amount guaranteeable under § 2609.3(a), computed without regard to the provisions of this paragraph, and the monthly amount to which the participant is entitled under the terms of the plan.

(2) *Joint and survivor annuity (contingent basis).* The monthly amount computed under § 2609.3(a) shall be reduced by an amount equal to 10 percent plus $\frac{3}{8}$ of 1 percent for each percentage point in excess of 50 percent of the participant's benefit that will continue to be paid to the beneficiary. If the benefit payable to the beneficiary is less than 50 percent of the participant's benefit, PBGC shall provide the adjustment factors to be used.

(3) *Joint and survivor annuity (joint basis).* The monthly amount computed under § 2609.3(a) shall be reduced by an amount equal to $\frac{1}{8}$ of 1 percent for each percentage point in excess of 50 percent of the participant's original benefit that will continue to be paid to the survivor. If the benefit payable to the survivor is less than 50 percent of the participant's original benefit, PBGC shall provide the adjustment factors to be used.

(e) When a benefit is payable in a form described in paragraphs (d) (2) or (3) of this section, and the beneficiary's age is different from the participant's age, the monthly amount computed under § 2609.3(a) shall be adjusted by the following amounts:

If the beneficiary is younger than the participant, deduct 1 percent for each year of the age difference;

If the beneficiary is older than the participant, add $\frac{1}{2}$ of 1 percent for each year of the age difference.

In computing the difference in ages, years over 65 years of age shall not be counted.

(f) *Step-down life annuity.* (1) The temporary additional amount payable under a step-down life annuity shall be converted to a life annuity payable in monthly installments by multiplying the appropriate factor based on the participant's age and the number of remaining years of the temporary additional benefit by the amount of the temporary additional benefit. The factors to be used are set forth in the table below. The amount of the monthly benefit so calculated shall be added to the level amount of the monthly benefit payable for life to determine the level-life annuity that is equivalent to the step-down life annuity.

Factors for converting temporary additional benefit under stepdown life annuity

Age of participant at the later of the date the temporary additional benefit commences or the date of plan termination [1]	Number of years temporary additional benefit is payable under the plan as of the date of plan termination									
	1	2	3	4	5	6	7	8	9	10
45	0.099	0.117	0.170	0.220	0.288	0.315	0.355	0.395	0.435	0.475
46	.061	.119	.173	.224	.273	.321	.362	.403	.444	.485
47	.062	.121	.176	.228	.278	.327	.369	.411	.453	.495
48	.063	.123	.179	.232	.283	.333	.376	.419	.462	.505
49	.064	.125	.182	.236	.288	.339	.383	.427	.471	.515
50	.065	.127	.185	.240	.293	.345	.390	.435	.480	.525
51	.066	.129	.188	.244	.298	.351	.397	.443	.489	.535
52	.067	.131	.191	.248	.303	.357	.404	.451	.498	.545
53	.068	.133	.194	.252	.308	.363	.411	.459	.507	.555
54	.069	.135	.197	.256	.313	.369	.418	.467	.516	.565
55	.070	.137	.200	.260	.318	.375	.425	.475	.525	.575
56	.072	.141	.206	.268	.328	.387	.439	.491	.543	
57	.074	.145	.212	.276	.338	.399	.453	.507		
58	.076	.149	.218	.284	.348	.411	.467			
59	.078	.153	.224	.292	.358	.423				
60	.080	.157	.230	.300	.368					
61	.082	.161	.236	.308						
62	.084	.165	.242							
63	.086	.169								
64	.088									

[1] Age of participant is his age at his last birthday.

NOTE.—If the benefit is payable for less than 1 year, the appropriate factor is obtained by multiplying the factor for 1 year by a fraction, the numerator of which is the number of months the benefit is payable, and the denominator of which is 12. If the benefit is payable for 1 or more whole years, plus an additional number of months less than 12, the appropriate factor is obtained by linear interpolation between the factor for the number of whole years the benefit is payable and the factor for the next year.

(2) If a participant is entitled to and chooses to receive a step-down life annuity at an age younger than 65, the monthly amount computed under § 2609.3(a) shall be adjusted by applying the factors set forth in paragraph (c) of this section in the manner described in paragraph (b) of this section.

(3) If the level-life monthly benefit calculated pursuant to paragraph (f) (1) of this section exceeds the monthly amount calculated pursuant to paragraph (f) (2) of this section, then the monthly maximum benefit guaranteeable shall be a step-down life annuity under which the monthly amount of the temporary additional benefit and the amount of the monthly benefit payable for life, respectively, shall bear the same ratio to the monthly amount of the temporary additional benefit and the monthly benefit payable for life provided under the plan, respectively, as the monthly benefit calculated pursuant to paragraph (f) (2) of this section bears to the monthly benefit calculated pursuant to paragraph (f) (1) of this section.

§ 2609.5 Benefit increases.

(a) *Scope.* This section applies:

(1) To all benefit increases, as defined in § 2609.2, payable with respect to a participant other than a substantial owner (as defined in section 4022(b) (6) (A) of the Act), which have been in effect for less than five years preceding the date of plan termination, and

(2) To all benefit increases payable with respect to a substantial owner, which have been in effect for less than 30 years preceding the date of plan termination.

(b) *General rule.* Benefit increases described in paragraph (a) of this section shall be guaranteed only to the extent provided in § 2609.6 with respect to a participant other than a substantial owner and in § 2609.7 with respect to a participant who is a substantial owner.

(c) *Computation of guaranteeable benefit increases.* Except as provided in paragraph (d) of this section pertaining to multiple benefit increases, the amount of a guaranteeable benefit increase shall be the amount, if any, by which the monthly benefit calculated pursuant to paragraph (c) (1) of this section exceeds the monthly benefit calculated pursuant to paragraph (c) (3) of this section.

(1) Determine the lesser of (i) the monthly benefit payable under the terms of the plan subsequent to the increase, using service credited to the date of plan termination or (ii) the maximum monthly benefit guaranteeable under § 2609.3 (a) subsequent to the increase, using service credited to the date of plan termination;

(2) Determine, in accordance with the provisions of § 2609.4, the factors which would be used to calculate the monthly maximum benefit guaranteeable under the plan prior to the increase, and state those factors in the manner set forth in § 2609.4(b) (1);

(3) Multiply the monthly benefit provided under the plan prior to the increase based on service credited to the date of plan termination by a fraction, the numerator of which is the product of the factors, stated in the manner set forth in § 2609.3(b) (1), used in the calculation under paragraph (c) (2) of this section and the denominator of which is the product of the factors computed pursuant to paragraph (c) (3) of this section.

(d) *Multiple benefit increases.* (1) Where there has been more than one benefit increase described in paragraph (a) of this section, the amounts of guaranteeable benefit increases shall be calculated beginning with the earliest increase, and each such amount (except for the amount resulting from the final benefit increase) shall be multiplied by a fraction, the numerator of which is the product of the factors, stated in the manner set forth in § 2609.4(b) (1), used to calculate the monthly maximum guaranteeable benefit under § 2609.3(a) and the denominator of which is the product of the factors used in the calculation under paragraph (c) (2) of this section.

(2) Each benefit increase shall be treated separately for the purposes of § 2609.6, except as otherwise provided in § 2609.6(d) and for the purposes of § 2609.7, as appropriate.

(e) For the purposes of this part, a benefit increase is deemed to be in effect

commencing on the later of its adoption date or its effective date.

§ 2609.6 Five-year phase-in of benefit guarantee for participants other than substantial owners.

(a) *Scope.* This section applies to the guarantee of benefit increases which have been in effect for less than five years with respect to participants other than substantial owners, as defined in section 4022(b)(6)(A) of the Act.

(b) *Phase-in formula.* The amount of a benefit increase computed pursuant to § 2609.5 shall be guaranteed to the extent provided in the following formula:

The number of years the benefit increase has been in effect, not to exceed five, multiplied by the greater of (1) 20 percent of the amount computed pursuant to § 2609.5; or (2) $20 per month.

(c) *Computation of years.* In computing the number of years a benefit increase has been in effect, each complete 12-month period prior to the date of termination during which such benefit increase was in effect shall constitute one year.

(d) *Multiple benefit increases.* In applying the formula contained in paragraph (b) of this section, multiple benefit increases within any 12-month period prior to the date of termination and calculated from that date shall be aggregated and treated as one benefit increase.

(e) Notwithstanding the provisions of paragraph (b) of this section, a benefit increase described in paragraph (a) of this section shall be guaranteed only if PBGC determines that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by PBGC.

§ 2609.7 Phase-in of benefit guarantee for participants who are substantial owners.

(a) *Scope.* This section shall apply to the guarantee of all benefits described in Part 2605 of the chapter with respect to participants who are substantial owners, as defined in section 4022(b)(6)(A), at the date of plan termination or who were substantial owners at any time within the 5-year period preceding that date.

(b) *Phase-in formula when there have been no benefit increases.* Benefits provided by a plan under which there has been no benefit increase as defined in § 2609.2, other than the adoption of the plan, shall be guaranteed to the extent provided in the following formula:

The monthly amount computed under § 2609.3(a) multiplied by a fraction not to exceed 1, the numerator of which is the number of full years prior to the date of plan termination that the substantial owner was an active participant under the plan, and the denominator of which is 30.

(c) *Phase-in formula when there have been benefit increases.* If there has been a benefit increase under the plan as defined in § 2609.2, other than the adoption of the plan, benefits provided by each such increase shall be guaranteed to the extent provided in the following formula:

The amount of the guaranteeable benefit increase computed under § 2609.5 multiplied by a fraction not to exceed 1, the numerator of which is the number of full years prior to the date of termination that the benefit increase was in effect and during which the substantial owner was an active participant under the plan, and the denominator of which is 30. However, in no event shall the total benefits guaranteed under all such benefit increases exceed the benefits which are guaranteed under paragraph (b) of this section with respect to a plan described therein.

§ 2609.8 Effect of tax disqualification.

(a) *General rule.* Except as provided in paragraph (b) of this section, benefits accrued under a plan after the date on which the Secretary of the Treasury or his delegate issues a notice that any trust which is part of the plan no longer meets the requirements of section 401(a) of the Internal Revenue Code of 1954 or that the plan no longer meets the requirements of section 404(a) of the Code or after the date of adoption of a plan amendment that causes the issuance of such a notice shall not be guaranteed under this part.

(b) *Exceptions.* The restriction on the guarantee of benefits set forth in paragraph (a) of this section shall not apply if:

(1) The Secretary of the Treasury or his delegate issues a notice stating that the original notice referred to in paragraph (a) of this section was erroneous;

(2) The Secretary of the Treasury or his delegate finds that, subsequent to the issuance of the notice referred to in paragraph (a) of this section, appropriate action has been taken with respect to the trust or plan to cause it to meet the requirements of section 401(a) or 404(a)(2), respectively, and issues a subsequent notice stating that the trust or plan meets such requirements; or

(3) The plan amendment is revoked retroactively to its original effective date.

Issued in Washington, D.C., this 30th day of October, 1975.

STEVEN E. SCHANES,
Executive Director,[1]
Pension Benefit Guaranty Corporation.

HENRY ROSE,
Secretary, Pension Benefit Guaranty Corporation.

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[1] Issued on the date set forth above, pursuant to a resolution of the Board of Directors approving the publication of these proposed regulations and authorizing its Executive Director to issue same.

federal register

TUESDAY, NOVEMBER 4, 1975



PART VI:

INTERSTATE COMMERCE COMMISSION

■

Procedures to be Followed in Motor Carrier Revenue Proceedings

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. MC-82]

PART 1104—PROCEDURES TO BE FOLLOWED IN MOTOR CARRIER REVENUE PROCEEDINGS

In response to various petitions for modification and reconsideration, the Interstate Commerce Commission has revised procedures, adopted in prior reports (339 I.C.C. 325 and 340 I.C.C. 1), governing the data and information to be submitted by motor carriers of general commodities seeking general revenue increases.

These revisions (1) expand the application of the procedures (making the Niagara Frontier Tariff Bureau, Inc. and the Motor Carriers Traffic Association also subject to them), (2) require the submission of certain additional data, and (3) revise and further define various definitions and data computations. Specific revisions are as follows.

The traffic study requirement of § 1104.2(a) is amended to allow use of data based on the latest traffic year and augmentation of the traffic study group with additional carriers where appropriate. Also with regard to the traffic study requirement, the phrase "possible labor and non-labor increases," found in § 1104.3(c), is changed to read "provable labor and non-labor increases," and a third alternative method of updating cost data authorized.

Revenue need computations required by § 1104.4 and prescribed in Appendix A to Part I have also been revised in several aspects. The carriers now must submit data for the two calendar years immediately preceding the "base calendar year—actual" and quarterly data between the "base calendar year—actual" and the proposed effective date of the increase.

Another change is that data specified in Appendices A, B, and C must now be shown separately for study carriers which derive 50 percent and more of their system revenues from the issue traffic. Definitions of "current liabilities" and "working capital" have also been modified, and computations regarding "carriers' rate of return on shareholders' equity," "capital structure," and "long-term debt to shareholders' equity" are now required with and without "intangibles."

Appendix B has also been expanded by adding thereto a "return on total capitalization" ratio and two new ratios. Also newly being required is a "funds flow" statement which is to be computed on both a carrier only and a consolidated basis.

Other changes authorize the use of year-end balance sheet data in computing all but one Appendix B ratio; require data regarding cash dividends on stock and a "dividend payout ratio"; and submission of Appendix A, B, and C data on a specified consolidated basis. As revised, deferred taxes are now excluded from the "sum of money" calculations of Appendix A, and Appendix B is to be calculated on a defered tax basis, including certain deferred tax liability data. The procedures now also include conversion tables (Attachment I to Appendices A and B) to reflect changes to the carriers' annual report form (Motor Carrier Annual Report Form A for Class I Motor Carriers of Property) as a result of the new uniform system of accounts which became effective January 1, 1974.

These regulations are issued under 49 U.S.C. 305(h), 316(g), 316(i), and 5 U.S.C. 553(b).

The changes to the procedures are to take effect on or before December 4, 1975. Reasons for their adoption are set forth in the Commission's Report and Order on Furthering Reconsideration, entered September 19, 1975 and printed at 351 I.C.C. 1.

Issued in Washington, D.C., October 23, 1975.

Upon consideration of the record in this proceeding, including the prior reports of the Commission, 339 I.C.C. 324 and on reconsideration, 340 I.C.C. 1, prescribing procedures published as Part 1104 "Procedures to be Followed in Motor Carrier Revenue Proceedings," of Chapter X of Title 49 of the Code of Federal Regulations; of petitions for reconsideration and modification filed on January 10, 1972 by Rocky Mountain Motor Tariff Bureau, on April 3, 1972 by Arthur W. Todd, and on April 10, 1972 individually by the National Industrial Traffic League, (hereafter the NIT League), by the Middle Atlantic Conference, and jointly by Central and Southern Motor Freight Tariff Association, Inc., Central States Motor Freight Bureau, Inc., The Eastern Central Motor Carriers Association, Inc., Middle Atlantic Conference, Middlewest Motor Freight Bureau, The New England Motor Rate Bureau, Inc., Pacific Inland Tariff Bureau, Southern Motor Carriers Rate Conference, and Southwestern Motor Freight Bureau, Inc.; and replies thereto filed on May 1, 1972 by Niagara Frontier Tariff Bureau, Inc.; on June 29, 1972 jointly by the National Small Shipments Traffic Conference and Drugs and Toilet Preparation Traffic Conference; and on June 30, 1972 by certain petitioners, by the Rocky Mountain Motor Tariff Bureau, Inc., and individually by the Motor Carriers Traffic Association, Inc. and NIT League; and good cause appearing therefor:

It is ordered, That the said petitions be and they are hereby granted.

It is further ordered, That the prescribed procedures previously modified in Appendix III of our report on reconsideration, 340 I.C.C. 1 at 27, be, and they are hereby, amended to read as set forth below to the report and order of the Commission of further reconsideration, 351 I.C.C. 54, decided on this date.

It is further ordered, That the prescribed procedures as amended, shall be published in the FEDERAL REGISTER and in the Code of Federal Regulations.

It is further ordered, That the prescribed procedures, as amended, shall take effect on or before December 4, 1975.

And it is further ordered, That this order shall continue in full force and effect until the further order of the Commission.

By the Commission.

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

Sec.

1104.1 Application.
1104.2 Traffic study.
1104.3 Cost study.
1104.4 Revenue need.
1104.5 Official notice.
1104.6 Summary of the increase proposal.
1104.7 News release.
1104.8 Service.
1104.9 Availability of underlying data.

Appendix A—Revenue need and allocation to traffic at issue.
Appendix B (Part I)—Financial data.
Appendix B (Part II)—Accounts giving effect to interperiod tax allocation (deferred taxes).
Appendix C—Statement of changes in financial position.

AUTHORITY: (49 U.S.C. 305(h), 316(g), 316(i), and 5 U.S.C. 553(b)).

Prescribed procedures [1]

§ 1104.1 Application.

(a) Upon the filing by the tariff publishing agencies named hereinafter on behalf of their motor common carrier members, or by such other agencies as the Commission may by order otherwise designate, of agency tariff schedules which contain: (1) Proposed general increases in rates or charges on general freight where such proposal would result in an increase of $1 million or more in the annual operating revenues on the traffic affected by the proposal; (2) a proposed general adjustment with the objective of restructuring the rates on a wide range of traffic, involving both increases and reductions in rates and charges, where such proposal would result in a net increase of $1 million or more in annual operating revenues; or (3) in any proceeding involving a proposed rate restructuring which would result in a net increase of less than $1 million in annual operating revenues, the motor common carriers of general freight on whose behalf such schedules are filed shall, concurrently with the filing of those tariff schedules, file and serve, as provided hereinafter, a verified statement presenting and comprising the entire evidential case which is relied upon to support the proposed general increase or rate restructuring. Carriers thus required to submit their evidence when they file their schedules are hereby notified that special permission to file those schedules shall be conditioned upon the

[1] The prescribed procedures as set forth hereinafter also incorporate changes recently adopted in Ex Parte No. 286, *Notice of Increases in Frt. Rates and Pass. Fares,* 349 I.C.C. 741.

publishing of an effective date at least 45 days later than the date of filing, to enable proper evaluation of the evidence presented. Under agency tariffs meeting the provisions of paragraphs (a)(1) and (a)(2) of this section, the carriers shall submit data in accordance with §§ 1104.2–1104.4. Under agency tariffs meeting the provisions of paragraph (a)(3) of this section, the carriers shall submit the data sought in §§ 1104.2 and 1104.3. Data to be submitted in accordance with §§ 1104.2–1104.4 represent the minimum data required to be filed and served, and in no way shall be considered as limiting the type of evidence that may be presented at the time of filing of the schedules. If a formal proceeding is instituted, the carriers are not precluded from updating the evidence submitted at the time of filing of the schedules to reflect the contemporary situation.

(b) The motor common carriers of general freight which are subject to the provisions of this section are those which are members of the following tariff publishing agencies:

Central and Southern Motor Freight Tariff Association, Inc., Central States Motor Freight Bureau, Inc., The Eastern Central Motor Carriers Association, Inc., Middle Atlantic Conference, Middlewest Motor Freight Bureau, Motor Carriers Tariff Association, Inc., The New England Motor Rate Bureau, Inc., Niagara Frontier Tariff Bureau, Inc., Pacific Inland Tariff Bureau, Inc., Rocky Mountain Motor Tariff Bureau, Inc., Southern Motor Carriers Rate Conference.

(c) Upon the filing of tariff schedules other than those described hereinabove, the carriers or their tariff publishing agencies shall be required to comply with such procedures as the Commission may direct in the event an investigation is instituted. Nothing stated in this part shall relieve the carriers of their burden of proof imposed under the Interstate Commerce Act.

§ 1104.2 Traffic study.

(a) The respondents shall submit a traffic study for the most current 12-month calendar year available, which shall be referred to as the "base calendar year—actual." If the effective date of the tariff schedules occurs during the calendar period August 1 through December 31, inclusive, the "base calendar year-actual" shall be the immediately preceding calendar year. If the effective date of the tariff schedules occurs during the calendar period January 1 through July 31, inclusive, the "base calendar year-actual" shall be the second preceding calendar year: *Provided, however,* That if traffic study data for the immediately preceding calendar year are available then this study year should be used as the "base calendar year—actual." The study shall include a probability sampling of the actual traffic handled during identical time periods for each study carrier.

(b)(1) The study carriers shall consist of those carriers subject to the requirements for allocation of expenses between line-haul and pickup and delivery services, as provided in Part 1207 of this chapter, Instruction 27, which participate in one of the motor carrier industry's Continuous Traffic Studies (CTS), and which derive $1 million or more in annual operating revenues from this issue traffic or 1 percent or more of the total annual operating revenues of all carriers from the issue traffic. A list of such carriers and the appropriate revenue data shall be submitted to corroborate the selection of the study carriers. "Issue traffic" consists of those shipments on which the freight rates or charges would be affected by the rate proposal.

(2) In addition to the traffic, cost, revenue need, and affiliate data studies required for the above designated study carriers, respondents may also submit, in addition thereto, similar studies based on an expanded group of study carriers. This expanded study carrier group shall include only those Instruction 27 carriers which participate in the industry's CTS and it shall include all such carrier's which derive annual revenues from the issue traffic equal to, or exceeding, the annual issue traffic revenues received by a study carrier obtaining no less than $200,000 in annual issue traffic revenues.

(c)(1) Respondents shall take a sample of the traffic handled by the study carriers according to acceptable standards of probability sampling principles and practices, and shall explain and evaluate the probability sample from the standpoint of purpose, sample design (including explanation of estimation procedure and disclosure of sampling errors for derived characteristics), quality control aspects involved in processing and tabulating data and any statistical analysis performed on the sampled data.[2] This explanation shall include the method or methods which were used to properly weight those study shipments which were interlined between two or more study carriers so as to avoid multiple counting.

(2) The foregoing explanation shall include an estimate of the number of single-line shipments of issue traffic and revenues derived therefrom which were not included in the frame of study carriers (as defined in § 1104.2(b)(1)). This estimate shall be provided for each Class I carrier not included in the study carrier frame which derived $50,000 more of revenue from the issue traffic during the base calendar year-actual. However, some revenue figure less than $50,000 may also be used. A full explanation of the principles, procedures and data sources used to develop this estimate shall be provided.

(3) Respondents shall also submit the following statistical data relative to the components of the sample: (i) The number of *single-line* shipments and revenues derived therefrom for (a) the total traffic (issue and non-issue), and (b) the issue traffic only; (ii) The number of interline shipments and revenues derived therefrom for (a) the total traffic (issue and non-issue), b) the issue traffic only; (iii) The number of interline "segments" carried by the *study carriers* and revenues derived therefrom for (*a*) the total traffic (issue and non-issue), and (*b*) the issue traffic only; and (iv) The number of interline "segments" carried by the *non-study carriers* and revenues derived therefrom for (*a*) the total traffic (issue and non-issue), and (*b*) the issue traffic only.

(d) For cost and revenue purposes, the "carried" basis shall be shown. "Carried" traffic means the issue traffic handled solely by the study carriers, either single-line or interline. Respondent carriers, however, are not precluded from submitting additional data on a through basis but they should be prepared to demonstrate that use of this basis does not result in a substantial sampling bias.

Estimates of current revenues applicable to the issue traffic should reflect all rates and charges in effect no later than 45 days prior to the date of the tariff filing.

§ 1104.3 Cost study.

(a) The respondents shall submit a cost study. Highway Form B may be used for this purpose. Service unit costs shall be developed for each individual study carrier, adjusted by size of shipment and length of haul, and shall be applied to respective individual carrier's traffic service units as developed from its traffic study. Operating ratios shall be determined for the issue traffic on the "carried" traffic basis by individual weight brackets affected by the rate proposal for: (1) The traffic study year, that is, the "base calendar year-actual," as hereinbefore defined; (2) a "present proforma year" based on present wage, price and productivity levels prevailing on a date no later than 45 days prior to the date of the tariff; and (3) a "restated proforma year" based on provable wage, price and productivity levels prevailing on the effective date of the proposed rates, with a separation indicating projected operating ratios on two bases, namely, "based on current revenues," and "based on proposed revenues." Operating ratios shall also be shown for all other traffic not affected by the rate proposal for the same weight brackets as shown for the issue traffic, but only for the period indicated in subparagraph (1) of this paragraph. In determining the cost for interline movements involving both study and non-study carriers, either the weighted composite unit cost of the study carriers or the applicable regional average unit cost should be used for that portion of the interline movements handled by the non-study carriers.

(b) In addition to the operating ratios, the cost study shall also be used to develop and provide the revenue-to-cost comparisons required in Appendix A to this part for the time period there specified.

(c) For both the operating ratios and the revenue-to-cost comparisons in Appendix A to this part, the "each-to-each" costing method, i.e., the application of each individual study carrier's unit costs to its traffic service units, applies only to the "base calendar year—actual." The application of provable labor and non-labor cost increases for the purpose of updating the "base calendar year-actual"

[2] Although not adopted by the Commission, attention is called to a staff report, "Guidelines for the Presentation of the Results of Sample Studies," February 1, 1971, available from the Superintendent of Documents.

cost data may be accomplished by using one of the following methods: (1) Individual carrier "updating" data applied to each of the respective study carrier's base data; (2) composite carrier "updating" data— for those individual study carriers whose revenues from the issue traffic during the "base calendar year-actual" amount to 50 percent or more of their respective total system revenues—applied to the study carriers' base data; or (3) composite carrier "updating" data—for those study carriers which in total account for 50 percent of the issue traffic revenues during the "base calendar year-actual"—applied to the study carriers' base data. In subparagraph (3) of this paragraph the study carriers to be used shall be selected from a list of study carriers arrayed in descending order beginning with the carrier deriving the greatest *percentage* of its total system revenues from the traffic at issue. The issue traffic revenues for each of the study carriers (beginning with that carrier having the greatest percentage as defined above) shall be accumulated until such revenues amount to 50 percent of the total issue traffic revenues for all study carriers. The study carriers thus obtained shall, on a composite basis, be used for "updating" purposes. However, method in subparagraph (2) may be used only if method in subparagraph (2) indicates less than six individual study carriers obtaining 50 percent or more of their respective total system revenues from the issue traffic. The sample values for expenses and revenues shall be expanded to full year values without adjustments to known annual report figures of any carrier.

(d) Where cost studies are developed through the use of computer processing techniques, there shall be submitted a manual application of the costing procedures used for one traffic and cost study carrier (study carrier) in order to demonstrate the procedures by which the computer program distributes the annual report statistics, and applies service unit costs to each shipment. An illustration of the application of service unit-costs to the applicable traffic service units generated by one single-line sample shipment and by one interline sample shipments shall also be submitted. These sample shipments shall be on the "carried" basis.

§ 1104.4 Revenue need.

Traffic and cost study carriers, i.e., the study carriers, shall submit evidence of the sum of money, in addition to operating expenses, including that needed to attract debt and equity capital, which they require to insure financial stability and the capacity to render service this evidence shall include data required by Appendix A, parts I and II, and Appendices B and C to this part.

§ 1104.5 Official notice.

The Commission will take official notice of all of the proponent carriers' annual and quarterly reports on file with the Commission.

§ 1104.6 Summary of the increase proposal.

The respondents shall submit a summary of the increase proposal, drafted in language directed at a reader who is not an expert in transportation matters and prepared in sufficient detail to apprise such a reader of the nature of the increase proposal. Pursuant to this purpose the summary will essentially contain the following:

(a) A general description of the increase proposal including its proponent(s), effective date, geographic scope, the amount of the increase, and a general description of holddowns, flagouts, and exceptions.

(b) A summary of the supporting rationale for the increase including why it is needed, what it will accomplish, an explanation in general terms for the presence of the holddowns, flagouts, and exceptions found therein; and as applicable, conclusions reached (1) in the traffic study, (2) in the cost study, (3) concerning the effect of transactions with affiliates on the parent's revenue need, and (4) with regard to the sum of money which the carrier asserts it requires to insure its financial stability.

(c) A statement indicating that copies of the proposal, the entire evidentiary case in support thereof, and this summary have been furnished to regional and district offices of the Commission and to the State regulatory agency responsible for such matters in all States served by the carrier and affected by the proposal.

(d) A statement as follows: "The proposed tariff* contains the only legal terms of the increase binding on the parties." (*"(A)nd/or petition" if applicable).

§ 1104.7 News release.

The respondents shall submit a notice of the increase proposal, suitable for forwarding as a news release, and prepared so that the public in general may be apprised of the increase proposal; and which pursuant to this purpose as a minimum will contain essentially the following:

(a) A statement directed at the editor of a newspaper stating that the news release has been prepared in accordance with regulations of the Interstate Commerce Commission so that the public in general may be apprised of the increase proposal, and requesting that the information being forwarded be given prominent placement in the newspaper so that as large a segment as possible of the public in general may be apprised thereof.

(b) A description, in language sufficient to apprise a reader who is not an expert in transportation matters, of the nature of the proposal—including the amount of the increase, the proponent (s) its geographic scope, and, in general terms, holddowns, flagouts, and exceptions.

(c) A statement summarizing the supporting rationale for the increase, including why it is needed, what it will accomplish, and, in general terms, accounting for the presence of the holddowns, flagouts, and exceptions.

(d) A statement indicating that copies of the proposal, the evidentiary case in support thereof, and a summary statement have been forwarded to regional and district offices of the Commission and to the State regulatory agency responsible for such matters in all States served by the carrier and affected by the proposal; and indicating that the public may also obtain copies of those documents by writing to "*(Here the name and address of the carrier or publishing agent will be inserted).*"

§ 1104.8 Service.

(a) The detailed information called for herein shall be in writing and shall be verified by a person or persons having knowledge thereof. The original and 16 copies of each verified statement (including the summary and the news release) for use by the Commission shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

(b) One copy of each statement excluding the news release, shall be sent by first-class mail (1) to each of the regional and district offices of the Commission in the area affected by the proposed increase, where it will be open to public inspection; (2) to the State regulatory agency responsible for such matters in States served by the carrier and affected by the proposal; and (3) to each party of record in the last formal proceeding concerning a general rate increase in the affected area or territory.

(c) A copy of the news release, will be transmitted to the major news wire services and the principal newspaper of general circulation in the capital and four largest cities of each State served by the carrier and affected by the proposal. For the purpose of this requirement, the principal newspaper of general circulation is that newspaper of general circulation published in a city having the largest average daily circulation. Where such service is made by mail, the news release shall be mailed in time to be received on the date the original is filed with the Commission.

(d) Otherwise, the service requirements of Rule 22 of the Commission's general rules of practice should be observed. Information with respect to carrier affiliates may be served on the parties in summary form, if so desired. A copy of each statement shall be furnished to any interested person on request.

§ 1104.9 Availability of underlying data.

All underlying data used in preparation of the material outlined above shall be made available in the office of the party serving such verified matter during usual office hours for inspection by any party of record desiring to do so, and shall be made available to the Commission upon request therefor. The underlying data shall be made available also at the hearing, but only if and to the extent specifically requested in writing and required by any party for the purpose of cross-examination. Since Appendix A to this part data are to be submitted on a combined carrier basis, any underlying individual carrier data used to complete Appendix A to this part should be furnished to the Commission for its use as well as for the use of parties opposing the sought increases.

Revenue need and allocation to traffic at issue

Specify: ☐Group I; ☐Group II; ☐Group III

(Dollars in thousands)

Line No.	Item	Source 1/	Second Preceding Calendar Year Actual 2/	First Preceding Calendar Year - Actual 2/	Base Calendar Year - Actual 3/	Current & Comparative Periods - Actual 4/		Present Proforma Year 5/	Restated Proforma Year 6/		
						Period Succeeding Col. (5)	Corresponding Previous Period to Col. (6)		Based on Current Revenues	Based on Proposed Revenues	Based on Constructed Revenue Needs 7/
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	Part I Revenue Need										
1	Carrier Operating Revenues	AR Sch. 101, L. 1	$	$	$	$	$	$	$	$	$
2	Carrier Operating Expenses	AR Sch. 101, L. 2									
3	Opera. Ratio (% to 1 dec.)	Line 2 ÷ Line 1	%	%	%	%	%	%	%	%	%
4	Net Carrier Operating Income	AR Sch. 101, L. 3	$	$	$	$	$	$	$	$	$
5	Lease of Distinct Operating Unit (Net)	AR Sch. 101, net of L. 10 & L. 16									
6	Other Deductions Less Other Income Excl. Net Lease of Distinct Operating Unit	AR Sch. 101. net of L. 21 & L. 16 plus net of L. 14 and L. 10									
7	Ordinary Income Before Income Taxes	AR Sch. 101, L. 22									
8	Income Taxes on Ordinary Income	AR Sch. 101, L. 23									
9	Provisions for Deferred Taxes	AR Sch. 101, L. 24									
10	Ordinary Income	AR Sch. 101 L. 25									
11	Total Extraordinary and Prior Period Items	AR Sch. 101, L. 30									
12	Provisions for Deferred Taxes - Extraordinary and Prior Period Items	AR Sch. 101, L. 29									

See following pages for footnotes

APPENDIX A

Revenue need and allocation to traffic at issue

(Dollars in thousands)

Line No.	Item	Source 1/	Second Preceding Calendar Year - Actual 2/	First Preceding Calendar Year - Actual 2/	Base Calendar Year - Actual 3/	Current & Comparative Periods - Actual 4/		Present Proforma Year 5/	Restated Proforma Year 6/		
						Period Succeeding Col. (5)	Corresponding Previous Period to Col. (6)		Based on Current Revenues	Based on Proposed Revenues	Based on Constructed Revenue Needs 7/
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	Part I Revenue Need										
13	Net Income (or loss)	AR Sch. 101, L. 31	$	$	$	$	$	$	$	$	$
14	Interest and Amortization of Debt - Discount Expense and Premium	AR Sch. 101, L. 20									
15	Percent Carrier Operating Property (Net) to Total Tangible Property (2 decimals)	AR Sch. 100, Col. (b) L. 16 ÷ L. 20	%	%	%	%	%	%	%	%	%
16	Interest Charges Assigned to Transportation Service	L. 14 x L. 15	$	$	$	$	$	$	$	$	$
17	Taxable Income Assigned to Transportation Service	L. 4 + L. 5 - L. 16									
18	Income Taxes Assigned to Transportation Service	(L. 17 ÷ L. 7) x L. 8									
19	Income or Loss Assigned to Transportation Service	L. 17 minus L. 18									
20	Sum of Money Above Operating Expenses Assigned to Transportation Service 8	Ls. 5, 16, 18, & 19									
21	Operating Expenses Plus Sum of Money	L. 2 Plus L. 20									

See following pages for footnotes

Revenue need and allocation to traffic at issue

(Dollars in thousands)

Line No.	Item	Source 1/	Second Preceding Calendar Year - Actual 2/	First Preceding Calendar Year Actual 2/	Base Calendar Year - Actual 3/	Current & Comparative Periods - Actual 4/		Present Proforma Year 5/	Restated Proforma Year 6/		
						Period Succeeding Col. (5)	Corresponding Previous Period to Col. (6)		Based on Current Revenues	Based on Proposed Revenues	Based on Constructed Revenue Needs 7/
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	Part II Allocation to Traffic at Issue										
22	Constant Costs and Sum of Money Allocated to Issue Traffic (A)	Method A	$	$	$			$	$	$	$
	(B)	Method B	$	$	$			$	$	$	$
23	Variable Expenses from Traffic at Issue (90% variable excl. Return on Investment 9/	From Traffic & Cost Study									
24	Operating Revenues from Traffic at Issue 9/	From Traffic Study									
25	Constant Costs and Sum of Money allocated to Issue Traffic plus variable Expenses (A)	L. 22 plus L. 23 Method A	$	$	$			$	$	$	$
	(B)	Method B	$	$	$			$	$	$	$
26	Revenue-to-Cost Comparison(1 Dec.) (A)	L. 24 ÷ L. 25 Method A									
	(B)	Method B									

See following pages for footnotes

METHOD A—*Constant costs and sum of money allocated to issue traffic based on ton and ton-mile method (See note A.)*

Line No.	Item (1)	Source for columns 3, 4, 5 (2)	Second preceding calendar year-actual (3)	First preceding calendar year-actual (4)	Base calendar year-actual (5)	Present pro-forma year (6)	Restated proforma year: Based on current revenues (7)	Restated proforma year: Based on proposed revenues (8)	Restated proforma year: Based on constructed revenue need (9)
(a)	System constant costs	L. (b) + L. (c)----------	$	$	$	$	$	$	$
(b)	Not related to distance	(See Note B)----------							
(c)	Related to distance	(See Note B)----------	$	$	$	$	$	$	$
(d)	Percent not related to distance (3 decimals)	L. (b) ÷ L. (a)----------	%	%	%	%	%		% %
(e)	Percent related to distance (3 decimals)	L. (c) ÷ L. (a)----------	%	%	%	%	$ %	$	$ % %
(f)	System sum of money	Appendix A, part I, L. 20 -	$	$	$	$			
(g)	Not related to distance	L. (f) x L. (d)----------							
(h)	Related to distance	L. (f) x L. (e)----------							
(i)	Total system constant costs plus sum of money	L. (a) + L. (f)----------							
(j)	Not related to distance	L. (b) + L. (g)----------							
(k)	Related to distance	L. (c) + L. (h)----------	$	$	$	$	$	$	$
(l)	Tons carried on issue and nonissue traffic combined	From traffic study							
		-----do----------							
(m)	Ton-miles	------do----------							
(n)	Issue traffic tons carried	------do----------							
		------do----------							
(o)	Issue traffic ton-miles	------do----------							
(p)	Percent of issue traffic tons to system tons (3 decimals)	L. (n) + L. (l)----------	%	%	%	%	%		% %
(q)	Percent of issue traffic ton-miles to system ton-miles (3 decimals)	L. (o) + L. (m)	%	%	%	%	%		% %
	Constant costs and sum of money allocated to issue traffic								
$(r)	Not related to distance	L. (p) x L. (j)	$	$	$	$	$	$	$
(s)	Related to distance	L. (q) x L. (k)					$	$	$
(t)	Total (enter amount in appendix A, part II, line 22, Method A, appropriate columns)	L. (r) + L. (s)	$	$	$	$			

Note A: This procedure allocates constant costs and the sum of money based on the ton and ton-mile method and shall be submitted for the information of the Commission. How much of the constant and sum of money costs may or should be recovered by any specific segment of traffic rest on (1) considerations including value of service, demand, and ability to pay, and (2) considerations which involve matters relating to regulatory policy.

Note B: Determine the amount of constant costs for Lines (b) and (c) by using Schedule A of Highway Form B, 6-68 (Revised October, 1974) in the following manner:

First, determine the amount of "unrelated" operating expenses assigned to the "non-distance" factor, Line (b), by computing the percentage relationship that the sum of Schedule A, Line 139, Columns (6), (7), (8), and (9) is to Schedule A, Line 139, Column (3). This percent multiplied by the total "unrelated" operating expenses (Schedule A, Line 136, Column (11), provides the amount of "unrelated" expenses assigned to the "non-distance" factor. The amount of "unrelated" operating expenses assigned to the "distance" factor, Line (c), is the difference between the total unrelated expenses and the amount assigned to the "non-distance" factor.

Secondly, For Method A, Line (b), add the sum of Schedule A, Line 139, Columns (6), (7), (8), and (9) multiplied by 10%, to the amount determined above for the "non-distance" unrelated. For Method A, Line (c), add the sum of Schedule A, Line 139, Columns (4) and (5) multiplied by 10%, to the amount determined above for the "distance" unrelated.

METHOD B—*Constant costs and sum of money allocated to issue traffic based on dollar (expense) method (See note A.)*

Line No.	Item (1)	Source for columns 3, 4, 5 (2)	Second preceding calendar year-actual (3)	First preceding calendar year-actual (4)	Base calendar year-actual (5)	Present pro-forma year (6)	Restated proforma year		
							Based on current revenues (7)	Based on proposed revenues (8)	Based on constructed revenue need (9)
(a)	System constant costs	Note B	$	$	$	$	$	$	$
(b)	System sum of money	Appendix A, part I, line 20							
(c)	Total system constant costs plus sum of money	Line (a) plus line (b)							
(d)	Variable expenses on issue traffic	From traffic and cost study;							
(e)	Variable expenses on issue and nonissue traffic combined	From traffic and cost study;							
(f)	Percent relationship (3 decimals)	Line (d) ÷ line (e)	%	%	%	%	%	%	%
(g)	Constant costs and sum of money allocated to issue traffic (enter amount in appendix A, part II, line 22, Method B, appropriate columns)	Line (c) x line (f)	$	$	$	$	$	$	$

Note A: This procedure allocates constant costs and the sum of money based on the dollar (expense) method and shall be submitted for the information of the Commission. How much of the constant and sum of money costs may or should be recovered by any specific segment of traffic rests on (1) considerations including value of service, demand, and ability to pay, and (2) considerations which involve matters relating to regulatory policy.

Note B: Determine the amount of constant costs, including "unrelated," by using Schedule A of Highway Form B (Revised October, 1974), Line 139, column (3) multiplied by 10 percent, plus Line 136, column (11); insert this amount on Line (a).

Explanatory, and Footnotes to Appendix A

EXPLANATORY

The purpose of appendix A is twofold, namely: (1) to obtain, through Part I, *Revenue Need*, an indication of the past, present, and restated system revenue needs of the traffic and cost study carriers, which, along with the financial data required in appendixes B and C, will facilitate an analysis of the financial stability of these carriers, and (2) to allocate a part of these system revenue needs to the traffic at issue as provided for in Part II, *Allocation to Traffic at Issue*. It is that portion of constant and sum of money costs resulting from this allocation (line 22) plus the related variable expenses (line 23) which produces the total costs assigned to the issue traffic (line 25). These costs are then compared to the issue traffic revenues in the revenue-to-cost comparison shown on line 26. This comparison provides some indication of how much the total issue traffic is contributing to the carriers' overall revenue needs; and it serves as a reference point for the consideration of ratemaking factors, other than costs, which may influence the appropriateness of the issue traffic's contribution.

Appendix A should be submitted for each of the following carrier groupings:

Group I.—All traffic and cost study carriers.

Group II.—Those traffic and cost study carriers which derive 50 percent and more of their total system revenues from the traffic at issue, as indicated in the "base calendar year-actual."

Group III.—Those traffic and cost study carriers which derive less than 50 percent of their total system revenues from the traffic at issue, as indicated in the "base calendar year-actual."

Where, in a given situation, there are less than 5 traffic and cost study carriers which do not derive 50 percent and more of their total system revenues from the traffic at issue, carrier groupings II and III need not be submitted.

Time frames for the column heads (3) through (8) should be appropriately identified either in the column heads themselves or by footnote. Data in Parts I and II, for each of the columns (3) through (7), should be developed for each traffic and cost study carrier and the respective results appropriately combined, for all such carriers. Data in part I, columns (8) through (11), which reflect an updating of revenue need data from the "base calendar year—actual" to present and restated levels, should be developed on either an individual carrier basis, or on a composite carrier basis comprised of all traffic and cost study carriers. Under either basis, operating revenues, line 1, column (10), should reflect the proposed revenues attributable to the system-wide operations of the study carriers, and every effort should be made to reflect the increased revenues resulting from other proposed rate increases on non-issue traffic which have an effective date on or near the effective date of proposed rate increases on the "issue traffic."

With respect to the total operating expenses, line 2, columns (8), (9), and (10), when the composite carrier basis is used these expenses shall be determined by applying updating factors in the following manner: *Issue Traffic*—Use factors from either the individual carrier basis or the so-called 50 percent and over carrier basis; *Non-Issue Traffic*—Use factors from the composite carrier basis. The updated expenses so determined separately for the issue and non-issue traffics should then be combined and inserted in line 2.

Data in part II, line (23), columns (8) through (11), which reflect an updating of the cost and traffic study data for the "base calendar year—actual" to present and restated levels, should be developed by the use of either individual carrier data for each of the study carriers, or the composite carrier data for those study carriers whose revenues from the issue traffic amount to 50 percent or more of their total system revenues in the "base calendar year—actual." However, for line (23), columns (8) through (11) the method selected should be the same as that used to update the operating ratios to present and restated levels as required in §1104.3.

Cost Study

Data in parts I and II, columns (8) through (11), must be appropriately explained and supported. Each of the dollar figures called for in these columns shall be accompanied by an explanation of the bases or methods of restatement, including explicit identification of all projected or assumed changes in revenues, in wage rates, in price levels of other expenses and property items, and in productivity, as compared with the preceding (actual) year results.

FOOTNOTES

[1] Annual report sources in this column refer to 1974 Annual Report Form M-1 for Class I motor carriers; for Class II Carriers and for years prior or subsequent to 1974 use comparable annual report sources. The annual report sources apply to columns (3) through (5). Data for columns (8) through (11) should consider the data in columns (3) through (6) as a base in order to reflect data for the "Present proforma year." Sources for columns (6) and (7) may be either quarterly or annual reports, as applicable.

[2] For the purpose of Appendix A the time periods "Second Preceding Calendar Year—Actual" (column (3)), and "First Preceding Calendar Year—Actual" (column (4)) refer to the calendar years immediately preceding the "Base Calendar Year—Actual" (column (5)). Where the consist of the traffic and cost study carriers used in columns (3) or (4) is different from that used in the "Base Calendar Year—Actual," identify that difference in carrier consist and explain.

[3] The data in column (5) should reflect the revenue need data (part I) and the traffic and cost study data (part II), for the traffic study year, i.e., the "Base Calendar Year—Actual," which should coincide with the "Base Calendar Year—Actual" referred to in §1104.3, *Cost Study*.

"The purpose of column (6) is to obtain the actual income statement data available for a time period immediately following the "Base Calendar Year—Actual" column (5). The purpose of column (7) is to obtain comparative data for the corresponding previous period. Since a proposed rate increase having an effective date of August 1 or later must be based on a traffic study for the previous calendar year, i.e., the "Base Calendar Year—Actual," the quarterly periods (cumulative if more than one) immediately following this base year should be reported in column (6). Comparative data for the corresponding quarters in the "Base Calendar Year—Actual" should be reported in column (7). In the event that a proposed rate increase has an effective date earlier than August 1, it is possible that actual data will be available for more than 4 quarters following the "Base Calendar Year—Actual." For example, if the proposed rate increases were effective July 1, 1974, the "Base Calendar Year—Actual" would be 1972 and therefore, the calendar year 1973 and the 1st quarter of 1974, should be reported separately as column 6(a) calendar year 1973 and column 6(b) 1st quarter 1974. Since the corresponding previous period is calendar year 1972, the same as the Base Calendar Year—Actual (column 5), only the 1st quarter of 1973 need be reported in column (7).

"The data in column (8) should be based on present wage, price and productivity levels prevailing on a date no later than the 45 days prior to the date of the tariff filing.

"The data in columns (9), (10), and (11) should be based on provable wage, price, and productivity levels prevailing on the effective date of the proposed rates.

"The purpose of this column is to obtain data on what the system revenue needs of the study carriers *should* be at a given time. Part I shall be based on an analysis of the sum of money in addition to operating expenses (including that needed to attract debt and equity capital) required to insure financial stability and the capacity to render service.

"In columns (8) through (10), determine the sum of money based on data shown for lines 1 through 18. In column (11), the constructed sum of money should be supported by evidence that it is a just and reasonable amount and is that needed to attract debt and equity capital and to insure financial stability and the capacity to render service. Such evidence should include an analysis of the adequacy of the carriers' earnings, the carriers' cost of debt and equity capital, the various kinds of risk attending their operations and the financing thereof, and the carriers' ongoing needs for working capital, new equipment and facilities.

"Show expenses and revenues allocated to the total issue traffic based on an expansion of the sample to a full year. The amount shown on line 23 for variable expenses, should agree with that shown in Method B, line (d).

Conversion table data sources for appendix A prior to and following January 1, 1974

System of Accounts Effective Prior to Jan. 1, 1974				System of Accounts Effective Jan. 1, 1974			
Appendix A Line No.	Acct. No	Annual Report Source 1/	Account Title or Other Designations	Appendix A Line No.	Acct. No.	Annual Report Source	Account Title or Other Designation
1	Accts. 3100, 3110, 3120, 3130, and 3900	Sch. 2998 L. 3	Operating Revenues	1	Accts. 3100, 3200, 3300, 3400, and 3900	Sch. 101 L. 1	Carrier Operating Revenues
2	Accts. 4000, 5000, 5100, 5150, and 5200	Sch. 2998 L. 10	Operating Expenses	2	Accts. 4100, 4200, 4300, 4400, 4500, 4600, 4700, 4800, 5100, 5300, 5400, 5500, 5700, and 5900	Sch. 101 L. 2	Carrier Operating Expenses
*	-	Sch. 2998 L. 11	Net Operating Revenue	4	-	Sch. 101 L. 3	Net Carrier Operating Income
3	Accts. 5400 and 5500	Sch. 2998 Net of L. 12 and L. 13	Lease of Distinct Operating Unit-Net	5	Accts. 8310 and 8320	Sch. 101 net of L. 10 and L. 16	Lease of Distinct Operating Units-Net
*	Accts. (7100, 7300, 7400, and 7500)-(6100, 6300, 6400, and 6500)	Sch. 2998 L. 27 - L. 20	Miscellaneous Deductions Less Other Income	6	Accts. (8420, 8520, 8540 and, 8600)-(8100, 8210, 8220, 1420, 8410, 8510 and 8530)	Sch. 101 (L. 21 - L. 16)-(L. 14 - L. 10)	Other Deductions Less Other Income (excl. Lease of Distinct Operating Units-Net)

Conversion table—Appendix A—Continued

System of Accounts Effective Prior to Jan. 1, 1974				System of Accounts Effective Jan. 1, 1974			
Appendix A Line No.	Acct. No.	Annual 1/ Report Source	Account Title or Other Designations	Appendix A Line No.	Acct. No.	Annual Report Source	Account Title or Other Designation
*	-	Sch. 2998 L. 28	Ordinary Income Before Income Taxes	7	-	Sch. 101 L. 22	Ordinary Income Before Income Taxes
6	Acct. 8800	Sch. 2998 L. 29	Income Taxes on Ordinary Income	8	Acct. 8710, 8720, and 8730	Sch. 101 L. 23	Income Taxes on Ordinary Income
-	-	-	-	9	Acct. 8740	Sch. 101 L. 24	Provision for Deferred Taxes
*	-	Sch. 2998 L. 30	Ordinary Income	10	-	Sch. 101 L. 25	Ordinary Income
7	Acct. 8910, 8930 and 8950	Sch. 2998 L. 34	Total Extraordinary and Prior Period Items	11	Acct. 8810, 8820, 8850 and 8851	Sch. 101 L. 30	Total Extraordinary and Prior Period Items
-	-	-	-	12	Acct. 8851	Sch. 101 L. 29	Provision for Deferred Taxes - Extraordinary and Prior Period Items
8	-	Sch. 2998 L. 35	Net Income (or Loss)	13	-	Sch. 101 L. 31	Net Income (or Loss)
*	Acct. 7100, 7300 and 7400	Sch. 2998 Net of L. 23, L. 24, and L. 25	Interest, Amortization of Debt Discount and Expense and Amortization of Premium on Debt	14	Acct. 8600	Sch. 101 L. 20	Interest, and Amortization of Debt Discount Expense and Premium
10	Acct. 1200 + 1300 ÷ sum of accts 1200, 1300 and 1400	Sch. 100, Col. (a) L. 21 plus L. 23 ÷ L. 26	Percent Carrier Operating Property (Net) to Total Tangible Property	15	Acct. 1200 (excl of Accts 1261 and 1262) ÷ Acct. 1200	Sch. 100, Col. (b) L. 16 ÷ L. 20	Percent Carrier Operating Property (Net) to Total Tangible Property

* No comparable Line Item in Appendix A Prior to January 1, 1974

1/ Refers to Annual Report Sources in effect December 31, 1970

Check Appropriate Blocks	
☐ Carrier Only	☐ Group I
☐ Consolidated	☐ Group II
	☐ Group III

APPENDIX B (Part)

Financial data
(dollars in thousands)

Line No.	Item	Source	Calendar Years Preceding Effective Date of Rate Proposal		
			3rd Year 19_	2nd Year 19_	Actual or Estimated 1st year 19
	(1)	(2)	(3)	(4)	(5)
1	Current Assets (End of Year)	A.R. Sch. 100, L.13 (Col. b)			
2	Current Liabilities (End of Year)	A.R. Sch. 100, L.56 (Col. b)			
3	Current Assets (Average Beg. and End Yr.)	A.R. Sch. 100, L.13 (Average of Cols. b and c)			
4	Current Liabilities (Average Beg. and End Yr.)	A.R. Sch. 100, L.56 (Average of Cols. b and c)			
5	Net-Carrier Operating Property (Average Beg. and End Yr.)	A.R. Sch. 100, L.16 (Average of Cols. b and c)			
6	Total Intangible Property (End of Year)	A.R. Sch. 100, L.27 (Col. b)			
7	Total Intangible Property (Average Beg. and End Yr.)	A.R. Sch. 100, L.27 (Average of Cols. b and c)			
8	Equipment Obligations and Other Debt Due Within One Year	A.R. Sch. 100, L.52 (Col. b)			
9	Long-Term Debt Due After One Year (End of Year)	A.R. Sch. 100, L.61 (Col. b)			
10	Long-Term Debt Due After One Year (Average Beg. and End Yr.)	A.R. Sch. 100, L.61 (Average of Cols. b and c)			

Financial data—Continued
(dollars in thousands)

Line No.	Item	Source	Calendar Years Preceding Effective Date of Rate Proposal		
			3rd Year 19	2nd Year 19	Actual or Estimated 1st Year 19
	(1)	(2)	(3)	(4)	(5)
11	Stockholders' Equity (End of Year)	A.R. Sch. 100, L. 80 or L. 84 or L. 88 (Col. b)			
12	Stockholders' Equity (Average Beg. and End Year)	A.R. Sch. 100, L. 80 or L. 84 or L. 88 (Average of Cols. b and c)			
13	Carrier Operating Revenues	A.R. Sch. 101, L. 1			
14	Carrier Operating Expenses	A.R. Sch. 101, L. 2			
15	Depreciation and Amortization of Carrier Operating Property	A.R. Sch. 4000, L. 65 (Col. b)			
16	Net Carrier Operating Income Plus (Minus) Net Lease of Distinct Operating Units	A.R. Sch. 101, L. 3 Plus (Minus) net of L. 10 and L. 16			
17	Income Available for Payment of Interest	A.R. Sch. 101, L. 15			
18	Interest and Amortization of Debt Discount Expense and Premium	A.R. Sch. 101, L. 20			
19	Ordinary Income before Income Taxes	A.R. Sch. 101, L. 22			
20	Net Income (or loss)	A.R. Sch. 101, L. 31			
21	Preferred Dividends (Cash)	A.R. Sch. 102B, L. 11 plus L. 12			
22	Common Stock Dividends (Cash)	A.R. Sch. 102B, L. 13			

Financial data—Continued
(dollars in thousands)

Line No.	Item	Source	Calendar Years Preceding Effective Date of Rate Proposal		
			3rd Year 19	2nd Year 19	Actual or Estimated 1st Year 19
	(1)	(2)	(3)	(4)	(5)
23	Net Income Available for Payment of Dividends on Common Stock	App. B - L. 20 minus L. 21			
24	Cash Flow	App. B - L. 15 plus L. 20			
25	Working Capital (Average Beg. and End Year)	App. B - L. 3 minus L. 4			
26	Investment in Carrier Operating Property plus Working Capital (Average Beg. and End Yr.)	App. B - L. 5 plus L. 25			
27	Stockholders' Equity, Exclusive of Intangibles (End of Year)	App. B - L. 11 minus L. 6			
28	Stockholders' Equity, Exclusive of Intangibles (Average Beg. and End Year)	App. B - L. 12 minus L. 7			
29	Long-Term Debt plus Stockholders' Equity (End of Year)	App. B - L. 9 plus L. 11			
30	Long-Term Debt plus Stockholders' Equity (Average Beg. and End Yr.)	App. B - L. 10 plus L. 12			
31	Long-Term Debt plus Stockholders' Equity Excluding Intangibles (End of Year)	App. B - L. 9 plus L. 27			
32	Long-Term Debt plus Stockholders' Equity Excluding Intangibles (Average Beg. and End Year)	App. B - L. 10 plus L. 28			
33.	Current Ratio (2 decimals)	App. B - L. 1 ÷ L. 2			

Financial data—Continued
(dollars in thousands)

Line No.	Item	Source	Calendar Years Preceding Effective Date of Rate Proposal		
			3rd Year 19	2nd Year 19	Actual or Estimated 1st Year 19
	(1)	(2)	(3)	(4)	(5)
34	Throw off to Debt Ratio (2 decimals)	App. B - L. 24 ÷ L. 9			
35	Throw off to Debt Ratio, Current Maturities (2 decimals)	App. B - L. 24 ÷ L. 8			
36	Capital Structure Ratio Including Intangibles (2 decimals)	App. B - L. 9 ÷ L. 29			
37	Capital Structure Ratio Excluding Intangibles (2 decimals)	App. B - L. 9 ÷ L. 31			
38	Ratio of Long-Term Debt to Stockholders' Equity, Including Intangibles (2 decimals)	App. B - L. 9 ÷ L. 11			
39	Ratio of Long-Term Debt to Stockholders' Equity Excluding Intangibles (2 decimals)	App. B - L. 9 ÷ L. 27			
40.	Operating Ratio (1 decimal)	App. B - L. 14 ÷ L. 13			
41	Ratio of Net Income (or loss) to Carrier Operating Revenues (2 decimals)	App. B - L. 20 ÷ L. 13			
42	Rate of Return on Investment in Carrier Operating Property plus Working Capital (2 decimals)	App. B - L. 16 ÷ L. 26			

Financial data—Continued
(dollars in thousands)

Line No.	Item	Source	Calendar Years Preceding Effective Date of Rate Proposal		
			3rd Year 19	2nd Year 19	Actual or Estimated 1st Year 19
	(1)	(2)	(3)	(4)	(5)
43	Rate of Return on Stockholders Equity (2 decimals)	App. B - L. 20 ÷ L. 12			
44	Rate of Return on Stockholders' Equity, Excluding Intangibles (2 decimals)	App. B - L. 20 ÷ L. 28			
45	Rate of Return on Total Capitalization (2 decimals)	App. B - (L. 20 plus L. 18) ÷ L. 30			
46	Rate of Return on Total Capitalization Excluding Intangibles (2 decimals)	App. B - (L. 20 plus L. 18) ÷ L. 32			
47	Interest Coverage Ratio (2 decimals)	App. B - L. 17 ÷ L. 18			
48	Dividend Payout Ratio (2 decimals)	App. B - L. 22 ÷ L. 23			

See following pages for explanatory.

Check Appropriate Blocks	
☐ Carrier Only	☐ Group I
☐ Consolidated	☐ Group II
	☐ Group III

APPENDIX B (PART II)

Accounts giving effect to interperiod tax allocation (deferred taxes)
(dollars in thousands)

Line No.	Item	Source	Calendar Years Preceding Effective Date of Rate Proposal		
			3rd Year 19	2nd Year 19	Actual or Estimated 1st Year 19
	(1)	(2)	(3)	(4)	(5)
	Balance Sheet Accounts:				
1	Deferred Income Tax Charges	A.R. Sch. 100, L. 12			
2	Accumulated Deferred Income Tax Charges	A.R. Sch. 100, L. 38			
3	Deferred Income Tax Credits	A.R. Sch. 100, L. 55			
4	Accumulated Deferred Income Tax Credits	A.R. Sch. 100, L. 63			
	Income Statement Accounts:				
5	Provision For Deferred Taxes	A.R. Sch. 101, L. 24			
6	Provision For Deferred Taxes - Extraordinary and Prior Period Items	A.R. Sch. 101, L. 29			

See following pages for explanatory.

Explanatory, Appendix B (Parts I and II)

The purpose of Appendix B (Parts I and II) together with Appendices A and C and the various data required therein, is to establish the minimum financial data required for an evaluation of the carriers' revenue needs.

Appendix B (Parts I and II) data shall be filed on both a "consolidated" and "carrier only" bases. The "consolidated" data required for these purposes shall be compiled in conformity with the guidelines set forth below. The "carrier only" data required under these procedures relate strictly to the carrier entity and its financial statements filed with the Commission.

Guidelines for compiling "consolidated" data follow:

(1) Consolidated data, as defined herein for the purpose of these instructions, refers to the consolidated statement of financial position, income statement, and statement of changes in financial position of the traffic and cost study carriers and any "Family" companies which comprise integral parts of the carrier's operations and whose express purpose, either singularly or collectively, is to provide transportation service or is supportive to such activity.

(2) The definition of family company herein is limited to the following:

(a) any carrier or non-carrier holding company which is exclusively engaged in the provision of motor carrier transportation service and controls, through majority stock ownership, one or more carriers.

(b) any carrier subsidiary which is majority owned and controlled by its carrier parent and whose express purpose and operations are supportive to the transportation operations of its parent.

(c) any carrier affiliate under common control with the carrier and whose express purpose and operations are supportive to the transportation operations of the carrier.

(3) Subject to any modification arising from the instructions set forth above, balance sheet and income statement data for the purpose of these instructions shall be consolidated in accordance with generally accepted accounting principles.

(4) Any balance sheet or income statement data prepared in accordance with generallly accepted accounting principles shall be restated in conformity with the Uniform System of Accounts for Class I and Class II motor carriers.

"Consolidated" and "carrier only" data shall be filed separately for each of the following traffic and cost study carrier groupings, namely:

Group I.—All traffic and cost study carriers.

Group II.—Those traffic and cost study carriers which derive 50 percent and more of their total system revenues from the traffic at issue, as indicated in the "base calendar year-actual."

Group III.—Those traffic and cost study carriers which derive less than 50 percent of their total system revenues from the traffic at issue, as indicated in the "base calendar year-actual."

Individual data for *each* of the traffic and cost study carriers need not be filed.

Source references through line 22 of Part I and for all lines of Part II relate to Motor Carrier Form M-1 (Class I Motor Carriers of Property) for the year ended

December 31, 1974. Class I carriers should use comparable annual report sources for calendar years other than 1974. Other than Class I motor carriers should also use comparable annual report sources.

Appendix B (Part II) Instructions:

Appendix B (Part II) is designed specifically to segregate the impact of the Commission's deferred tax accounting rule changes on the carriers financial statements.

If the financial data reported in columns 3, 4, or 5 of Appendix B (Part I) apply to periods subsequent to January 1, 1974 (the effective date of the deferred tax rule change), it will be necessary to complete the corresponding column of Appendix B (Part II). For example, if the data reported in column 5 of Appendix B (Part I) is based on calendar year 1974, it will be necessary to complete column 5 of Appendix B (Part II).

NOTE

It should be noted that the time periods in this Appendix may not be identical to those in Appendix A. For example, in Appendix A the "first preceding calendar year—actual" refers to the year immediately preceding the latest traffic study year, i.e., the "base calendar year-actual." However, in Appendix B the "first preceding calendar year" is that year immediately preceding the effective date of the rate proposal. Therefore, these two time references may not be for the same calendar year. Notwithstanding these possible differences in time references and identifications, there will be situations where different time references will be for the same calendar year. For example, the "base calendar year—actual" in Appendix A may be for the year 1973 and the "first preceding calendar year" in Appendix B may likewise be for the year 1973. Thus, where there is comparability between the Appendices A and B for a given year, certain figures in these Appendices should agree. The following identifies the line numbers in these Appendices for those figures which should be in agreement for the same calendar year.

Appendix A, Line No.	*Appendix B (Part II), Line No.*
1	13
2	14
3	40
4	16
7	19
13	20
14	18

ATTACHMENT I

Conversion Table data sources for appendix B prior to and following January 1, 1974

System of Accounts Effective Prior to Jan. 1, 1974				System of Accounts Effective Jan. 1, 1974			
Appendix B Line No.	Acct. No.	Annual 1/ Report Source	Account Title or Other Designation	Appendix B Line No.	Acct. No.	Annual Report Source	Account Title or Other Designation
*	Accts. 1000, 1020, 1040, 1060, 1080, 1100, 1120, 1130, 1140, 1160, 1170, 1180, and 1190	Sch. 100 L. 18 (Col. c)	Current Assets (End of Year)	1	Accts. 1011, 1012, 1020, 1030, 1110, 1120, 1130 net of acct. 1138, 1140, 1151, 1160, and 1170	Sch. 100 L. 13 (Col. b)	Current Assets (End of Year)
*	Accts. 2000, 2020, 2030, 2050, 2070, 2090, 2100, 2120, 2150, 2160, 2180 and 2190	Sch. 101 L. 13 (Col. c) plus L. 15 (Col. c)	Current Liabilities (End of Year)	2	Accts. 2000, 2020, 2030, 2041, 2051, 2110, 2120, 2131, 2140, 2150, 2160, 2170, 2180, and 2190	Sch. 100 L. 56 (Col. b)	Current Liabilities (End of Year)
1	Accts. 1000, 1020, 1040, 1060, 1080, 1100, 1120, 1130, 1140, 1160, 1170, 1180, and 1190	Sch. 100 L. 18 Average of Cols. a and c)	Current Assets (Average Beg. and End Year)	3	Accts. 1011, 1012, 1020, 1030, 1110, 1120, 1130 net of acct. 1138, 1140, 1151, 1160, and 1170	Sch. 100 L. 13 (Average of Cols. b and c)	Current Assets (Average Beg. and End Year)
6	Accts. 2000, 2020, 2030, 2050, 2070, 2090, 2100, 2120, 2150 2160, 2180 and 2190	Sch. 101 L. 13 plus. L. 15 (Average of Cols a and c)	Current Liabilities (Average Beg. and End Year)	4	Accts. 2000, 2020, 2030, 2041, 2051, 2110, 2120, 2131, 2140, 2150, 2160, 2170, 2180 and 2190	Sch. 100 L. 56 (Average of Cols. b and c)	Current Liabilities (Average Beg. and End Year)

System of Accounts Effective Prior to Jan. 1, 1974				System of Accounts Effective Jan. 1, 1974			
Appendix B Line No.	Acct. No.	Annual Report Source 1/	Account Title or Other Designation	Appendix B Line No.	Acct. No.	Annual Report Source	Account Title or Other Designation
3	Acct. 1200 and 1300	Sch. 100 L. 21 Plus L. 23 (Average of Cols. a and c)	Net-Carrier Operating Property (Owned plus Leased to Others) (Average Beg. and End Year)	5	Acct. 1200	Sch. 100 L. 16 (Average of Cols. b and c)	Net-Carrier Operating Property (Average Beg. and End Year)
*	Acct. 1500 and 1550	Sch. 100 L. 32 (Col. c)	Intangibles (End of Year)	6	Accts. 1300 and 1340	Sch. 100 L. 27 (Col. b)	Total Intangible Property (End of Year)
5	Acct. 1500 and 1550	Sch. 100 L. 32 (Average of Cols. a and c)	Intangibles (Average Beg. and End Year)	7	Accts. 1300 and 1340	Sch. 100 L. 27 (Average of Cols. b and c)	Total Intangible Property (Average Beg. and End Year)
*	Acct. 2190	Sch. 101 L. 15 (Col. c)	Equipment Obligations and Other Debt Due Within One Year	8	Acct. 2160	Sch. 100 L. 52 (Col. b)	Equipment Obligations and Other Debt Due Within One Year
*	Accts. 2200, 2250, 2300, 2330, and 2360	Sch. 101 L. 25 (Col. c)	Long-Term Debt Due After One Year (End of Year)	9	Accts. 2310, 2320, and 2330	Sch. 100 L. 61 (Col. b)	Long-Term Debt Due After One Year (End of Year)
*	Accts. 2200, 2250, 2300, 2330, and 2360	Sch. 101 L. 25 (Average of Cols. a and c)	Long-Term Debt Due After One Year (Average Beg. and End Year)	10	Accts. 2310, 2320, and 2330	Sch. 100 L. 61 (Average of Cols. b and c)	Long-Term Debt Due After One Year (Average Beg. and End Year)
*	Accts. 2700 - 2930	Sch. 101 L. 55 (Col. c)	Shareholders' Equity (End of Year)	11	Accts. 2611 - 2800	Sch. 100 L. 80 or L. 84 or L. 88 (Col. b)	Stockholders' Equity (End of Year)

Conversion Table—Continued

System of Accounts Effective Prior to Jan. 1, 1974				Systems of Accounts Effective Jan. 1, 1974			
Appendix B Line No.	Acct. No.	Annual 1/ Report Source	Account Title or Other Designation	Appendix B Line No.	Acct. No.	Annual Report Source	Account Title or Other Designation
8	Accts. 2700 - 2930	Sch. 101 L. 55 (Average of Cols. a and c)	Shareholders' Equity (Average Beg. and End Year)	12	Accts. 2611 - 2800	Sch. 100 L. 80 or L. 84 or L. 88 (Average of Cols. b and c)	Shareholders' Equity (Average Beg. and End Year)
9	Accts. 3100, 3110, 3120, 3130, and 3900	Sch. 2998 L. 3	Operating Revenues	13	Accts. 3100, 3200, 3300, 3400 and 3900	Sch. 101 L. 1	Carrier Operating Revenues
11	Accts. 4000, 5000, 5100, 5150 and 5200	Sch. 2998 L. 10	Operating Expenses	14	Accts. 4100, 4200, 4300, 4400, 4500, 4600, 4700, 4800, 5100, 5300, 5400, 5500, 5700, and 5900	Sch. 101 L. 2	Carrier Operating Expenses
*	Accts. 5000, 5100, and 5150	Sch. 2998 L. 6 plus L. 7 plus L. 8	Depreciation and Amortization of Carrier Operating Property	15	Acct. 5300	Sch. 4000, L. 65 (Col. b)	Depreciation and Amortization of Carrier Operating Property
12	-	Sch. 2998 L. 14	Net Carrier Operating Income	16	Accts. 8310 and 8320	Sch. 101 L. 3 plus (Minus) Net of L. 10 & L. 16	Net Carrier Operating Income Plus (Minus) Net Lease of Distinct Operating Units
*	-	Sch. 2998 L. 21	Income Available for Payment of Interest	17	-	Sch. 101 L. 15	Income Available for Payment of Interest
*	Accts. 7100, 7300 and 7400	Sch. 2998 net of L. 23, L. 24 and L. 25	Interest Amortization of Debt Discount and Expense and Amortization of Premium on Debt	18	Acct. 8600	Sch. 101 L. 20	Interest and Amortization of Debt Discount Expense and Premium

System of Accounts Effective Prior to Jan. 1, 1974				System of Accounts Effective Jan. 1, 1974			
Appendix B Line No.	Acct. No.	Annual 1/ Report Source	Account Title or Other Designation	Appendix B Line No.	Acct. No.	Annual Report Source	Account Title or Other Designation
13	-	Sch. 2998 L. 28	Ordinary Income Before Income Taxes	19	-	Sch. 101 L. 22	Ordinary Income Before Income Taxes
14	-	Sch. 2998 L. 35	Net Income (or Loss)	20	-	Sch. 101 L. 31	Net Income (or Loss)
*	Acct. 2944	Sch. 2930 L. 34 plus L. 35	Preferred Dividends (Cash)	21	Acct. 2941	Sch. 102B L. 11 plus L. 12	Preferred Dividends (Cash)
*	Acct. 2944	Sch. 2930 L. 36	Common Stock Dividends (Cash)	22	Acct. 2941	Sch. 102B L. 13	Common Stock Dividends (Cash)

* No comparable line item in Appendix B prior to January 1, 1974

1/ Refers to annual report sources in effect December 31, 1970

APPENDIX C

Statement of changes in financial position

(Dollars in thousands) . .

Check Appropriate Blocks	
☐ Carrier Only	☐ Group I
☐ Consolidated	☐ Group II
	☐ Group III

Line No.	Item (1)	Calendar Years Preceding Effective Date of Rate Proposal: 3rd Year 19 (2)	2nd Year 19 (3)	Actual or Estimated 1st Year 19 (4)
	Source of funds:			
1	Net income			
2	Add non-cash charges for depreciation and amortization			
	Add non-cash charges for additions (deduct for decrease) to estimated liabilities:			
3	Self insurance			
4	Personal injuries, property damage, workmen's compensation			
5	Cargo loss and damage claims			
6	Over charge claims			
7	Other important items (specify)			
8	Total non-cash charges (Lines 2 thru 7)			
9	Funds provided by operations (Lines 1 and 8)			
10	Proceeds from sale of capital stock of own issue			
11	Proceeds from sale of funded debt and other obligations of own issue (except for equipment obligations)			
12	Proceeds from sale of equipment obligations of own issue			
13	Book cost of depreciable transportation property retired during year			
14	Less accumulated depreciation			
15	Net book value of depreciable transportation property retired during year			
16	Net book value of miscellaneous physical property disposed of during year			
17	Net book value of investment securities disposed of during year			
18	Advances, notes and other debts repaid by affiliated companies			
19.	Advances, notes and other debts repaid by other companies			
20.	Net decrease in sinking and other special funds			
21	Net decrease in working capital (total current assets less total current liabilities)			
22	Other sources (specify)			
23				
24				
25				
26	Total sources of funds (should be same as line 44)			

Line No.	Item (1)	Calendar Years Preceding Effective Date of Rate Proposal: 3rd Year 19 (2)	2nd Year 19 (3)	Actual or Estimated 1st Year 19 (4)
	Application of funds:			
27	Investment in transportation property			
28	Investment in miscellaneous physical property			
29	Investments and advances, affiliated ICC regulated carriers			
30	Investments and advances, other affiliated companies			
31	Total investments and advances, affiliated companies			
32	Investments in nonaffiliated companies			
33	Advances, notes and other debts repaid to other companies			
34	Capital stock of own issue reacquired			
35	Funded debt and other obligations paid or reacquired (except equipment obligations)			
36	Equipment obligations paid or reacquired			
37	Net increase in sinking and other special funds			
38	Payment of dividends (other than stock dividends)			
39	Net increase in working capital			
40	Other applications (specify)			
41				
42				
43				
44	Total application of funds (should be same as Line 26)			

See following pages for explanatory.

Explanatory, Appendix C

The purpose of Appendix C, together with Appendices A and B and the various data required therein, is to establish the minimum financial data required for an evaluation of the carriers' revenue needs.

Appendix C data shall be filed on both a "consolidated" and "carrier only" basis. The "consolidated" data required for these purposes shall be compiled in conformity with the guidelines set forth below. The "carrier only" data required under these procedures relate strictly to the carrier entity and its financial statements filed with the Commission.

Guidelines for "consolidated" data follow:

(1) Consolidated data, as defined herein for the purpose of these instructions, refers to the consolidated statement of financial position, income statement, and statement of changes in financial position of the traffic and cost study carriers and any "family" companies which comprise integral parts of the carriers' operations and whose express purpose, either singularly or collectively, is to provide transportation service or is supportive to such activity.

(2) The definition of family company herein is limited to the following:

(a) any carrier or non-carrier holding company which is exclusively engaged in the provision of motor carrier transportation service and controls, through majority stock ownership, one or more carriers.

(b) any carrier subsidiary which is majority owned controlled by its carrier parent and whose express purpose and operations are supportive to the transportation operations of its parent.

(c) any carrier affiliate under common control with the carrier and whose express purpose and operations are supportive to the transportation operations of the carrier.

(3) Subject to any modification arising from the instructions set forth above, balance sheet and income statement data for the purpose of these instructions shall be consolidated in accordance with generally accepted accounting principles.

(4) Any balance sheet or income statement data prepared in accordance with generally accepted accounting principles shall be restated in conformity with the Uniform System of Accounts for Class I and Class II motor carriers.

"Consolidated" and "carrier only" data shall be filed separately for each of the following traffic and cost study carrier groupings, namely:

Group I.—All traffic and cost study carriers.

Group II.—Those traffic and cost study carriers which derive 50 percent and more of their total system revenues from the traffic at issue, as indicated in the "base calendar year-actual."

Group III.—Those traffic and cost study carriers which derive less than 50 percent of their total system revenues from the traffic at issue, as indicated in the "base calendar year-actual."

Individual data for *each* of the traffic and cost study carriers need not be filed.

The term "funds" for the purpose of preparing this Appendix shall include all assets or financial resources even though a transaction may not directly affect cash or working capital. For example, the purchase of property in exchange for shares of stock or bonds would be an application of funds for investment in property provided by the issue of securities. Sources and uses of funds should be individually disclosed. For example, outlays for fixed assets should not be reported net of retirements.

NOTE: Items in column 1 of this Appendix are identical to those appearing in Schedule 103 of 1974 Annual Report Form M-1. For years prior or subsequent to 1974 use comparable annual report sources.

Affiliate data

Name of affiliate	Type of affiliation	Percentage ownership by carrier	Type of service to carrier	Total affiliate revenue	Total affiliate income from operations before income taxes	Percentage revenue derived from carrier to total revenue
(1)	(2)	(3)	(4)	(5)	(6)	(7)

See following page for explanatory.

Explanatory, Appendix D

The purpose of Appendix D is to supplement Appendix B consolidated financial data with information pertaining to carrier-affiliate business relationships. Appendix D shall be filed by each traffic and study carrier having affiliates subject to consolidation under the guidelines set forth in Appendices B and C.

Guidelines for compiling affiliate data follow:

Column (1)—State full name of affiliate.

Column (2)—Enter code letter as follows:

A—Company controlled by carrier.
B—Company indirectly controlled by carrier, through intermediary companies.
C—Company under common control with carrier.
D—Company controlling carrier.

Column (3)—Enter percentage ownership by carrier of affiliates coded "A" in Column (2). Leave blank for affiliates coded other than "A."

Column (4)—Enter code letter signifying type of service performed by affiliate for carrier as follows:

A—Engineering
B—Management
C—Legal
D—Accounting
E—Financial
F—Furnishing of materials and supplies
G—Leasing of land and/or structures
H—Leasing of equipment
I—Purchase of equipment
J—Construction
K—All other services

Column (5)—State total affiliate revenue for most recent full calendar year.

Column (6)—State total affiliate income from operations before income taxes for most recent full calendar year.

Column (7)—State percentage of total affiliate revenue in Column (5) derived from services provided to carrier.

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