AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Vol. 41—No. 96
5-17-76
PAGES
20151–20388

federal register

MONDAY, MAY 17, 1976



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List of Public Laws

This is a continuing numerical listing of public bills which have become law, together with the law number, the title, the date of approval, and the U.S. Statutes citation. The list is kept current in the FEDERAL REGISTER and copies of the laws may be obtained from the U.S. Government Printing Office.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

Ten agencies have agreed to a six-month trial period based on the assignment of two days a week beginning February 9 and ending August 6 (See 41 FR 5453). The participating agencies and the days assigned are as follows:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
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	CSC			CSC
	LABOR			LABOR

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this trial program are invited. Comments should be submitted to the Director of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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federal register
Area Code 202 Phone 523–5240

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Adjustment Assistance for Mushroom Industry

THE WHITE HOUSE,
May 13, 1976.

DEAR MR. SECRETARY:

On March 17 the United States International Trade Commission (USITC) reported to me the results of its investigation TA–201–10 under section 201 of the Trade Act of 1974. The Commission determined that mushrooms provided for in item 144.20 of the Tariff Schedules of the United States are being imported in such increased quantities as to be a substantial cause of serious injury or threat thereof to the domestic industry, and recommended the provision of adjustment assistance to remedy that injury.

Pursuant to Section 202(a)(2) of the Trade Act of 1974, I am, therefore, directing you to give expeditious consideration to any petitions for adjustment assistance filed with you under Title II, Chapter 2 of the Trade Act of 1974 by workers in the mushroom industry producing mushrooms covered by the USITC determination, or their duly authorized representatives.

Pursuant to Section 202(b)(2) of the Trade Act of 1974, this order is to be published in the FEDERAL REGISTER.

Sincerely,

Gerald R. Ford

THE HONORABLE WILLIE J. USERY, JR.
Secretary of Labor,
Washington, D.C. 20210

[FR Doc.76–14485 Filed 5–14–76;12:48 pm]

Letter of May 13, 1976

Adjustment Assistance for Mushroom Industry

THE WHITE HOUSE,
Washington, May 13, 1976.

DEAR MR. SECRETARY:

On March 17 the United States International Trade Commission (USITC) reported to me the results of its investigation TA–201–10 under section 201 of the Trade Act of 1974. The Commission determined that mushrooms provided for in item 144.20 of the Tariff Schedules of the United States are being imported in such increased quantities as to be a substantial cause of serious injury or threat thereof to the domestic industry, and recommended the provision of adjustment assistance to remedy that injury.

Pursuant to Section 202(a)(2) of the Trade Act of 1974, I am, therefore, directing you to give expeditious consideration to petitions for adjustment assistance filed with you under Title II, Chapters 3 and 4 of the Trade Act of 1974, by domestic firms producing mushrooms covered by the USITC determination and by communities impacted by increased imports of such mushrooms.

Pursuant to Section 202(b)(2) of the Trade Act of 1974, this order is to be published in the FEDERAL REGISTER.

Gerald R. Ford

THE HONORABLE ELLIOT L. RICHARDSON
Secretary of Commerce,
Washington, D.C. 20230

[FR Doc.76–14486 Filed 5–14–76;12:48 pm]

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

PART 201—FEDERAL SEED ACT REGULATIONS

Miscellaneous Amendments

Pursunt to section 402 of the Federal Seed Act, as amended (7 U.S.C. 1551 et seq.) and the administrative procedure provisions in 5 U.S.C. 553, there was published in the FEDERAL REGISTER (40 FR 40524) on September 3, 1975, a notice of rulemaking and hearing with respect to proposed amendments of the Part 201 regulations (7 CFR Part 201) under the Act. The proposals included additions to the lists of agricultural and vegetable seeds subject to the Act, together with regulations for testing the additional kinds. The proposals also included changes in the botanical names for numerous kinds of agricultural and vegetable seed, changes in the regulations for testing seed, and changes in the regulations for certified seed.

Interested persons were given an opportunity to present views orally or in writing at a hearing on October 7, 1975, regarding the proposals, or to submit written comments to the Department's Hearing Clerk. Approximately 3,000 copies of the proposals were distributed to the trade and to Government organizations. No oral or written comments were received at the hearing. Three written comments were received by the Hearing Clerk.

One written comment generally supported the proposed amendments.

One written comment recommended three technical corrections which are being adopted as follows:

1. Amendment number 10b with respect to § 201.76 is changed by deleting the sentence "In all three classes under isolation, add superscript '42' for sunflower and hybrid sunflower."; and substituting therefor the sentence "For sunflower, under isolation, in all three classes, add superscript '42,' and for hybrid sunflower, under isolation, in the Foundation and Certified classes, add superscript '42'."

2. Amendment number 10a, Table 5, with respect to § 201.76 is changed by deleting superscripts 43 and 45 opposite "Alfalfa, hybrid."

3. The amendment number "12" was incorrectly numbered and is changed to number 11. The number "201.77" in the first sentence is changed to "201.78" and the heading "§ 201.78 Length of stand requirements" is deleted.

One written comment proposed amendments not contained in the announcement. Further consideration will be given to this comment at a later date.

Editorial changes have been made in the wording to correct typographical errors.

In accordance with the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that further public rulemaking proceedings on the matter are impractical and unnecessary.

On the basis of comments received and all other information available to the Department, it is concluded that the amendments of the regulations as proposed on September 3, 1975, and as modified above, are in the public interest and are adopted as follows:

§ 201.2 [Amended]

1. Section 201.2 (h) and (i) is amended as follows:

a. Add in proper alphabetical order in the list of "Agricultural Seeds," § 201.2 (h), the following:

Agrotricum—X Agrotriticum Ciferri and Giacom.
Brome, meadow—Bromus biebersteinii Roem. and Schult.
Clover, arrowleaf—Trifolium vesiculosum Savi.
Milkvetch—Astragalus cicer L.
Timothy, turf—Phleum nodosum (L.) Huds.
Saltbush, fourwing—Atriplex canescens (Pursh.) Nutt.
Wheat X Agrotricum—Triticum X Agrotriticum.

b. Add in proper alphabetical order in the list of "Vegetable Seeds," § 201.2(i), the following:

Gherkin, West India—Cucumis anguria L.

c. Change the names under "Agricultural Seeds", § 201.2(h), as follows:

Following "Barrelclover-Medicago" delete "tribuloides Desr." and insert "truncatula Gaertn."
Following "Bean, adzuki" delete "Phaseolus angularis Willd." and insert "Vigna angularis (Willd.) Ohwi and Ohashi."
Following "Bean, mung" delete "Phaseolus aureus Roxb." and insert "Vigna radiata (L.) Wilczek."
Following "Bentgrass, creeping-Agrostis" delete "palustris Huds." and insert "stolonifera var. palustris (Huds.) Farw."
Following "Bermudagrass—Cynodon dactylon (L.) Pers." add "var. dactylon."
Following "Bluestem, big-Andropogon" delete "furcatus Muhl." insert "gerardi Vitm."
Following "Bluestem, little" delete "Andropogon scoparius Michx." and insert "Schizachyrium scoparium (Michx.) Nash (Andropogon scoparius Michx.)"
Following "Bluestem, yellow" delete "Andropogon ischaemum L." and insert "Bothriochloa ischaemum (L.) Keng."
Following "Broomcorn—Sorghum" delete "vulgare var. technicum (Koern.) Jav." and insert "bicolor (L.) Moench."
Following "Buffelgrass" delete "Pennisetum ciliare (L.) Link." and insert "Cenchrus ciliaris L. (Pennisetum ciliare (L.) Link.)."
Following "Burclover, California—Medicago" delete "hispida Gaertn." and insert "polymorpha L."
Following "Clover, large hop—Trifolium" delete "procumbens L." and insert "campestre Schreb."
Following "Corn, pop—Zea mays" delete "var. everta (Sturt.) Bailey" and insert "L."
Following "Crotalaria, slenderleaf—Crotalaria" delete "intermedia Kotschy" and insert "brevidens Benth."
Following "Crotalaria, striped—Crotalaria" delete "striata DC. (C. mucronata Desv.")" and insert "pallida Ait."
Following "Fescue, hair—Festuca" delete "capillata Lam." and insert "tenuifolia Sibth."
Following "Fescue, hard—Festuca" delete "ovina var. duriscula (L.) Koch." and insert "longifolia Thuill."
Following "Fescue, meadow—Festuca" delete "elatior L." and insert "pratensis Huds."
Following "Fescue, red—Festuca rubra L." add "subsp. rubra."
Following "Fescue, sheep—Festuca ovina L." add "var. ovina."
Following "Hardinggrass—Phalaris" delete "tuberosa var. stenoptera (Hack.) Hitche." and insert "stenoptera Hack."
Following "Kudzu—Pueraria" delete "thunbergiana (Sieb. and Zucc.) Benth." and insert "lobata (Willd.) Ohwi."
Following "Lespedeza, Siberian—Lespedeza" delete "hedysaroides (Pallas) Ricker" and insert "juncea (L. f.) Pers."
Following "Millet, browntop" delete "Panicum ramosum L." and insert "Brachiaria ramosa (L.) Stapf."
Following "Millet, pearl—Pennisetum" delete "glaucum (L.) R. Br." and insert "americanum (L.) K. Schum."
Following "Mustard, white" delete "Brassica hirta Moench" and insert "Sinapsis alba L."
Following "Redtop—Agrostis" delete "alba L." and insert "gigantea Roth."
Following "Rescuegrass—Bromus" delete "catharticus Vahl." and insert "unioloides Kunth."
Following "Sorghum" delete "Sorghum vulgare Pers." and insert "Sorghum bicolor (L.) Moench."
Following "Sorghum-sudangrass" delete "hybrid Sorghum vulgare X S. sudanense" and insert "Sorghum bicolor X S. sudanense."
Following "Triticale" delete "Tritico-secale Whittmack." and insert "X Triticosecale (Secale X Triticum)."
Following "Velvetbean" delete "Stizolobium deeringianum Bort." and insert "Mucuna deeringiana (Bort.) Merr."
Following "Vetch, common—Vicia sativa L." add "subsp. sativa."
Following "Vetch, narrowleaf—Vicia" delete "angustifolia (L.) Reich" and insert "sativa subsp. nigra (L.) Ehrh."

Following "Vetch woollypod—Vicia" delete "dasycarpa Ten." and insert "villosa subsp. varia (Host) Corb.

Following "Wheatgrass, slender—Agropyron" delete "paucflorum (Schwein.) Hitchc., (A. trachycaulum Steud.)" and insert "trachycaulum (Lipk.) Malte. ex H. F. Lewis."

d. Change the names under "Vegetable Seeds", § 201.2(i), as follows:

Following "Asparagusbean—Vigna" delete "sesquipedalis (L.) Fruwirth." and insert "unguiculata (L.) Walp. subsp. sesquipedalis (L.) Verdc."

Following "Bean, lima—Phaseolus lunatus" delete "var. macrocarpus Van Eseltine" and insert "(L.)"

Following "Beet—Beta vulgaris L." add "var. vulgaris."

Following "Citron—Citrullus" delete "vulgaris Schrad." and insert "lanatus (Thunb.) Matsum. and Nakai var. citroides (Bailey) Mansf."

Following "Cornsalad—Valerianella locusta" delete "var. olitoria Pall." and insert "(L.) Laterrade."

Following "Cress, water" delete "Rorippa nasturtium-aquaticum (L.) Britt. and Rendle." and insert "Nasturtium officinale R. Br."

Following "Eggplant—Solanum melongena" delete "var. esculentum Nees." and insert "(L.)."

Following "Leek—Allium" delete "porrum L." and insert "ampeloprasum L."

Following "Okra" delete "Hibiscus esculentus L." and insert "Abelmoschus esculentus (L.) Moench."

Following "Parsley—Petroselinum" delete "hortense Hoffm." and insert "crispum (Mill.) A. W. Hill."

Following "Spinach, New Zealand—Tetragonia" delete "expansa Thunb." and insert "tetragonioides (Pall.) Ktze."

Following "Watermelon—Citrullus" delete "vulgaris Schrad." and insert "lanatus (Thunb.) Matsum. and Nakai."

§ 201.43 [Amended]

2. Section 201.43(c) is amended by deleting "sorghum," from the list of kinds of seed.

3. Section 201.43(d) is amended by adding to the list of seeds in proper alphabetical order the name "sorghum,".

§ 201.46 [Amended]

4. Section 201.46 would be amended as follows:

a. Add the following at the end of subparagraph (c): "If the approximate percentage of the components of a mixture are not known they may be estimated. The weight of the noxious-weed seed working sample shall be determined by mutiplying the weight of the purity working sample by 10 or by calculating the weighted average in the same manner described above for the purity working sample."

b. Delete subparagraph (d).

5. Section 201.46, Table 1, would be amended as follows:

a. Add in proper alphabetical order under "Agricultural Seed" in the respective columns the following:

Agrotricum—*X Agrotriticum*	65	500	39
Brome, meadow—*Bromus biebersteinii*	13	130	19
Clover, arrowleaf—*Trifolium vesiculosum*	3	30	90
Milkvetch—*Astragalus cicer*	10	100	293
Timothy, turf—*Phleum nodosum*	1	10	2565
Saltbush, fourwing—*Atriplex canescens*	15	150	165
Wheat X Agrotricum—*Triticum X Agrotriticum*	65	500	38

b. Add in proper alphabetical order under "Vegetable Seed" in the respective columns the following:

Gherkin, West India—*Cucumis anguria*	16	160	153

c. Under "Agricultural Seed" following "Barrelclover" in column 1 delete "tribuloides" and insert "truncatula." Also delete "50" and "300" from columns 2 and 3 respectively and insert "10," "100" and "250" in columns two, three, and four respectively.

d. Under "Agricultural Seed" opposite "Wheatgrass, Siberian—Agropyron sibiricum" delete "10" and insert "5" in column 2.

e. Under "Agricultural Seed" make the following changes in column 1:

Following "Bean, adzuki" delete "Phaseolus angularis" and insert "Vigna angularis."

Following "Bean, mung" delete "Phaseolus aureus" and insert "Vigna radiata."

Following "Bentgrass, creeping" delete "Agrostis palustris" and insert "Agrostis stolonifera var. palustris."

Following "Bluestem, little" delete "Andropogon scoparius" and insert "Schizachyrium scoparium."

Following "Bluestem, yellow" delete "Andropogon ischaemum" and insert "Bothriochloa ischaemum."

Following "Broomcorn" delete "Sorghum vulgare var. technicum" and insert "Sorghum bicolor."

Following "Buffelgrass" delete "Pennisetum ciliare" and insert "Cenchrus ciliaris."

Following "Burclover, California—Medicago" delete "hispida" and insert "polymorpha" in both instances.

Following "Clover, large hop—Trifolium" delete "procumbens (T. campestre)" and insert "campestre."

Following "Corn, pop—Zea mays" delete "var. everta."

Following "Crotalaria, striped—Crotalaria" delete "mucronata" and insert "pallida."

Following "Crotalaria, Slenderleaf—Crotalaria" delete "intermedia" and insert "brevidens."

Following "Fescue, hair—Festuca" delete "capillata" and insert "tenuifolia."

Following "Fescue, hard—Festuca" delete "ovina var. duriscula" and insert "longifolia."

Following "Fescue, meadow—Festuca" delete "elatior" and insert "pratensis."

Following "Fescue, red—Festuca rubra" insert "subsp. rubra."

Following "Fescue, sheep—Festuca ovina" insert "var. ovina."

Following "Hardinggrass—Phalaris" delete "var. stenoptera" and insert "stenoptera."

Following "Kudzu—Pueraria" delete "thunbergiana" and insert "lobata."

Following "Lespedeza, Siberian—Lespedeza" delete "hedysaroides" and insert "juncea."

Following "Millet, browntop" delete "Panicum ramosum" and insert "Brachiaria ramosa."

Following "Millet, pearl—Pennisetum" delete "glaucum" and insert "americanum."

Following "Mustard, white" delete "Brassica hirta" and insert "Sinapsis alba."

Following "Redtop—Agrostis" delete "alba" and insert "gigantea."

Following "Rescuegrass — Bromus" delete "catharticus" and insert "unioloides."

Following "Sorghum" delete "Sorghum vulgare" and insert "Sorghum bicolor."

Following "Sorghum-sudangrass" delete "hybrid, S. vulgare X S. sudanense" and insert "S. bicolor X S. sudanense."

Following "Triticale" insert "X Triticosecale."

Following "Velvetbean" delete "Stizolobium deeringianum" and insert "Mucuna deeringiana."

Following "Vetch, common—Vicia sativa" add "subsp. sativa."

Following "Vetch, narrowleaf" delete "Vicia angustifolia" and insert "Vicia sativa subsp. nigra."

Following "Vetch, woollypod—Vicia" delete "dasycarpa" and insert "brevidens."

f. Under "Vegetable Seed" make the following changes in column 1:

Following "Asparagusbean—Vigna" delete "sesquipedalis" and insert "unguiculata subsp. sesquipedalis."

Following "Beans, lima—Phaseolus lunatus" delete "var. macrocarpus."

Following "Beet—Beta vulgaris" add "var. vulgaris."

Following "Citron—Citrullus" delete "vulgaris" and insert "lanatus var. citroides."

Following "Cornsalad—Valerianella locusta" delete "var. olitoria."

Following "Cress, water" delete "Rorippa nasturtium-aquaticum" and insert "Nasturtium officinale."

Following "Eggplant—Solanum melongena" delete "var. esculentum."

Following "Leek—Allium" "delete porrum" and insert "ampeloprasum."

Following "Okra" delete "'Hibiscus esculentus" and insert "Abelmoschus esculentus (Hibiscus esculentus)."

Following "Parsley—Petroselinum" delete "hortense (P. crispum)" and insert "crispum."

Following "Spinach, New Zealand—Tetragonia" delete "expansa" and insert "tetragoniodes."

Following "Watermelon—Citrullus" delete "vulgaris" and insert "lanatus."

§ 201.48 [Amended]

6. Section 201.48(g) is amended by by changing the last sentence to read as follows:

"Attached empty florets of the following kinds shall not be removed from fertile florets when the analysis is made by the special method described under § 201.51a: Smooth brome (Bromus inermis), chewings fescue (Festuca rubra var. commutata), red fescue (Festuca rubra subsp. rubra), orchardgrass (Dactylis glomerata), fairway crested wheatgrass (Agropyron cristatum), standard crested wheatgrass (Agropyron desertorum), intermediate wheatgrass (Agropyron intermedium), and pubescent wheatgrass (Agropyron trichophorum).

7. Section 201.51a introductory text and the table to paragraph (b) is amended to read as follows:

§ 201.51a **Special procedures for purity analysis.**

When the multiple units of the pure seed fraction (multiple florets or entire spikelets containing at least one caryopsis, to which is attached any type of inherent inert matter) of the kinds of grasses indicated in this section constitute 5 percent or more of the sample, the test shall be made by the following procedures:

* * * * *

(b) * * *

Factors applicable to multiple units

Kind of seed	Percent of single florets in sample									
	50 or less	50.01 to 55	55.01 to 60	60.01 to 65	65.01 to 70	70.01 to 75	75.01 to 80	80.01 to 85	85.01 to 90	90.01 to 95
Brome, smooth	0.72	0.74	0.75	0.76	0.78	0.79	0.81	0.82	0.83	0.85
Fescue, chewings	.91	.91	.91	.91	.91	.91	.91	.91	.91	.91
Fescue, red	.80	.81	.82	.83	.84	.86	.87	.88	.89	.90
Orchardgrass	.80	.81	.81	.82	.82	.82	.83	.83	.83	.84
Wheatgrass, crested [1]	.70	.72	.73	.74	.75	.76	.77	.78	.79	.79
Wheatgrass, intermediate	.72	.74	.75	.76	.77	.78	.79	.80	.81	.82
Wheatgrass, pubescent	.66	.67	.67	.67	.68	.68	.69	.69	.69	.70

[1] Includes both fairway crested wheatgrass and standard crested wheatgrass.

§ 201.58 **[Amended]**

8. Section 201.58(b) is amended as follows:

a. Add new paragraph (b)(12) to read as follows:

(12) Garden beans (Phaseolus vulgaris); Use of calcium nitrate: If hypocotyl collar rot is observed on seedlings, the sample involved may be retested using a 0.3 to 0.6 percent solution of calcium nitrate to moisten the germination medium.

b. Add new paragraph (b)(13) to read as follows:

(13) Fourwing Saltbush (Atriplex canescens); preparation of seed for test: De-wing seeds and soak for 2 hours in 3 liters of water after which rinse with approximately 3 liters of distilled water. Remove excess water, air dry for 7 days at room temperature, then test for germination as indicated in Table 2.

9. Section 201.58(c)—Table 2; germination requirements for indicated kinds, would be amended as follows:

a. Add in proper alphabetical order under "Agricultural Seed" in the indicated columns the following new kinds:

Col. 1 "Agrotricum—Agrotriticum"	Col. 2 "B,T,S" Col. 3 "20;15" Col. 4 "4" Col. 5 "7" Col. 7 "Prechill at 5° or 10° C. for 5 days."
Col. 1. "Brome, meadow — Bromus beibersteinii"	Col. 2 "B,T,TB" Col. 3 "20–30" Col. 4 "6" Col. 5 "14" Col. 6 "light optional"
Col. 1 "Clover, arrowleaf—Trifolium vesiculosum"	Col. 2 "B,T" Col. 3 "20" Col. 4 "4" Col. 5 "14" Col. 6 "See par. (b)(11)"
Col. 1 "Milkvetch—Astragalus cicer"	Col. 2 "B,T" Col. 3 "20" Col. 4 "6" Col. 5 "14"
Col. 1 "Timothy, turf-Phelum nodosum"	Col. 2 "P,TB" Col. 3 "15–25;20–30" Col. 4 "5" Col. 5 "10" Col. 6 "Light" Col. 7 "KNO_3 & Prechill at 5° or 10° C. for 5 days."
Col. 1 "Saltbush, fourwing-Atriplex canescens"	Col. 2 "B" Col. 3 "20" Col. 4 "5" Col. 5 "14" Col. 6 "See par. (b)(13)" Col. 7 "prechill 5° C. for 7 days."
Col. 1 "Wheat X Agrotricum-Triticum X Agrotriticum"	Col. 2 "B, T, S" Col. 3 "20;15" Col. 4 "4" Col. 5 "7" or 10° C. for 5 days."

b. Make the following changes under "Agricultural Seed" for the kinds indicated in the appropriate column:

Fescue, Hair Hardinggrass	Col. 6 delete "light" Col. 6 delete "KNO_3"
Ricegrass, Indian	Col. 2 delete "S"; add "P" Col. 3 delete "5–15" and "15–25" Col. 5 delete "28"; add "42" Col. 7 delete "Dark; prechill in soil at 5° C. for 4 weeks." Add "prechill at 5° C. for 4 weeks and test for 21 additional days."
Add "Alternate Method"	Col. 2 "S" Col. 3 "5–15;15;15–25" Col. 4 "7" Col. 5 "28" Col. 7 "Dark; prechill in soil at 5° C. for 4 weeks."
Wheatgrass, western	Col. 2 delete "P" Col. 3 delete "15–25"; add "15–30" Col. 6 delete "light and KNO_3 optional" Col. 7 delete "and prechill at 5° or 10° C. for 7 days"

c. Add in proper alphabetical order under "Vegetable Seed" in the indicated columns, the following new kind:

Col. 1 "Gherkin, West India—Cucumis anguira"	Col. 2 "B,T,S" Col. 3 "20–30" Col. 4 "3" Col. 5 "7" Col. 7 "Test at 30° C."

d. Under "Vegetable Seeds" opposite "Beans, garden—Phaseolus vulgaris" delete "5" from column 4 and insert "none" and insert in column 6 "see par. (b)(12)."

e. Under "Agricultural Seed" make the following changes in column 1:

Following "Bean, adzuki" delete "Phaseolus angularis" and insert "Vigna angularis."

Following "Bean, mung" delete "Phaseolus aureus" and insert "Vigna radiata."

Following "Bentgrass, creeping" delete "Agrostis palustris" and insert "Agrostis stolonifera var. palustris."

Following "Bluestem, little" delete "Andropogon scoparius" and insert "Schizachyrium scoparium."

Following "Bluestem, yellow" delete "Andropogon ischaemum" and insert "Bothriochloa ischaemum."

Following "Broomcorn" delete "Sorghum vulgare var. technicum" and insert "Sorghum bicolor."

Following "Buffelgrass" delete "Pennisetum ciliare" and insert "Cenchrus ciliaris."

Following "Burclover, California—Medicago" delete "hispida" and insert "polymorpha" in both instances.

Following "Clover, large hop—Trifolium" delete "procumbens (T. campestre)" and insert "campestre."

Following "Corn, pop—Zea mays" delete "var. everta."

Following "Crotalaria, striped—Crotalaria" delete "mucronata" and insert "pallida."

Following "Fescue, hair—Festuca" delete "capillata" and insert "tenuifolia."

Following "Fescue, hard—Festuca" delete "ovina var. duriscula" and insert "longifolia."

Following "Fescue, meadow—Festuca" delete "elatior" and insert "pratensis."

Following "Fescue, red—Festuca rubra" insert "subsp. rubra."

Following "Fescue, sheep—Festuca ovina" insert "var. ovina."

Following "Hardinggrass—Phalaris" delete "tuberosa var. stenoptera" and insert "stenoptera."

Following "Kudzu—Pueraria" delete "thunbergiana" and insert "lobata."

Following "Lespedeza, Siberian—Lespedeza" delete "hedysaroides" and insert "juncea."

Following "Millet, browntop" delete "Panicum ramosum" and insert "Brachiaria ramosa."

Following "Millet, pearl—Pennisetum" delete "glaucum" and insert "americanum."

Following "Mustard, white" delete "Brassica hirta" and insert "Sinapsis alba."

Following "Redtop—Agrostis" delete "alba" and insert "gigantea."

Following "Rescuegrass—Bromus" delete "catharticus" and insert "unioloides."

Following "Sorghum: Grain and Sweet—Sorghum" delete "vulgare" and insert "bicolor."

Following "Sorghum-sudangrass" delete "hybrid, S. vulgare X. S. sudanense" and insert "S. bicolor X S. ..udanense."

Following "Velvetbean" delete "Stizolobium deeringianum" and insert "Mucuna deeringianum."

Following "Vetch, common—Vicia sativa" add "subsp. sativa."

Following "Vetch narrowleaf" delete "Vicia augustifolia" and insert "Vicia sativa subsp. nigra."

f. Under "Vegetable Seed" make the following changes in column 1:

Following "Asparagusbean—Vigna" delete "sesquipedalis" and insert "unguiculata subsp. sesquipedalis."

Following "Beans, lima—Phaseolus lunatus" delete "var. macrocarpus."

Following "Beet—Beta vulgaris" add "var. vulgaris."

Following "Citron—citrullus" delete "vulgaris" and insert "lanatus var. citroides."

Following "Cornsalad—Valerianella locusta" delete "var. olitoria."

Following "Cress, water" delete "Rorippa nasturtium-aquaticum" and insert "Nasturtium officinale."

Following "Eggplant—Solanum melongena" delete "var. esculentum."

Following "Leek—Allium" delete "porrum" and insert "ampeloprasum."

Following "Okra" delete "Hibiscus esculentus" and insert "Abelmoschus esculentus (Hibiscus esculentus)."

Following "Parsley—Petroselinum" delete "hortense (P. crispum)" and insert "crispum."

Following "Spinach, New Zealand—Tetragonia" delete "expansa" and insert "tetragonioides."

Following "Watermelon—Citrullus" delete "vulgaris" and insert "lanatus."

§ 201.76 [Amended]

10. Section 201.76, Table 5, is amended as follows:

a. Add in proper alphabetical order the following new standards:

TABLE 5

Crop kind	Foundation				Registered				Certified			
	Land	Isolation	Field	Seed	Land	Isolation	Field	Seed	Land	Isolation	Field	Seed
Alfalfa, hybrid	[14] [43,46]	1,320	[44] 1,000	0.1					[1,21]	[3,46,47] 165	[44,45] 100	1.0
Corn, backcross line	0	[40,41] 660	[42] 1,000	[15] 0.1								
Fava bean	[51]	[22] 0	2,000	0.05	[51]	[22] 0	1,000	0.10	[51]	[22] 0	500	0.20
Flat pea	[14]	[5,47] 600	1,000	0.1	[13]	[5,47] 300	400	0.25	[1,21]	[3,47] 165	100	1.0

b. Make the following changes in standards in the columns indicated:

In all three classes under isolation, delete superscript "4" and insert superscript "47" for alfalfa, birdsfoot trefoil, clover, crownvetch, sainfoin, and vetch.

For sunflower, under isolation, in all three classes, add superscript "42," and for hybrid sunflower, under isolation, in the Foundation and Certified classes, add superscript "42."

For field pea, delete "[7]1," "1000," "C.1"; "[7]1," "500," "0.2"; "[7]1," "200," and "0.5" from the three columns and insert "[5]1," "2000," "0.05"; "[5]-," "1000," "0.1"; "[5]1," "500," and "0.2," respectively.

c. Change footnotes at end of Table 5 to read as follows:

15. Refers to off-type ears. Ears with off-colored or different textured kernels are limited to 0.5 percent, or a total of 25 off-colored or different textured kernels per 1,000 ears.

28. Whiteheart fruits may not exceed 1 per 100, 40, and 20 for Foundation, Registered, and Certified classes, respectively. Citron or hard rind is not permitted in Foundation or Registered classes and may not exceed 1 per 1,000 fruits in the Certified class.

33. Unless the preceding crop was another kind or unless the preceding soybean crop was planted with a class of certified seed of the same variety, or unless the preceding soybean crop and the variety being planted are of contrasting pubescence or hilum color, in which case, no time need elapse.

d. Add the following footnotes at the end of Table 5 as follows:

42. Does not apply to Helianthus siniles, H. ludens, or H. agrestis.

44. The ratio of male sterile (A) strains and pollen (B or C) strains shall not exceed 2:1.

46. Parent lines (A and B) in a crossing block, or seed and pollen lines in a hybrid seed production field, shall be separated by at least 6 feet and shall be managed and harvested in a manner to prevent mixing.

47. Distance between fields of certified classes of the same variety may be reduced to 10 feet regardless of the class or size of the fields.

11. Section 201.78 would be amended by adding a new paragraph (e) as follows:

* * * * *

(e) Hybrid alfalfa. When at least 75 percent of the plants are in bloom and there is no more than 15 percent seed set, 200 plants shall be examined to determine the pollen production index (PPI). Each plant is rated as 1, 2, 3 or 4 with "1" representing no pollen, "2" representing a trace of pollen, "3" representing substantially less than normal pollen, and "4" representing normal pollen. The rating is weighted as 0, 0.1, 0.6 or 1.0, respectively. The total number of plants of each rating is multiplied by the weighted rating and the values are totaled. The total is divided by the number of plants rated and multiplied by 100 to determine the PPI. The maximum PPI allowed is 14 for the Foundation class, and 6 for 95 percent hybrid seed, and 42 for 75 percent hybrid seed of the Certified class.

Effective date. These amendments shall become effective July 1, 1976.

Dated: May 11, 1976.

IRVING W. THOMAS,
Acting Administrator.

[FR Doc.76-14204 Filed 5-14-76;8:45 am]

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

[Naval Orange Regulation 379, Amdt. 1]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

PREAMBLE

This regulation increases the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period May 7-13, 1976. The quantity that may be shipped is increased due to improved market conditions for Navel oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Navel Orange Regulation 379 (41 FR 18674). The marketing picture now indicates that there is a greater demand for Navel oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Navel oranges to fill the current market demand thereby making a greater quantity of Navel oranges available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

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

§ 907.679 [Amended]

* * * * *

(b) *Order, as amended.* The provisions in paragraph (b)(1) (i), and (ii) of § 907.679 (Navel Orange Regulation 379) (41 FR 18674) are hereby amended to read as follows:

"(i) District 1: 1,066,000 cartons;

"(ii) District 2: 234,000 cartons."

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

Dated: May 12, 1976.

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

[FR Doc.76-14258 Filed 5-14-76;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Extension of Effectiveness of Crude Oil Supplier/Purchaser Rule

On February 12, 1976, the FEA issued amendments to the crude oil supplier/

purchaser rule set forth in 10 CFR 211.63 (the "rule"). The rule was made effective for a period of ninety (90) days (through May 11, 1976) because the FEA recognized certain potential problem areas that might be created by the rule. During this period, FEA undertook to evaluate alternative procedures for allocating crude oil at the producer level and then to propose such further amendments as it deemed appropriate.

On April 6, 1976 the FEA issued a notice of proposed rulemaking and public hearing which included some possible amendment to the rule. A public hearing was held on May 6 and 7, 1976. After evaluating the comments submitted, FEA determined that additional time was required to evaluate the proposed amendments in light of the comments received thereon, since the issues presented are unusually complex.

Accordingly, FEA hereby extends the effectiveness of the crude oil supplier/purchaser rule set forth in section 211.63 of Part 211, Chapter II of Title 10, Code of Federal Regulations for a period of thirty (30) days from May 11, 1976 through June 10, 1976.

(Emergency Petroleum Allocation Act of 1973, as amended by Pub. L. 94-163; Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 FR 23185).

Issued in Washington, D.C., May 12, 1976.

MICHAEL F. BUTLER,
General Counsel.

[FR Doc.76-14238 Filed 5-12-76;10:41 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airworthiness Docket No. 76-SW-33, Amdt. 39-2610]

PART 39—AIRWORTHINESS DIRECTIVES

Bell Models 205A and 205A-1 Helicopters

There have been several cases of cracked tail boom to fuselage fittings occurring in the Bell Model 205A-1 helicopter tail booms. There has been one alleged separation of the tail boom from the fuselage as a result of possible fatigue failure of the tail boom attach fittings in a Bell Model 205A-1 helicopter. Loss of helicopter control will occur after loss of the tail boom.

Since this condition is likely to exist or develop in other helicopters of the same type design, an airworthiness directive is being issued to require repetitive inspections of the tail boom and fuselage fittings used to attach the tail boom to the fuselage on Bell Model 205A-1 helicopters.

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

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

BELL. Applies to Bell Models 205A and 205A-1 helicopters certificated in all categories. Compliance required as indicated.

To prevent possible loss of the tail boom as a result of possible fatigue cracks in the tail boom and fuselage attach fittings in the tail boom and fuselage, accomplish the following.

(a) For helicopters with less than 500 hours' total time in service after the effective date of this AD, conduct the visual inspections of this AD prior to attaining 550 hours' total time in service and thereafter at intervals not to exceed 50 hours' time in service from the last inspection.

(b) For helicopters with 500 or more hours' total time in service on the effective date of this AD, conduct the visual inspections of this AD within the next 50 hours' time in service and thereafter at intervals not to exceed 50 hours' time in service from the last inspection.

(c) Inspect the upper tail boom attach fittings for cracks, using a light and mirror, by removing the forward dome light of the baggage compartment. Inspect the fittings in the area of the most forward rivets. Special attention must be given to inspecting the upper left-hand fitting.

(d) Inspect the lower tail boom attach fittings for cracks, using a light and mirror, by removing the forward access door on the tail boom.

(e) Inspect the four tail boom attach fittings on the fuselage bulkhead, using a light and mirror, for cracks around the tail boom attach bolt and most aft fasteners. Special attention must be given to inspecting the lower left-hand fitting.

(f) Inspect, visually, the four tail boom barrel nut bores for cracks, after removing the plug buttons. Determine that not less than one thread or more than two threads of the tail boom attachment bolts protrude through each barrel nut.

(g) If cracks are found, replace the affected fitting prior to further flight in accordance with an FAA approved procedure.

(h) Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, Flight Standards Division, FAA Southwest Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

(Bell Helicopter message dated April 29, 1976, to all 205A/205A-1 operators pertains to this subject.)

This amendment becomes effective May 18, 1976.

(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)).)

Issued in Fort Worth, Texas, on May 7, 1976.

HENRY R. NEWMAN,
Director, Southwest Region.

[FR Doc.76-14092 Filed 5-14-76;8:45 am]

PART 39—AIRWORTHINESS DIRECTIVES

Cessna 300 and 400 Series Airplanes

Amendment 39-2582, AD 76-08-02, published in the FEDERAL REGISTER on April 19, 1976 (41 FR 16451, 16452), is an Airworthiness Directive (AD) applicable to Cessna 300 and 400 series airplanes equipped with wing tip fuel tank nose cap mounted strobe lights. AD 76-08-02, which superseded Amendment 39-2103 (AD 75-05-08), requires that strobe light systems having strobe lights which are not explosion proof be deactivated until either the lights are modified by adding an explosion proof feature or replaced with explosion proof strobe lights.

Subsequent to the issuance of AD 76-08-02 the Grimes Manufacturing Company advised that two strobe lights it manufactures which are explosion proof are not presently excepted from the applicability statement of the AD and should be. Reports received from the field and verified both by the airplane manufacturer (Cessna) and the strobe light manufacturer (Grimes) show that some Grimes P/N 31-1723-5 cover plates referred to in Paragraphs A and C of the AD are identified as Grimes P/N 30-1171-1 cover plates. Accordingly, it is necessary to amend AD 76-08-02 to reflect these changes.

Since this amendment is in part relieving in nature, provides clarification and will impose no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment shall become effective in less than thirty (30) days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator 14 CFR 11.89 (31 FR 13697), § 39.13 of Part 39, Amendment 39-2582, AD 76-08-02, is revised in the following respects:

1. Change the first paragraph of the applicability statement so that it now reads as follows:

"CESSNA. Applies to the following models of airplanes if equipped with strobe lights installed in the wing tip fuel tank nose cap, except those airplanes having Symbolic Displays P/Ns 30-0005, 30-0199-3 and 701133-1, Whelan Engineering Company, Inc. P/N A430, and Grimes Manufacturing Company (Grimes) P/Ns 30-0515-5, 30-1172-1, 30-0531-1 and 30-0467-5, strobe lights:"

2. In Paragraph A change the second sentence so that it now reads as follows:

"On those airplanes where Grimes P/N 30-0515-1 strobe lights are installed, determine if the strobe lights have been modified by installing Grimes P/Ns 31-1723-5 or 30-1171-1 cover plates."

3. Paragraph C is changed so that it now reads as follows:

"C) Systems having unmodified Grimes P/N 30-0515-1 strobe lights may be reactivated upon the installation of Grimes P/Ns 31-1723-5 or 30-1171-1 cover plates in accordance with Cessna Service Letter ME75-16, dated July 11, 1975, or later approved revisions."

This amendment becomes effective May 20, 1976.

(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)).)

Issued in Kansas City, Missouri, on May 6, 1976.

C. R. MELUGIN, Jr.,
Director, Central Region.

[FR Doc.76-14091 Filed 5-14-76;8:45 am]

[Docket No. 15709; Amdt. 39-2614]

PART 39—AIRWORTHINESS DIRECTIVES

Hawker Siddeley Aviation Limited Model DH-104 Airplanes

There have been reports of corrosion occurring in the drag brace fittings at the center section spar cap on Hawker Siddeley Aviation Ltd. Model DH-104 airplanes that could result in catastrophic structural failure of the wing. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require repetitive inspections of these fittings and their replacement, as necessary, on Model DH-104 airplanes.

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

This amendment is made 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 and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

HAWKER SIDDELEY AVIATION LIMITED. Applies to Model DH-104 airplanes, certificated in all categories not altered in accordance with Hawker Siddeley Aviation Ltd. Modification 1067.

Compliance is required as indicated, unless already accomplished.

To detect corrosion and cracking of the drag brace fittings at the center section spar lower cap, and prevent possible structural failure of the wing, accomplish the following:

(a) Within the next 50 hours time in service after the effective date of this AD, inspect the drag brace fittings, P/N 4FS.1797(L.H.) and 4FS.1798(R.H.) for corrosion and cracks in accordance with paragraph No. 4, entitled "Inspection of Fittings," of Hawker Siddeley Aviation Ltd. Technical News Sheet, Series CT104, No. 230, dated April 9, 1973, or in FAA-approved equivalent.

(b) If a crack or evidence of severe corrosion is found in either drag brace fitting during an inspection specified in paragraph (a) of this AD, before further flight, replace the drag brace fitting with an improved fitting, P/N 14FS.6069-70, in accordance with the instructions set forth in paragraph 5.2 of Hawker Siddeley Aviation Ltd. Technical News Sheet, Series CT104, No. 230, dated April 9, 1973, or an FAA-approved equivalent.

(c) "Severe corrosion" as used in this AD is internal corrosion that has progressed to a point where there is evidence of corrosion breaking through the exterior surface of the fitting. "Surface corrosion" as used in this AD means corrosion limited to surface pitting.

NOTE.—The Hawker Siddeley Aviation Ltd. Model DH-104 Maintenance and Repair Manual further defines the terms "severe corrosion" and "surface corrosion."

(d) If, during an inspection specified in paragraph (a) of this AD, no crack is found and evidence of corrosion is found but it is limited to surface corrosion and does not constitute the severe corrosion specified in paragraph (b) of this AD, remove the corrosion, protect the surface from further corrosion in accordance with FAR 43.55, and reinspect the drag brace fittings in accordance with the inspection requirements of paragraph (a) of this AD, at intervals not to exceed 100 hours time in service from the last inspection.

NOTE.—Advisory Circular AC 43.13-1A "Acceptable Methods, Techniques and Practices-Aircraft Inspection and Repair" contains information relating to corrosion protection and removal.

(e) If, during an inspection specified in paragraph (a) of this AD, no crack is found in the fittings, and the fittings are free of evidence of any corrosion, re-inspect the fittings in accordance with the inspection requirements of paragraph (a) of this AD at intervals not to exceed 100 hours time in service from the last inspection.

(f) The repetitive inspections required by paragraphs (d) and (e) of this AD may be terminated upon the installation of the improved fitting P/N 14FS. 6069-70, in accordance with the instructions set forth in paragraph 5.2 of Hawker Siddeley Aviation Ltd. Technical News Sheet, Series CT104, No. 230, dated April 9, 1973, or an FAA-approved equivalent.

This amendment becomes effective June 1, 1976.

Issued in Washington, D.C. on May 10, 1976.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.76-14093 Filed 5-14-76;8:45 am]

[Airspace Docket No. 76-EA-21]

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

Alteration of Control Zone

On page 12903 of the FEDERAL REGISTER for March 29, 1976, the Federal Aviation Administration published a proposed rule which would alter the Reading, Pa., Control Zone (41 F.R. 420).

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

In view of the foregoing, the proposed regulation is hereby adopted, effective 0901 G.m.t. July 15, 1976.

Section 307(a) of the Federal Aviation Act of 1958 [72 Stat. 749; 49 U.S.C. 1348], and section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].

Issued in Jamaica, N.Y., on April 30, 1976.

L. J. CARDINALI,
Acting Director,
Eastern Region.

§ 71.171 [Amended]

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations by adding the following to the description of the Reading, Pa. control zone: "; within 2.5 miles each side of a 301° bearing from a point of 40°23'00" N., 75°58'42" W., extending from said point to 5 miles northwest of said point; within 2 miles each side of a 352° bearing from a point 40°23'06" N., 75°57'48" W., extending from said point to 4.5 miles north of said point."

[FR Doc.76-14090 Filed 5-14-76;8:45 am]

[Airspace Docket No. 76-SW-13]

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

Alteration of Transition Area

● The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Del Rio, Tex., transition area. ●

On March 29, 1976, a notice of proposed rule making was published in the FEDERAL REGISTER (41 F.R. 12901) stating the Federal Aviation Administration proposed to alter the Del Rio, Tex., transition area.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations, is amended, effective 0901 G.m.t., July 15, 1976, as hereinafter set forth.

In § 71.181 (41 FR 440), the Del Rio, Tex., transition area is amended as follows:

DEL RIO, TEX.

That airspace extending upward from 700 feet above the surface within a 12-mile radius of latitude 29°23'00" N., longitude 100°-50'15" W., and within 4.5 miles west and 9.5 miles east of the Laughlin VORTAC 148° radial extending from the 12-mile-radius area to 22 miles southeast of the VORTAC and within 8.5 miles west and 6.5 miles east of the Laughlin VORTAC 315° radial extending from the 12-mile-radius area to 18 miles northwest of the VORTAC, excluding the portion outside of the United States.

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

Issued in Fort Worth, Tex., on May 6, 1976.

ALBERT H. THURBURN,
Acting Director,
Southwest Region.

[FR Doc.76-14094 Filed 5-14-76;8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER D—SPECIAL REGULATIONS

[Regulation SPR-103, Amdt. 14]

PART 378—INCLUSIVE TOUR CHARTERS

Interpretative Amendment

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., May 11, 1976.

For the reasons set forth in SPR-102, published contemporaneously herewith, the Board has decided to amend Part 378 by adding a definition of the term "itinerary" to § 378.2.

Inasmuch as this amendment is an interpretative rule, the Board finds that notice and public procedure hereon are not required, and that it may become effective immediately.

Accordingly, the Board hereby amends Part 378 of its Special Regulations (14 CFR Part 378), effective May 11, 1976, as follows:

Section 378.2, *Definitions*, is amended by adding, at the end thereof, the term "itinerary," which is defined as follows:

§ 378.2 Definitions.

* * * * *

(i) "Itinerary" means all the components of a tour package, as described in the tour prospectus, including not only the points named therein but also all hotels, and other ground accommodations and services described therein.

(Secs. 204(a) and 1002 of the Federal Aviation Act, as amended, 72 Stat. 743, 788 (as amended), 49 U.S.C. 1324, 1482.)

By the Civil Aeronautics Board:

Effective: May 11, 1976.

Adopted: May 11, 1976.

[SEAL] PHYLLIS T. KAYLOR, *Acting Secretary.*

[FR Doc.76-14305 Filed 5-14-76;8:45 am]

[Regulation SPR-102, Amdt. 5]

PART 378a—ONE-STOP-INCLUSIVE TOUR CHARTERS

Interpretative Amendment

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., May 11, 1976.

Section 378a.28(d) of the Board's Special Regulations which authorize One-stop-inclusive Tour Charters (OTC's) requires that an OTC prospectus must contain the "tour itinerary, including hotels . . . and other ground accommodations and services." The word "itinerary" is also used elsewhere in Part 378a (*e.g.*, § 378a.30(e)) but without the modifying phrase "including hotels and other ground accommodations and services," although, in its context, the term is clearly intended to include the various components of the tour package. Since the unmodified use of the term has generated some uncertainty as to whether its use in our regulations includes hotels and other ground accommodations, we are amending the OTC rule so as to make it explicit that, unless the context otherwise requires, the term "itinerary" includes hotels and other ground accommodations and services which comprise the tour package.

Inasmuch as this amendment is an interpretative rule, the Board finds that notice and public procedure hereon are not required and that it may become effective immediately.

Accordingly, in consideration of the foregoing, the Board hereby amends Part 378a of its Special Regulations (14 CFR Part 378a), effective May 11, 1976, as follows:

Section 378a.2, *Definitions*, is amended by inserting, in proper alphabetical sequence, the term "itinerary," which is defined as follows:

§ 378a.2 Definitions.

* * * * *

"Itinerary" means all the components of a tour package, as described in the tour prospectus, including not only the points named therein but also all hotels, and other ground accommodations and services described therein.

(Secs. 204(a) and 1002 of the Federal Aviation Act, as amended, 72 Stat. 743, 788 (as amended), 49 U.S.C. 1324, 1482.)

By the Civil Aeronautics Board:

Effective: May 11, 1976.

Adopted: May 11, 1976.

[SEAL] PHYLLIS T. KAYLOR, *Acting Secretary.*

[FR Doc.76-14304 Filed 5-14-76;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket 8949-o]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Rubbermaid Inc.

Subpart—Combining or conspiring: § 13.388 To control allocations and solicitation of customers; § 13.395 To control marketing practices and conditions; § 13.425 To enforce or bring about resale price maintenance; § 13.430 To enhance, maintain or unify prices; § 13.470 To restrain or monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Controlling, unfairly, seller-suppliers: § 13.530 Controlling, unfairly, seller-suppliers. Subpart—Corrective actions and/or requirements: § 13.533 Corrective actions and/or requirements: 13.533–20 Disclosures; 13.533–45 Maintain records; 13.533–45 (c) Complaints. Subpart—Cutting off access to customers or market: § 13.560 Interfering with distributive outlets; § 13.580 Organizing and controlling seller-suppliers. Subpart—Cutting off supplies or service: § 13.610 Cutting off supplies or service. Subpart—Maintaining resale prices: § 13.1130 Contracts and agreements; § 13.1140 Cutting off supplies; § 13.1145 Discrimination; 13.1145–5 Against price cutters; 13.1145–20 Distributive channels and outlets generally; 13.1145–45 In favor of price maintainers.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

In the Matter of Rubbermaid, Incorporated, a corporation.

Consent order requiring a Wooster, Ohio, manufacturer, seller and distributor of rubber, plastic and rubber coated wire household products, under the brand name "Rubbermaid," among other things to cease maintaining contracts with wholesalers or retailers containing provisions which restrict trade and prices of respondent's commodities; refusing to deal with customers without such agreements; and discriminating against any reseller because of his failure to adhere to set resale prices or conditions. Further, respondent is required to make written offers of reinstatement to wholesalers terminated by respondent since January 1, 1966, for failure to comply with refusal to deal provisions of their contracts.

The final order, including further order requiring report of compliance therewith, is as follows: [1]

FINAL ORDER

This matter having been heard by the Commission upon the appeal of respondent Rubbermaid from the initial decision, and upon briefs and oral argument in support thereof and in opposition thereto, and the Commission having determined that the respondent Rubbermaid, Incorporated is in violation of Section 5 of the Federal Trade Commission Act:

It is ordered, That the findings of fact contained in the initial decision of the administrative law judge are adopted, with the conclusions of law expressed in this opinion, as the basis for the Commission's decision in this matter.

It is further ordered, That respondent's motion for dismissal as moot upon repeal of the McGuire Act be, and it hereby is, denied.

Accordingly, the following cease-and-desist order is hereby entered:

ORDER

I

It is ordered, That Respondent, Rubbermaid Incorporated, a corporation, directly or indirectly, through its officers, agents, representatives, employees, subsidiaries, successors, licensees, or assigns, or through any reseller or any other corporate or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of any commodity, shall forthwith cease and desist from:

1. Maintaining or enforcing any existing understanding, contract, or agreement, or entering into, maintaining, or enforcing any future understanding, contract, or agreement, with any wholesaler or any retailer, which contains any provision which restricts, is intended to restrict, or may be construed by the wholesale or retail reseller (hereinafter, "reseller") to restrict the reseller's right to deal with any customer, whether for subsequent resale or otherwise; or which otherwise imposes, is intended to impose, or may be construed by the seller to impose any qualification, precondition, or other limitation on said right; or which contains any circumstances or conditions under which such provisions shall become applicable to any resale.

2. Maintaining or enforcing any existing understanding, contract, or agreement, or entering into, maintaining, or enforcing any future understanding, contract, or agreement, with any wholesaler or any retailer, which requires, is

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

intended to require, or may be construed by the reseller to require, as a precondition to any resale or as a qualification or other limitation on the right to resell, that said reseller:

(a) Obtain from any customer or potential customer any understanding, contract, or agreement by which said customer or potential customer agrees to maintain the price of the commodity to be resold; or

(b) Refuse to deal with any customer or potential customer unless such customer or potential customer has agreed to maintain the price of the commodity to be resold.

II

It is further ordered, That Respondent, directly or indirectly, through its officers, agents, representatives, employees, subsidiaries, successors, licensees, or assigns, or through any reseller or any other corporate or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of any commodity, shall forthwith cease and desist from entering into, maintaining, or enforcing any contract, combination, or conspiracy which imposes, and from imposing by refusal to deal, by termination, or by any other unilateral action, any limitation, qualification, or precondition on any reseller's right or ability to purchase or sell any commodity:

1. Where the purpose or effect thereof is, or is likely to be, adherence to resale prices or to any course of conduct established, required, or suggested by Respondent by any reseller whose resale prices or conduct are not or cannot lawfully be controlled by Respondent; or

2. Where the purpose or effect thereof is, or is likely to be, the unavailability through normal channels of distribution of Respondent's commodities to, or any discrimination with respect thereto against, any such reseller because of his failure or unwillingness to adhere to said resale prices or course of conduct.

III

It is further ordered, That Respondent shall:

1. Within sixty (60) days from the date upon which this Order becomes final, mail, deliver, or cause to be delivered, and request signed receipts for, copies of this Order to the following resellers:

(a) Every current reseller; and

(b) Every reseller on or after January 1, 1966 whose contract for or whose supply of Rubbermaid products has been terminated by, at the request of, or with the participation of Respondent, and every other reseller as to whose termination of the supply of Rubbermaid products Respondent has actual knowledge.

2. Within sixty (60) days from the date upon which this Order becomes final, mail, deliver, or cause to be delivered, and request signed receipts for, notices, in forms submitted to and approved by the Commission prior to mailing or delivery, which clearly inform all resellers specified in subparagraphs 1 (a) and (b) of this Paragraph III:

(a) That said resellers may and are encouraged to sell Respondent's goods to any customer at such price as may be individually determined by each such reseller;

(b) That said resellers may and are encouraged to sell Respondent's goods to any customer, whether for subsequent resale or otherwise, without restriction or precondition;

(c) That no resellers are required to refuse to deal with any other reseller due to the other reseller's failure or unwillingness to sign any contract requiring the maintenance of resale prices;

(d) That any reseller in any state who places an order for Respondent's goods with any reseller which is not filled due to its having advertised, offered for sale, or sold such goods at less than Respondent's suggested resale price or any former stipulated or minimum price should immediately notify Respondent in writing of the name and address of the reseller so refusing to deal;

(e) That the exercise by said resellers of any of their rights previously subject to the fair trade provisions of Respondent's fair trade contracts shall in no way prejudice said resellers' ability to obtain or to continue to obtain Respondent's merchandise;

(f) That any reseller who believes that Respondent is violating any provision of this Order, either directly or indirectly (through its wholesalers or otherwise) should set forth the facts and circumstances believed relevant and submit them to:

Assistant Director, Division of Compliance, Bureau of Competition, Federal Trade Commission, Washington, D.C. 20580.

The first notice required to be mailed or delivered to retailers by this subparagraph 2 shall be accompanied by a list of the names and addresses (arranged by state) of all wholesalers or Respondent's goods. Said list shall contain a clear and conspicuous statement that all wholesalers listed therein are free to sell at prices of their own choosing to any retailer in any state without qualification, limitation, or precondition.

3. Within sixty (60) days from the date upon which this order becomes final, mail or deliver, and obtain a signed receipt for, a written offer of reinstatement to any wholesaler who has been terminated by Respondent since January 1, 1966 for failure to comply with any refusal-to-deal provision of his wholesaler contract, and reinstate forthwith any such wholesalers who within thirty (30) days thereafter request reinstatement. Said offer of reinstatement shall be accompanied by a copy of this Order and the notice required by subparagraph 2 of this Paragraph III.

4. Immediately upon receipt, take such action as is necessary to ensure correction of all complaints received pursuant to any provision of this Paragraph III, and retain such complaints and records of all corrective action taken thereon for a period of five (5) years from the date on which each complaint is received. Reports of said complaints and of corrective action taken shall be included in reports to the Commission required by Paragraph V 1. of this Order.

IV

It is further ordered, That Respondent shall:

1. Fully acquaint all appropriate present and future personnel with the provisions and requirements of this Order.

2. For a period of five (5) years from the date of this Order, mail or deliver, and obtain a signed receipt for, a copy of this Order and the Federal Trade Commission press release concerning this decision and order to all new resellers to whom Respondent directly sells.

V

It is further ordered, That Respondent shall:

1. Within sixty (60) days from the date on which this Order becomes final, and annually for a period of five (5) years thereafter, submit to the Commission a written report setting forth in full detail the manner in which Respondent is complying with each requirement of this Order, accompanied by such documents, forms, contracts, receipts, or other material as is necessary to constitute proof that Respondent is in full and faithful compliance herewith.

2. Notify the Commission at least thirty (30) days prior to any proposed change in the corporation 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 this Order.

3. Retain all receipts required to be obtained by this Order for a period of five (5) years from the date of each said receipt.

Opinion of the Commission by Commissioner Nye.

Not having participated in the oral argument in this matter, Chairman Collier did not participate in the resolution of it.

The Final Order was issued by the Commission April 13, 1976.

CHARLES A. TOBIN,
Secretary.

[FR Doc.76-14248 Filed 5-14-76;8:45 am]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-680]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Final Flood Elevation Determinations for the Town of Falmouth, Massachusetts

On August 28, 1975, at 40 FR 39499, the Federal Insurance Administrator published a notification of modification of the base (100-year) flood elevations in the Town of Falmouth. Since that date, ninety days have elapsed; and the Federal Insurance Administrator has evaluated requests for changes in the base flood elevations, and after consul-

tation with the Chief Executive Officer of the community, has determined no changes are necessary. Therefore, the modified flood elevations are effective as of August 8, 1975 and amend the Flood Insurance Rate Map which was in effect prior to that date.

The modifications are pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448) 42 U.S.C. 4001-4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 255211A and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the final flood elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The numerous changes made in the base flood elevations on the Falmouth Flood Insurance Rate Map make it administratively infeasible to publish in this notice all of the base flood elevation changes contained on the Falmouth map.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: May 7, 1976.

H. B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-14318 Filed 5-14-76;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 650-76]

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Subpart B—Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities

DELEGATION OF AUTHORITY TO ADMINISTRATOR, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, TO APPROVE PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

This order amends the Department's regulations concerning the production of material or disclosure of information of the Department of Justice by employees or former employees of the Department in response to a demand of a court or other authority by adding the Administrator of the Law Enforcement Assistance Administration as an official authorized to approve production or disclosure.

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, § 16.23 of Subpart B of Part 16 of Title 28, Code of Federal Regulations, is amended by deleting the word "and" immediately after paragraph (b)(2)(ii), by adding the word "and" at the end of paragraph (b)(2)(iii), and by adding the following new paragraph (b)(2)(iv):

§ 16.23 Procedure in the event of a demand for production or disclosure.

* * * * *

(b) * * *

(2) * * *

(iv) The Administrator of the Law Enforcement Assistance Administration, if the demand is one made on an employee or former employee of the Administration for information or if the demand calls for the production of material from the files of the Administration.

* * * * *

Dated: May 10, 1976.

EDWARD H. LEVI,
Attorney General.

[FR Doc.76-14252 Filed 5-14-76;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 203—EMERGENCY EMPLOYMENT OF ARMY AND OTHER RESOURCES, NATURAL DISASTER PROCEDURES

On 29 August 1975, a notice was given in the FEDERAL REGISTER (40 FR 39978) that the Secretary of the Army, acting through the Chief of Engineers, was publishing a regulation, effective 1 September 1975, prescribing policies and agency procedures implementing Pub. L. 84-99, Flood Emergency Preparation (33 U.S.C. 701n). The regulation concerns Corps of Engineers actions in response to flood emergency preparation, flood fighting, and rehabilitation of flood control and coastal storm protection structures, and response to other emergency and disaster declarations issued by the President pursuant to Pub. L. 93-288 (42 U.S.C. 5121 et seq.). Subsequent to final publication of the regulation, administrative revisions and revised wording to improve the clarity of the instructions was recommended by the Corps of Engineers field operating agencies, and the Federal Disaster Assistance Administration. The amendments are improved wording and rearrangement of some material. Since they do not alter published policy and agency procedures, notice and public procedure thereon are not deemed required.

1. The table of contents for Subpart 6, Pub. L. 93-288 Operations, is amended by revising the section numbers as follows:

Sec.
203.6100 General.
203.6200 Administrative Support to FDAA.
203.6300 FDAA directives to other Federal Agencies.
203.6400 Response by COE.
203.6500 Procedures for handling direct requests.
203.6600 Scope of Pub. L. 93-288 assistance.
203.6700 Joint participation and responsibilities.

2. Section 203.2150 is revised to read as follows:

§ 203.2150 Environmental impact statements.

ER 1105-2-507 prescribes the responsibilities for preparing Environmental Statements. Specifically excluded from the required preparation of statements are the emergency flood control, shore protection, and disaster recovery actions performed by the Corps under Pub. L. 84-99. Pub. L. 93-288, and Section 14 of the 1946 Flood Control Act. No action performed pursuant to these authorities that has the effect of restoring the facilities substantially as they existed prior to the disaster shall be deemed a major Federal action affecting the quality of the human environment. The influence of major rehabilitation projects (Code 300) upon the environment, however, must be considered. An environmental assessment (Code 300) will be performed and retained in the project files. The total number of major rehabilitation projects determined during the quarter to have no significant impact on the environment will be noted on the quarterly submission of the Environmental Impact Statement Schedule.

3. Section 203.2245 is revised by changing the word arranged to warranted and reads as follows:

§ 203.2245 Coordination.

Emergency rehabilitation of local interest levees will be coordinated with representatives of the Department of Agriculture in case there is an alternative emergency conservation assistance they provide to farmers. If the President has determined that disaster assistance is also warranted under Pub. L. 93-288, coordination through the division office will be accomplished with the concerned FDAA Regional Director.

4. Section 203.2321 is completely changed to conform with definitions used in 42 USC 5122 to read as follows:

§ 203.2321 Disaster Relief Act of 1974 (Pub. L. 93-288) (42 U.S.C. 5121 et seq.) (88 Stat. 143).

Section 101 of the law authorizes Federal assistance to states and local governments in a major disaster or emergency. The authority conferred by Pub. L. 93-288, and any funds provided thereunder, are supplementary to and not limiting upon or in substitution for any other authority conferred or funds provided under any law such as Pub. L. 84-99.

(a) "Emergency" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal waves, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety

or to avert or lessen the threat of a disaster.

(b) "Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Act, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

5. Section 203.23212 is revised by adding a clarifying phrase to read:

§ 203.23212 Authority of FDAA Administrator.

The Secretary, Department of Housing and Urban Development (D/HUD) has been designated by the President in Executive Order 11795 to administer the Federal Disaster Relief Act of 1974, and supplemental legislation, and to prescribe rules and regulations for carrying out provisions thereof. The President reserved the authority to declare major disasters or emergencies. All other authorities pertaining to natural disaster functions pursuant to previous Executive Orders that were transferred by E.O. 11795 to the Secretary, D/HUD, have been further delegated, with certain exceptions, to the Federal Disaster Assistance Administration, D/HUD. FDAA Administrator has been given certain authorities and functions under Pub. L. 93–288, including:

(a) The authority to direct Federal agencies to provide assistance in "major disasters or emergencies" with or without reimbursement.

(b) The authority to coordinate the activities of Federal agencies in providing disaster relief.

(c) The authority to appoint a Federal Coordinating Officer.

6. Section 203.23213 is revised with an added sentence to read:

§ 203.23213 Authority of FDAA Regional Directors.

The FDAA Administrator has redelegated certain authorities and functions to the FDAA Regional Directors within their respective areas including: The authority to direct and coordinate the activities of the Federal agencies in providing disaster assistance and to direct any Federal agency to utilize its available personnel, equipment, supplies, facilities and other resources. This authority to issue mission assignments and approve project application may not be redelegated below the Regional Director.

7. Section 203.23214 is revised by and added phrase to read:

§ 203.23214 FDAA Federal Coordinating Officer (FCO).

The FCO as the representative of the FDAA Regional Office will perform the following functions, but he may not issue mission assignments or approve project applications.

(a) Make an initial appraisal of the types of relief most urgently needed.

(b) Coordinate the administration of voluntary relief organizations.

(c) Take such other action consistent with the provisions of Pub. L. 93–288 and authority delegated to him by the FDAA Regional Director.

8. Section 203.23215 has been replaced to read as follows:

§ 203.23215 Emergency assistance.

In an emergency, the President is authorized under section 305, Pub. L. 93–288, to provide assistance to save lives and protect property and public health and safety. He may direct Federal agencies to provide technical assistance and advisory personnel to assist the affected State and local governments. Division Engineers will comply with those requests.

9. The section number following § 203.-23215 is changed to read:

§ 203.23216 Coordinating assistance under statutory authority.

10. Section 203.2342 is revised by deleting reference to departmental regulations to read:

§ 203.2342 Disaster assistance under Pub. L. 93–288.

Disaster missions assigned by the FDAA and Army Commanders under FDAA direction will be executed by the Corps under authority of Pub. L. 93–288 as a civil function. Division Engineers will be responsible for the validity of any request for disaster assistance, requiring that such request be made in writing by the FDAA Regional Director (or oral requests promptly confirmed) as provided by Federal Reimbursement Regulations. Work for the FDAA will be accomplished expeditiously and effectively in accordance with the Federal Disaster Assistance Regulations (24 CFR 2205). These cover Pub. L. 93–288 eligibility conditions, categories, and criteria, and such other guidance as prescribed by the FDAA.

11. Section 203.3341 is revised for clarity to read:

§ 203.3341 Coordination at national level.

The Administrator, FDAA, is charged with responsibility for coordination of Federal agency disaster assistance programs and efforts. Within OCE, DAEN–CWO–E is the coordination element with the FDAA national office on natural disaster matters involving only the Civil Works programs and activities, such as emergency protective activities under Pub. L. 84–99.

12. Section 203.4420 is revised by a change departmental form number to read:

§ 203.4420 Damage survey teams.

Particular attention to training designated members of Corps damage survey teams in preparing FDAA Damage Survey Reports (HUD Form 484, available from Regional FDAA offices) is required. Repeat assignment of trained and experienced Corps personnel to these communications to the Office, Chief of Engineers will be simulated, not executed.

13. Section 203.4510 is revised by an added sentence to read:

§ 203.4510 Design and construction contractors.

To assist in the post disaster selection of contractors, giving preference to those who reside or do business primarily in the disaster area to the extent feasible and practicable (Sec. 310, Pub. L. 93–288), district resources should include a list of prequalified contractors. The requirement to give preference to local contractors is discussed more thoroughly in Subpart 5. Obtaining a list of contractors, and keeping it current, can be accomplished by inviting contractor registration for emergency work referral. Contract work by anyone on the HUD consolidated list of Debarred, Suspended, and Ineligible Contractors, however, may not be reimbursed by FDAA under Pub. L. 93–288. The Associated General Contractors of America, Inc. (AGC), has maintained a list of member and other contractors available for emergency work under its Plan Bulldozer. Prior to each flood season, districts should update their list of contractors by appropriate liaison with local AGC chapters and organizations to determine contractor capability at that time for emergency work in the area.

14. The section number following § 203.4510 is changed to read:

§ 203.4520 Supplies and equipment.

15. Section 203.5220 is revised by deleting the last sentence to read:

§ 203.5220 Limitation on extent of emergency operations.

Following determination that a specific emergency program is to be undertaken by the Corps of Engineers, emergency measures will be of temporary nature designed to meet the imminent threat and to preserve existing protective work. Pub. L. 84–99 authority does not extend to the removal of temporary protective work. They will not include work of a permanent nature except as the work under either heading, temporary or permanent, is identical.

16. Sections 203.5250 through 203.5290 are replaced by the following sections:

§ 203.5250 Ice jam removal.

The Corps policy is that ice jam removal is a local responsibility. Corps technical advice and assistance under the standing $10,000 authority, however, can be provided. When the ice jam poses an immediate flood threat to improved property, Corps efforts to supplement State, county, and local efforts is authorized under code 200 activities. The assistance must be limited to flood fighting and terminate as the flood flows recede. Actual ice jam removal should be a last resort action by the Corps. Blasting of ice jams should be limited to exceptional cases as the accompanying effects often outweigh the benefits. Complete coordination with local authorities is required. Releases from liability for property damage and personal injury are necessary.

§ 203.5260 Advance measures.

Advance emergency work may be conducted prior to an actual flood fight when approved within OCE. To justify this work, conditions must exist which pose an appreciable flood threat to life or improved property. Advance operations must be geared to complement maximum local efforts and capabilities, and be justified in the engineering and economic standpoint. The work should be of a temporary nature adequate for the current emergency or specific threat, and able to be finished in time to prevent damage. Letter or TWX reports on the request must reflect the extent of field investigations and items considered for applicability of Pub. L. 84–99, and include any needed plans and sketches. Plans and sketches for TWX reports should be telecopied to DAEN–CWO–E (202–693–0288).

§ 203.5261 Flood threat from possible dam breachings.

If a dam is likely to be breached unless immediate action is taken, and a flood hazard to life and improved property would occur. Corps assistance may be considered even if the dam is not a flood control structure. The Corps activities should not include preservative work after the immediate threat passes. Work extends to drawdown of the pool if required. Close coordination with State and local authorities is required to assure adequate community sanitary, health, and fire protection services that may depend upon the impoundment. Permanent repair, including investigations and design, is a local responsibility.

§ 203.5262 Abnormal snowpack.

When recorded snowpack depths are abnormally high, posing an appreciable threat of flooding due to snowmelt, advance measures may be considered. The request for approval of such measures must include the prediction of unusual flooding by the National Weather Service. These measures shall be geared to develop local effort toward their own flood protection plan. Corps actions may include loan of supplies and equipment, temporary protective work, and direction of emeregncy work. The assurances of local cooperation and participation discussed in § 53.20 will be obtained. The provision to maintain the temporary works may be revised to establish that the local interests must remove them if they desire.

§ 203.5263 Threat of future disaster.

Preservative work which is a local responsibility on privately and Federally built flood protective projects, may be accomplished in extreme situations under Pub. L. 84–99 when there is a clear need for expedited emergency action beyond the local and State capability. Necessary steps to remedy any adverse conditions threatening the integrity of protective works, before actual damage occurs, require OCE approval. Measures which local interest are responsible to perform include restoring normal levee or dune height after subsistence, replacement of deteriorated components such as outlet structure and pipes, removal of debris and other obstructions in adjacent channels, and new construction such as bank protection against erosion. If local best efforts have been unsuccessful, Corps assistance in an emergency may be considered. Examine the following factors.

(a) How is the integrity threatened?

(b) Has the condition been a long, continuing problem?

(c) Have local preservative measures been implemented, and to what extent?

(d) What State assistance, including financial aid, is available?

(e) Does time permit local accomplishment?

(f) If Federal assistance is warranted, what local participation is appropriate, considering their operation and maintenance responsibility? Are local interests willing to participate on a cost sharing basis?

17. Section 203.52100 is renumbered to read:

§ 203.5270 Snagging and clearing.

18. Section 203.5320 revised by word changes to read:

§ 203.5320 Requirements for local cooperation and participation.

Though not compelled by the provisions of Pub. L. 84–99, it is the policy that authorization of a rehabilitation project will, insofar as feasible, be on the basis that local interests are required to furnish assurances of local cooperation similar to those set forth for project construction in Section 3 of the 1936 Flood Control Act. As modified therefrom, the requirements are that local interests (a) provide without cost to the United States all lands, easements, and rights-of-way necessary for the authorized work; (b) hold and save the United States free from damages due to the authorized work, exclusive of damage due to the fault or negligence of the United States or its contractor; (c) maintain and operate, in a manner satisfactory to the Chief of Engineers, all the rehabilitation work after completion. The assurance should also cover portions of the structure where previous agreements do not exist. Rehabilitation projects may be sponsored by individual as well as organized property owners. Wherever practicable, in the interest of adequacy of maintenance assurance, the assurance furnished by each property owner should be sponsored collectively by a public entity or other permanently responsible organization. This organization in turn is to furnish its own overall assurances for acceptance by the District Engineer. Additional features of local participation, including financial contribution, will be required with respect to any necessary major improvements undertaken in connection with the work, and for maintenance or other items considered the responsibility of local interests (See App. E).

19. Section 203.5360 is revised by a word change to read:

§ 203.5360 Maintenance deficiencies.

Rehabilitation under Pub. L. 84–99 will not be applied to flood control or shore protective works which by reason of poor maintenance, have deteriorated over long periods to the point where substantially complete reconstruction is required. No emergency funds will be expended for rehabilitation, even though built or previously repaired by the Corps of Engineers, as long as local interests are delinquent in meeting their maintenance commitments. For all interrelated parts of a flood control or coastal protection system, deficient or deferred maintenance outstanding when damage occurs will be accomplished by or at the expense of the responsible local interests, either prior to or concurrently with rehabilitation work for which Pub. L. 84–99 funds are made available. When restorative work accomplished by the Corps will take care of the accumulated deferred maintenance, the estimated maintenance cost will be included in the contributed funds. This policy does not preclude furnishing flood fight assistance in connection with an actual emergency. The imminent failure or failure of a flood control or coastal work because of inadequate maintenance will not preclude provision of flood fight assistance, other than rehabilitation.

20. The section number preceding § 203.5381 is revised to read:

§ 203.5380 Authorization of rehabilitation work.

21. Section 203.5383 is revised by deletions and word changes to read:

§ 203.5383 Contributed funds.

Contributed funds outlined in ER 1140–2–30[illegible], or an acceptable contract, will be made available to the engineer district prior to initiation of the work under the project as authorized. They may be accepted without further reference or approval by the Chief of Engineers. The required certificate of the District Engineer outlined in ER 37–2–10 will cite as the pertinent authority "Pub. L. 99, 84th Congress, approved 28 June 1955 as amended."

22. Section 203.54211 is revised by an added sentence to read:

§ 203.54211 Cost plus fixed fee contracts (CPFF).

Except in extraordinary cases, prior approval for the use of CPFF contracts shall be obtained from an authority no less than the Deputy Director of Civil Works by the most expeditious means required under the circumstances. If the circumstances so dictate, approval action may be effected by telephone with written confirmation following. The contract file shall reflect the means of and person granting such approval. However, FDAA will not reimburse work under Pub. L. 93–288 performed under a cost plus percent of cost contract.

23. Section 203.6120 is replaced to read as follows:

§ 203.6120 FDAA-Corps relationship.

Section 302, Pub. L. 93–288, authorizes the President to coordinate the activities of Federal agencies in order to provide maximum mobilization of the available

Federal assistance. It also authorized directing a Federal agency to utilize its available resources in disaster assistance, with or without reimbursement. These section 302 provisions have been delegated to the FDAA Regional Directors. Under those terms, Division Engineers may accept mission assignments, or work directives, from FDAA Regional Directors. Actions taken to manage the mission will be in accordance with existing policies, procedures, authorities, and available resources. Administration and management of Corps personnel, resources, and equipment is the responsibility of the Division. Missions from FDAA, however, are during emergency situations beyond the Corps statutory authority and a mission assignment under Pub. L. 93–288 is required to conduct the operations.

24. Section 203.6240 is revised by a word change to read:

§ 203.6240 Emergency assistance.

If the President determines that an emergency exists, he is authorized to use all resources of the Federal government to avert the disaster or lessen its effects should the disaster occur. Division Engineers will be fully responsive to FDAA requests for emergency assistance.

25. Section 203.6250 is revised by title changes of a survey to read:

§ 203.6250 Preliminary assessments.

Regional Directors may assign responsibilities to Federal agencies by categories of damages most relevant to the agencies' activities. Preliminary field assessments are made in those disasters which are not clearly of such severity to be obviously major disasters. Expenses incurred in providing preliminary field assessments not warranting a major disaster declaration are chargeable to FDAA.

§§ 203.6300—203.6322 [Reserved]

26. Section 203.6300 through section 203.6322 are deleted in their entirety.

27. Section 203.6400 is renumbered to read:

§ 203.6300 FDAA directives to other Federal agencies.

28. Section 203.6410 is renumbered and revised by deletions to read:

§ 203.6310 Nature of directive.

FDAA Directives, or Letters of Request to Federal agencies specify in general terms the nature and scope of disaster assistance to be provided. Letters of request are supplemented as necessary. The FDAA has grouped certain work items eligible under Pub. L. 93–288 in categories designated. A through I (HUD Handbook 3300.6). Project applications are reviewed with consideration of the interrelated statutory authorities of the Corps of Engineers and other Federal agencies. FDAA directives are framed accordingly, to provide for only supplementary Federal assistance.

29. Sections 203.6420 through 203.6520 are renumbered as follows:

§ 203.6320 Issuance and channeling.

A directive may initially be issued informally, either orally or by teletype. An informal directive must be confirmed by a Letter of Request. FDAA requests may be addressed either by the Administrator or by an FDAA Regional Director to a Division Engineer. Advice as to the receipt of any informal requests, and an information copy of each letter request and supplements thereto, will be expeditiously furnished to HQDA (DAEN–CWO–E) WASH DC 20314.

§ 203.6400 Responsive action by the Corps.

§ 203.6410 Requests to the Corps.

Action will be initiated immediately following receipt of valid FDAA directives, whether formal or informal. Work will be prosecuted in conformance with the FDAA general guidance and directives as well as directives issued pertinent to a specific program of disaster assistance. Consideration will be given to the interrelated statutory authorities of the Corps.

§ 203.6420 Support of other Federal agency missions.

The Corps resources will be utilized in support of disaster recovery operations assigned by the FDAA to other Federal agencies. Written directives which outline the desired Corps support, such as developing sites for temporary housing, are required from the requesting FDAA region.

30. Section 203.6530 is renumbered and revised by deleting the Federal Coordinating Officer to read:

§ 203.6430 Disaster operations coordinator.

During major Pub. L. 93–288 operations involving a disaster declaration covering more than one district area within a division and State, a COE disaster operations coordinator (DOC) will be appointed by the Division Engineer as he determines necessary, and as may be requested by the Regional Director. The DOC will serve as a liaison and point of contact between the COE operations and other agencies. If the declaration covers areas of more than one division within the state, determining the need for and appointing a DOC will be by mutual agreement between the Division Engineers in coordination with the Regional Director.

(a) When a large disaster requires declarations in more than one state and more than one Regional Director has been appointed, a separate DOC will be appointed, if required by the situation, for liaison with each Regional Director. The DOC will make contact with the Regional Director and be prepared to be the COE point of contact at the FDAA disaster center, if required.

(b) The DOC will coordinate all Corps requests for military assistance with the appointed DOD Military Representative. AR 500–60 now provides that the CONUSA Commander appoint a single DOD Military Representative when a major disaster has been declared. The DOD Military Representative is to coordinate all requests, including those from the Corps, for military assistance. The regulation states that a separate DOD Military Representative will be appointed for each Regional Director named in the disaster declaration.

(c) In exceptional cases, OCE may designate the Division Engineer to be in overall charge of the COE disaster operations.

31. Section 203.6600 and § 203.6610 are renumbered as follows:

§ 203.6500 Procedures for handling direct requests for disaster assistance under Pub. L. 93–288.

§ 203.6510 Without Pub. L. 93–288 Presidential declaration.

In an emergency other than of flood or coastal storm nature or for emergency requirements beyond the statutory authority of the Corps of Engineers, such as landslides or erosion problems, the local interests concerned should address any request for assistance to the State Governor (or his designee) for consideration of State assistance and/or transmission to the FDAA Regional Director. In no case will the applicant be told assistance may be available from FDAA until the problem has been discussed with the Regional Director. If, however, such a request is received directly by a Division or District Engineer, and upon discussions with the requesting local interests and determination that redirection of the request through state channels, or provision of assistance available from state agencies would not meet the situation, it will be forwarded to OCE for decision. The foregoing is exclusive of response to conditions of imminent seriousness or immediate urgency.

32. Section 203.6620 is revised by being renumbered and by added clarifying phrases to read:

§ 203.6520 Prior to Presidential declaration.

The occurrence of a disaster may be of such magnitude as to assure the Presidential declaration of a major disaster area. Corps participation in these immediate post disaster activities prior to receipt of a formal declaration becomes so manifestly required that the eventual completion of administrative procedures is self-evident. On the other hand, when conditions do not warrant unrestrained Corps assistance, close coordination with FDAA Regional Directors is required to determine the nature of the directives expected. Initially, Division and District Engineers may receive FDAA disaster survey requests to determine appropriate courses of action. Timely response to these requests is required. Generally, Corps action in other existing conditions beyond statutory authority should be abated pending an appropriate request from the FDAA. If in the final disaster analysis a Presidential declaration is not received, only those Corps functions under other authority may be performed. Costs incurred in the predeclaration period, in response to an FDAA request, will

be referred to the FDAA for reimbursement as provided in the request.

33. Section 203.6630 is renumbered as follows:

§ 203.6530 Following Pub. L. 93–288 Presidential declaration.

If a direct request is received from local interests for disaster assistance beyond the statutory authority of the Corps of Engineers, the Division or District Engineer receiving such a request will inform the applicant tactfully that the request should instead be submitted to the state Disaster Office. Concurrently, send a copy of the request to the FDAA Regional Director. Disaster missions received from the Administrator, Regional Director, or FCO will be performed expeditiously under the authority of Pub. L. 93–288.

§§ 203.6700–203.6730 [Reserved]

34. Sections 203.6700 through 203.6730 are deleted in their entirety.

35. Section 203.6800 is renumbered and revised by deletion of eligibility discussions under other authorities to read as follows:

§ 203.6600 Scope of Pub. L. 93–288 assistance.

The Federal Disaster Assistance Regulations include a requirement that Pub. L. 93–288 work performed at FDAA direction by a Federal agency shall be subject to the same criteria of work eligibility as apply to financial assistance provided to State and local applicants performing work on their own account. Determination by FDAA of the scope of work will further be guided by cost consciousness and economic considerations. In particular, these apply to eligible protective measures undertaken in the general public interest, such as the emergency clearance of flood deposits from stream channels (material other than normal suspended components of a flood control, irrigation, or drainage facility maintained by public entities); and emergency shore protective work beyond the scope of Pub. L. 84–99 authority.

36. Section 203.6900 through section 203.6930 are renumbered as follows:

§ 203.6700 Joint participation and responsibilities.

§ 203.6710 Support of Corps operations.

Whenever use of State and local facilities or services is helpful and economical in the provision of Pub. L. 93–288 assistance, local consent to such Corps use on a non-reimbursable basis will be actively sought. Authority for acceptance and use is contained in sec. 309 of Pub. L. 93–288. Arrangements for use should be formalized whenever appropriate.

§ 203.6720 Reciprocal Corps support.

When directed by the FDAA, the Corps may provide support assistance to States and local governments in their efforts. As authorized by Pub. L. 93–288, such support may be provided by use or loan of Corps equipment, supplies, facilities, personnel or other resources, with or without compensation by the recipient.

§ 203.6730 Provision of real property.

State and local authorities shall be held fully responsible for procurement of all usage rights and permits locally required by the Corps for the requested Federal assistance. The responsible authorities shall provide adequate documentation fully covering rights of access and entry, use of work sites, necessary demolition of structures, disposal area, and other proprietary rights to be permanently acquired or subordinate to the operational necessities.

37. Section 203.6940 is renumbered and revised by change wording to read:

§ 203.6740 Corps support of State and local governments.

Corps support to State and local governments under Pub. L. 93–288 must be limited to that work outlined in the mission assignment. Its duration will be determined by operational necessity, and will be furnished only as a supplement to State and local capabilities. All actions relating to required procurement of real property, or concerning private property rights, will be taken in behalf of and in the name of the responsible non-Federal interests. Accordingly, Corps use of condemnation procedures pursuant to the Federal eminent domain will clearly be not applicable.

38. Section 203.6950 is renumbered and revised by a word change to read.

§ 203.6750 State or local government funds.

In the accomplishment of FDAA directed work such as debris removal and repair and restoration of public facilities, the Corps is authorized to accept funds contributed by States or local governments for the inclusion of betterments in work underway. Similarly, grants-in-aid paid to States or local governments by the FDAA for planned accomplishment of recovery work items cannot be accepted by the Corps for undertaking that work at a later date.

39. Section 203.6960 through section 203.6990 are renumbered as follows:

§ 203.6760 Government liability.

Pub. L. 93–288 includes a specific provision to the effect that the Federal Government shall not be liable for claims based on actions or omitted actions by a Federal employee or agency in providing Federal assistance under Pub. L. 93–288 authority. Appropriate action will be taken to secure blanket "Hold and Save Harmless" assurances from public entities, in the same manner as for provision of Pub. L. 84–99 assistance. For assurance to be used in debris removal operations, see Sec. 403b, Pub. L. 93–288 and sample resolution in Appendix 16 of HUD Handbook 3300.5. In cases of imminent seriousness, lacking such assurance and pending provision of required real property rights, actions will apply to demolition of unsafe private structures only if public safety requirements cannot be adequately served through temporary exclusion of the public from the area involved.

§ 203.6770 Detailed damage survey.

Corps representatives making on-site inspections of damaged facilities, preliminary to FDAA action on project applications for financial assistance will act as engineer advisors to the FDAA. Initial findings concerning work scope and Pub. L. 93–288 eligibility will be made in the light of established criteria. In that connection, however, specific recommendations furnished will be confined to engineering, design, and cost estimating aspects of the work. As outlined under 43.10, the COE will provide a disaster team trained in the techniques of executing detailed damage surveys.

§ 203.6780 Completion inspection.

The state agency which assisted in performing the detailed damage surveys will notify the district when work in that category has been completed. The State agencies and district personnel will then make arrangements to make a final completed work inspection. The district inspector will decide who is to make the final inspection but a joint Federal-State final inspection is strongly preferred. If State personnel make the final inspection alone, the district is responsible to the FCO for reviewing the State report, and for its adequacy. All final inspections must be completed within 15 days following notification that an applicant has completed all categories of work approved in the project application. The results of the final inspection will be reported on D/HUD Form 485.

§ 203.6790 Completed Corps work.

40. Section 203.6791 is renumbered and revised by changing the state coordinator to read as follows:

§ 203.6791 Adequacy.

Except for public facility replacement and projects of improvement, completed Pub. L. 93–288 recovery work by the Corps is not transferred to the public entity concerned, and their formal acceptance of the completed work by signed documents is not required. District Engineers will insure conformance with contract plans and specifications under standard procedures. For each assigned project. FDAA requires the preparation of a D/HUD Form 485, Report of Final Completed Work Inspection, with distribution of one signed copy to the Governor's Authorized Representative, and the original and one signed copy to the FDAA Regional Director. A final joint inspection with the counterpart State agency and local government official, as appropriate, is preferred but not mandatory.

41. Sections 203.6992 through 203.6994 are renumbered as follows:

§ 203.6792 Maintenance.

Provision of a State or local maintenance assurance is not a mandatory prerequisite to Pub. L. 93–288 work accomplishment. Such assurance, if voluntarily furnished, will not occasion periodic

Corps inspection to monitor compliance. However, emergency preparedness efforts by the non-Federal agencies will be encouraged and requested technical advice furnished on protective measures.

§ 203.6793 Completion notice.

The date of completion and termination of Corps activity will be furnished to the local authority by letter. The letter should include, as applicable and appropriate, advice as to the further maintenance and improvement of completed work. Advice furnished will include any limitations or inadequacies of the work, special inspection and maintenance measures, improvement, or replacement required in the interest of public safety. Copies of the letter will be furnished the Division Engineer as desired, the FDAA Regional Director, and the State official concerned.

§ 203.6794 Records.

Permanent file maps, drawings, and other records of public facility repair or replacement and protective work accomplished, adequate for possible future Civil Works activities, will be retained as needed.

42. Section 203.7262 is revised by changing the reporting format to be as follows:

§ 203.7262 Reporting format.

During the Critical phase of a Category A flood, the daily TWX situation report will include the following coverage as available and applicable, using the paragraph numbers shown in the following example. Subparagraphs may be used as required. If there is no change in a given paragraph from the preceding day's report, say "No change" or "No change except for * * *."

Subject. Category A SITREP No. 3, (Indicate Final Report submission).

(a) *General Situation Summary.* Location of stricken area by river basin; weather conditions and forecast (include rainfall data); condition of flood control works and their effectiveness (identify whether Federal or non-Federal); Federal property (military and civil works installations) damaged or threatened; communities damaged or threatened; essential transportation systems (land, air, marine and rail) out of service; emergencies declared by Governor(s); and any other significant events such as lives lost, utility failures, etc.

(b) *Efforts by State and Local Interests.* Nature, location, and degree to which state and local interests are applying their capabilities in rescue, evaluation of flood fighting, and related matters. Include whether they can cope with the situation and any activity of National Guard (provide unit designation). Nature and location of prospective requests for Pub. L. 84-99 assistance. Status of a Governor's application for Pub. L. 93-288 assistance.

(c) *Military Efforts.* Nature of actions where taken by the military (Army, Navy, Air Force and other DOD components). Also where applicable, indicate military participation in flood fighting and rescue work under Corps of Engineers direction and control, specifying unit designations.

(d) *Other Efforts.* Brief coverage of nature and location of support being rendered by Red Cross, Coast Guard, and other Federal, State, charitable, and local agencies furnishing significant aid. Indicate role of FDAA, location of field office if established, name and phone number of person in charge. List or describe liaison and coordination effected with other Federal agencies.

(e) *Corps of Engineers Efforts.* (1) Summarize District Engineer's activity in discharging his mission, including liaison, rescue, flood fighting, damage surveys, and data collection. Upon activation of District EOC, provide hours of operation, phone number(s) and person in charge.

(2) Following is a summary of pertinent data on this flood event which began on 14 Aug. 75.

(i) Number of COE personnel involved—85 (20 District; 60 Field; 5 TDY).

(ii) Number of sandbags furnished to date—250,000.

(iii) Number of pumps on loan—14.

(iv) (Other significant materials issued such as rolls of polyethylene sheeting, riprap, snow fencing, etc.)

(v) Number and value of emergency contracts: 6—$75,000.

(vi) Estimated total PL 84-99 obligations to date—$90,000.

(f) *Damages and Damages Prevented.*

(1) Acres Flooded:

State	Agricultural	Other	Total
Mississippi	60,000	5,000	65,000
Louisiana	40,000	0	40,000

(2) Total Preliminary Damages Estimate:

State	Amount
Mississippi	$1,000,000
Louisiana	200,000

(3) Effects of Corps of Engineers Projects (Permanent and Temporary Protection).

(i) Damages prevented:

State	Amount
Mississippi	$5,000,000
Louisiana	10,000,000

(ii) Acres protected:

State	Number
Mississippi	10,000
Louisiana	350,000

(g) *Tabulation of River-Stage Data:*

Gage	River stage		Tendency	NWS predicted		Record	
	Zero damage	Today		Crest	Date	Stage	Year
Mississippi River:							
Vicksburg, Miss.	30.0	35.0		38.0	Aug. 20	60.0	1948
Natchez, Miss.	21.5	28.7		31.0	Aug. 24	55.6	1937
Big Black River:							
Sun City, Miss.	14.0	17.5		18.0	Aug. 19	25.0	1960
Monroe, Miss.	12.5	16.0		17.0	Aug. 21	23.4	1978

(h) *Tabulation of Reservoir Data:*

Reservoir	Average past 12 h (cubic feet per second)		Pool elevation		Tendency	Percent of flood control utilization
	Inflow	Outflow	Normal	Today		

To condense TWX reports, the tabular data referred to above that are not dependent upon daily observations may be furnished HQDA (DAEN-CWO-E) WASH DC 20314 in advance by letter for selected key stations, and subsequently omitted from teletype reports pertaining to those stations. After the critical phase of a flood has passed and stages have receded generally to a relatively non-dangerous stage, daily reports, as specified above, may be reduced in scope. They will include a description of the flood situation in general terms, supplemented as required for clarity, by selected representative river stage and pool data. River stage data normally available on Weather Service teletype, Schedule C, CE sequence, may be omitted from reports submitted during the later recession phases of floods. During critical flood periods, daily reports will be adequately self-contained, inasmuch as the desired data are not always available from Weather Service teletype reports.

43. Section 203.8120 is revised by adding coordination instructions to read:

§ 203.8120 Coordination.

Close coordination of public affairs effort should be established and maintained between the districts, divisions, Chief of Engineers, and the respective Federal, State, local, and other agencies concerned with the activity. The public should be assured that the Corps of Engineers is taking all possible actions within its authority to protect the safety and welfare of the public. Coordination of Corps press releases with FDAA is a special responsibility in work performed for FDAA.

44. Section 203.8270 is revised by a deletion to read:

§ 203.8270 FDAA.

The release of public information concerning disaster activities being per-

formed under Pub. L. 93–288 will be coordinated with the FDAA Regional Director.

§ 203.8290 [Reserved]

45. Section 203.8290 is deleted in its entirety.

46. Section 203.8291 is renumbered and revised by combining it with § 203.82911. The title of § 203.82911 is deleted to read as follows:

§ 203.8290 Emergency Public Affairs Unit (EPAU).

To effectively meet the requirements of major floods, hurricanes, earthquakes, and other emergencies, wherein normal public affairs facilities are inadequate, an Emergency Public Affairs Unit (EPAU) may be organized by specific assignment of designated personnel from the district staff. They will be trained and maintained on a standby basis and subject to immediate call in an emergency. The unit will work under the direction of the Public Affairs Officer to provide comprehensive service on an around-the-clock basis, or other schedule as determined by the District Engineer. The basis responsibility for handling press relations will remain with the Public Affairs Officer. The EPAU duties will include obtaining and making available to the news media all newsworthy information including, as may be appropriate, photographs and motion picture footage.

47. Section 203.82912 is renumbered as follows:

§ 203.8291 Assistance.

The EPAU will facilitate the work of the news media in such matters as providing emergency transportation, a place to work, access to communications, and assistance in getting through guard lines. In general, under the direction of the responsible officer in charge of the Corps activities, it will aid in the discharge of all public relations aspects of his mission.

Effective date: This amendment was effective 30 April 1976.

Dated: May 11, 1976.

RUSSELL J. LAMP,
Colonel, Corps of Engineers, Executive.

[FR Doc.76–14235 Filed 5–14–76;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT; APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5583 (OR–10900)]

WASHINGTON

Revocation of National Forest Administrative Site Withdrawal

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

1. Public Land Order No. 1874 of June 9, 1959, withdrawing lands for national forest administrative site, recreation areas, a roadside zone, and other public purposes, is hereby revoked so far as it affects the following described land:

COLVILLE NATIONAL FOREST

WILLAMETTE MERIDIAN

Orient Administrative Site

T. 39 N., R. 36 E.,
Sec. 10, SW¼SE¼, E½SE¼ except Exchange Survey 282 comprising 14.91 acres;
Sec. 15, NW¼NE¼.

The area described contains 145.09 acres in Ferry County.

2. At 10 a.m. on June 16, 1976, the national forest land described above shall be open to such forms of disposition as may by law be made of such land.

JACK O. HORTON,
Assistant Secretary of the Interior.

MAY 11, 1976.

[FR Doc.76–14236 Filed 5–14–76;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 76–419]

PART 0—COMMISSION ORGANIZATION

Delegation of Authority to Chief, Broadcast Bureau

In the matter of amendment to § 0.281 of the Commission's Rules: delegations of authority to the Chief, Broadcast Bureau.

1. As part of a continuing study of broadcast license renewal policy and practice, the Commission has under review Sections 0.281(a)(8)(i) and 0.281(a)(10) of its Rules, which require that the Chief of the Broadcast Bureau refer to the Commission *en banc* for disposition all commercial AM, FM and TV applications:

(a) Proposing for the coming license period less than eight, six and ten percent, respectively, of total non-entertainment programming;

(b) Showing substantial variation from prior representations to the Commission regarding levels of non-entertainment programming or commercial practices. These requirements represent two exceptions, *inter alia*, to the general rule that uncontested applications ordinarily may be acted upon by the Bureau Chief in the exercise of authority delegated under Section 0.281. 43 FCC 2d 638 (1973). They illustrate the Commission's often-expressed concern that a licensee's informational programming be sufficient to respond to the problems, needs and interests of his community; and that a station's representations in this regard be reliable. AM & FM Program Form, 1 FCC 2d 439 (1965); Programming Logging Rules—AM & FM, 1 FCC 2d 499 (1965); Television Program Form, 5 FCC 2d 175 (1966); Television Program Logging Rules, 5 FCC 2d 185 (1966); Primer on Ascertainment of Community Problems by Broadcast Applicants, 27 FCC 2d 650 (1971).

2. These rules, of course, are procedural rather than substantive. They do not identify a quantity—much less a quality—of programming below which no application will be granted and above which all applications will be granted. The amount and kind of programming to be broadcast in serving the interest of its public is left largely to the reasonable, good-faith judgment of the the individual licensee. Programming Policy Statement, FCC 60–970, 25 Fed. Reg. 7291, 7293 (1960). Instead, the cited subsections of Rule 0.281 attempt to make clear the circumstances in which the full Commission, rather than the staff, will evaluate the past or proposed program service of a broadcast applicant.

3. To increase the scope and the flexibility of our delegations process, we are promulgating the revised rules on levels and types of programming and on "promise vs. performance" which are set out in the Appendix to this Order. It will be noted that the revisions of Section 0.281(a)(8)(i) apply only to commercial television applications. We intend to consider in the near future possible revisions in the delegations respecting commercial AM and FM applications. We believe the change in Section 0.281(a)(10) on promise versus performance, however, can be implemented immediately for radio as well as television applications.

4. The scope of the TV rule in Section 0.281(a)(8) has been enlarged by adding two other categories to the criterion of "non-entertainment programming" found in the present delegations: namely, local and "informational" programming. The latter consists of the "news" and "public affairs" elements which are defined in Section 73.112 of our Rules.[1] We long have recognized, of course, the importance of any broadcast facility's function as a locally oriented transmission service, not only with respect to non-entertainment but also sports and entertainment programming. Programming Policy Statement, supra at 7295. The establishment of a category of "informational" programming reaffirms the special contributions to an "informed public opinion" made by news and public affairs broadcasts. Report on Editorializing, 13 FCC 1246, 1249 (1949). At the same time, retention of the non-entertainment category continues our recognition of the valuable service rendered by such "other" programs as agricultural, instructional and religious broadcasts.

5. We believe the revised delegations promise greater flexibility in several respects. First, the special situation of the independent UHF television station is recognized by exempting such facilities from the delegation guidelines on program levels (although not from the promise vs. performance criterion).[2] This

[1] The public affairs definition has been revised as a result of our action in Docket 20419 on the radio renewal short form, FCC 76–264, adopted March 19, 1976.

[2] *Television Broadcast Financial Data—1974*, an FCC report, indicates that only 29 percent of the independent UHF stations were profitable in that year, compared with percentages ranging from 55 to 87 for independent VHF's and for affiliated U's and V's.

will give full range to the expertise of the Broadcast Bureau staff in its evaluation of the programming performance of such stations. We would still expect to review the novel case, as provided for generally under the delegations rules.

6. Second, with respect to promise vs. performance, express provision is made for staff judgment as to whether a substantial decline in programming actually performed from that previously proposed is justified in terms of the public interest. The Commission in the past has acknowledged the licensee's discretion in adjusting to changing circumstances, fortunes and perceptions of the public interest, while insisting that information in an application be reliable. KORD, Inc., 31 FCC 85 (1961); The Evening News Association, 35 FCC 2d 366, 391 (1972). Heretofore, the staff has exercised some flexibility in implementing this subsection through its reading of the word "substantial." Henceforth, it is our view that some fairly low percentage threshold—15 percent in either category or 20 percent in all categories—represents a substantial variation, with the exercise of staff discretion then focusing on the timing and substance of the licensee's explantation for the variance.[3]

7. There remains for discussion one other revision in the delegations criteria under consideration, namely the provision that the percentages and the comparisons for programming are to be based upon the period 6:00 a.m. to midnight—or upon whatever portion of that span the station actually is operating. In the current rules, of course, there is no such time limitation. Programs designed to meet community needs may be offered whenever they reasonably can be expected to be effective. Primer, 27 FCC 2d 650, 687 (1971). We believe that expectation is higher before midnight than in the early morning hours thereafter. However, the staff in its discretion, or the Commission, if necessary, will continue to weigh programming offered from midnight to 6:00 a.m. in terms of the licensee's explanation of the public interest in such scheduling. We believe the revision makes it appropriately clear that the burden of such a public-interest showing is upon the licensee.

8. Authority for the adoption of this Order is contained in Section 5(d) of the Communications Act of 1934, as amended. Since it relates to internal Commission management, practice and procedure, and because the early implementation of these changes will expedite the transaction of public business, compliance with the notice and effective date provisions of the Administrative Procedure Act, 5 U.S.C. 553, is not required.

9. Accordingly, *it is ordered*, That effective October 1, 1976 for those licenses expiring on February 1, 1977 and thereafter, Sections 0.281(a)(8)(i) and 0.281(a)(10) of the Rules are amended in the manner set forth below.

(Sec. 5, 48 Stat., as amended, 1068; 47 U.S.C. 155.)

Adopted: May 6, 1976.

Released: May 14, 1976.

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

Section 0.281(a)(8)(i) and (a)(10) are revised to read as follows:

§ 0.281 Authority delegated.

* * * * *

(a)(8) * * *

(i) Commercial AM and FM proposals for less than eight and six percent, respectively, of total non-entertainment programming; commercial TV proposals (except those made by UHF stations not affiliated with major networks) which project for the hours 6:00 a.m. to 12:00 midnight less than the indicated percentages in one or more of the following categories: five percent total local programming, five percent informational (news plus public affairs) programming, ten percent total non-entertainment programming.

* * * * *

(a)(10) * * * prior representations with respect to commercial practices or the programming categories set forth at Section 0.281(a)(8)(i), and for which variation there is lacking, in the judgment of the Broadcast Bureau, adequate justification in the public interest.

* * * * *

[FR Doc.76-14294 Filed 5-14-76;8:45 am]

[Docket No. 18179; FCC 76-422]

PART 73—RADIO BROADCAST SERVICES

Availability of Television Programs Produced by Non-network Suppliers to Commercial Television Stations and CATV Systems

In the matter of amendment of Part 73 of the Commission's rules with respect to the availability of television programs produced by non-network suppliers to commercial television stations and CATV systems.

1. This Commission has before it for consideration a series of filings listed in the margin[1] concerning aspects of the Commission's rules (Section 73.658(m)) as they relate to geographical exclusivity in non-network syndicated program contracts in the Cleveland-Akron, Ohio market. We also have before us for consideration a petition for clarification filed on June 3, 1974, by McClatchy Newspapers, licensee of Station KOVR-TV, Stockton, California, and supplements thereto relative to the Stockton-Modesto, California market. The present provisions of Section 73.658(m), are set forth below.[2]

2. A short history of the pertinent provisions in the present rule will aid us in the disposition of matters presented in the pleadings. On August 3, 1973, the Commission released the First Report and Order in Docket No. 18179 (FCC 73-806, 42 F.C.C. 2d 175) in which a rule was adopted which provided that program contracts negotiated on or after August 7, 1973, for non-network syndicated program material could not provide for geographical exclusivity in excess of 25 miles from the community of license as determined by reference points contained in Section 76.53 of the Commission's Rules. On reconsideration, based on several

[3] A similar percentage range was suggested at para. 53 of the Report and Order in Docket 20419, *supra*. The obligation to amend a pending application to account for changes since filing is set out at Section 1.65 of the Rules. The duty to notify the Commission of changes in a granted application relates to the question of its continuing reliability. We have chosen not to put this number in the rule to permit flexibility in changing circumstances, but any change in this internal standard will be appropriately noticed.

[1] (a) "Request for Clarification" filed on July 18, 1974, by Scripps-Howard Broadcasting Company, licensee of Station WEWS (TV), Cleveland, Ohio; "Comments on Request for Clarification" filed on July 25, 1974, by Summit Radio Corporation, licensee of Station WAKR-TV, Akron, Ohio; and "Reply to Opposition to Request for Clarification" by Scripps-Howard, on August 1, 1974; and (b) the letter of Summit Radio Corporation (dated March 31, 1976) filed on April 6, 1976, requesting that the Commission continue the applicability of Note 2 to Section 73.658 (m) of the Commission's Rules beyond May 10, 1976; the response thereto filed on April 23, 1976, by Scripps-Howard Broadcasting Company, supplemented by an affidavit filed on April 30, 1976; and a further letter by Summit on April 30, 1976.

[2] § 73.658(m) *Territorial exclusivity in non-network arrangements.* No television station shall enter into any contract, arrangement or understanding, express or implied, with a non-network program producer, distributor, or supplier, or other person which prevents or hinders another television station located in a community over 35 miles away, as determined by the reference points contained in § 76.53 of this chapter (if reference points for a community are not listed in § 76.53, the location of the main post office will be used) from broadcasting any program purchased by the former station from such non-network program producer, distributor, supplier, or other person, except that a television station may secure exclusivity against a television station licensed to another designated community in a hyphenated market specified in the market listing as contained in § 76.51 of this chapter for those 100 markets listed, and for markets not listed in § 76.51 of this chapter, the listing as contained in the ARB Television Market Analysis for the most recent year at the time that the exclusivity contract, arrangement or understanding is complete under practices of the industry. As used in this subsection, the term "community" is defined as the community specified in the instrument of authorization as the location of the station.

NOTE 1.—Contracts, arrangements, or understanding that are complete under the practices of the industry prior to August 7, 1973, will not be disturbed. Extensions or renewals of such agreements are not permitted because they would in effect be new agreements without competitive bidding. However, such agreements that were based on the broadcaster's advancing "seed money" for the production of a specific program or series that specify two time periods—a tryout period and period thereafter for general exhibition—may be extended or renewed as contemplated in the basic agreement.

NOTE 2.—For a two-year period beginning May 10, 1974, television stations licensed to Cleveland, Ohio, and Stockton, California, may not enter into any contract, arrangement or understanding, express or implied, with a non-network program producer, distributor, or supplier, or other person which prevents Station WAKR-TV, Akron, Ohio, and Station KLOC-TV, Modesto, California, respectively, from broadcasting programs purchased by those Cleveland, Ohio, and Stockton, California stations.

petitions, the Commission modified the 25 miles standard noted above, by raising the mileage standard to 35 miles with the exception set forth in Note 2, supra, and also permitting television stations in hyphenated markets to secure exclusivity against another station in a designated community in a hyphenated market specified in the market listings contained in Section 76.51 of the Commission's Rules (for the top 100 markets) and the ARB Television Market Analysis for below the top 100. Note 2 to Section 73.658 (m) was added to secure data concerning non-network programming, which would enable us to assess and deal with special situations in Cleveland-Akron, Ohio, and Stockton-Modesto, California. Memorandum Opinion and Order, FCC 74-382, 46 F.C.C. 2d 892, released May 2, 1974.

3. Summit's Efforts to Secure Programming. To understand and assess the results of WAKR-TV efforts to secure programming under the provisions of Note 2, supra, its filings will be considered first. In response to the provisions of Note 2, Summit, on August 29, 1974, and August 29, 1975, filed letters setting forth its efforts to secure better quality non-network syndicated programming, and the results of its efforts under the operating provisions of Note. 2. In its filing of April 6, 1976, Summit submitted a letter, dated March 31, 1976, which covered its efforts and the results therefrom since its filing of August 29, 1975. In the letter of March 31, 1976, Summit, after outlining its efforts and setting forth the results of its efforts, requested the following:

Therefore, WAKR-TV requests that the Commission not only continue (insofar as it pertains to the Cleveland-Akron situation) the applicability of Note 2, beyond its current May 10, 1976 expiration date, but that the Commission take all necessary and appropriate measures to strengthen the rule in a way that would preclude the circumstances which have heretofore blocked its full effectiveness.

4. The letters of Summit concerning its efforts clearly indicate that it has made significant and determined steps to secure programming from the available program supply. However, it appears, from the Summit letters, that while a good supply of non-network syndicated programming is admittedly available, it is only available to Station WAKR-TV at the price that the programs are also being offered for sale to the television stations licensed to Cleveland, Ohio. Scripps-Howard, in its responsive statement of April 23, 1976,[3] submitted a list of non-network syndicated programming available in the Cleveland-Akron area, and contends that the problems of Summit are due to the fact that Station WAKR-TV "has the technical facilities to serve Cleveland and does in fact actively solicit advertising in direct competition with the Cleveland stations."

[3] On April 30, 1976, Scripps-Howard submitted an affidavit of the General Manager of Station WEWS-TV, concerning non-network syndicated programming in the Cleveland-Akron market.

The further statement of WAKR-TV, filed on April 30, 1976, reiterates its statements that, while programming is available, it is only available at "Cleveland" prices, and, again urges that the Commission, at minimum, extend the provisions of Note 2, because they have had a limited beneficial effect for WAKR-TV.

5. The Scripps-Howard Request Concerning Cleveland-Akron. Following the adoption of the modification set forth in paragraph 2, (especially the enactment of Note 2 to Section 73.658(m)), Scripps-Howard filed a request for stay pending an appeal of the Memorandum Opinion and Order of May 2, 1974, to the United States Circuit Court of Appeals for the Sixth Circuit (Scripps-Howard Broadcasting Company v. F.C.C., Case No. 74-05222). The request for stay was denied by the Commission's Memorandum Opinion and Order, FCC 74-724, 47 F.C.C. 2d 869, released July 12, 1974.

6. Scripps-Howard states that it will dismiss the appeal if the requested clarification is given with respect to a particular paragraph in the opinion denying the stay request. The particular point raised by Scripps-Howard arises from the provisions of Note 2, supra, that was contained in the modification Order released May 2, 1974, the provisions of which, unless extended, will cease to be operative after May 10, 1976.

7. In the Order denying the stay request of Scripps-Howard, we said as follows:

18. . . . So WEWS(TV) and the other Cleveland stations are on Notice of the provisions of Note 2 while they are conducting their negotiations for non-network syndicated programming during the period of the Court appeal. They can take reasonable steps to protect themselves from economic loss resulting from any duplication of programming that may be sold to WAKR-TV. . . .

8. The request for clarification filed by Scripps-Howard, in a sense, asks for an interpretation of the second sentence, i.e.: "They can take reasonable steps to protect themselves from economic loss resulting from any duplication of programming that may be sold to WAKR-TV." Scripps-Howard asks that the Commission approve the following language as a reasonable interpretation under paragraph 18: It reads:

(a) That if the same programming is subsequently sold to WAKR-TV for a lesser price during the same run or time period covered by said contract, the price to WEWS shall be adjusted so that WEWS will pay no more for the remaining duration of its contract than the price established for WAKR-TV, or in the alternative:

(b) That WEWS have the option to immediately terminate said contract.

Scripps-Howard then states that if the Commission approves the above-quoted language it will dismiss the aforementioned appeal.

9. Summit, the licensee of WAKR-TV, Akron, Ohio, opposes approval of the language proposed by Scripps-Howard on the ground that it would "totally frustrate the Rule and its objective." Summit sets forth that "the Commission should make clear to Scripps-Howard and others that the effect of whatever steps are taken must not be to discourage program suppliers from dealing with WAKR-TV." In reply to Summit, Scripps-Howard states that the right to terminate is essential, because without the right to terminate, WEWS would have to continue to pay for programs which not only may be of greatly lessened value to it but which, in its judgment, it should not broadcast in the interest of avoiding duplication in its service area.

10. Discussion. Objective data contained, for example, in the Television Factbook clearly indicate that Station WAKR-TV, an ABC affiliate, draws a much smaller share of the audience than the other stations licensed to the Cleveland-Akron-Lorain, Ohio market because its published spot announcements rates are significantly lower than the other Cleveland stations, and somewhat less than the UHF station licensed to Lorain, Ohio. It is a fact that Station WAKR-TV and the Cleveland stations have a large common area within their respective predicated service contours.

11. The Commission recognizes the very diligent good faith efforts exerted by Summit to secure programming for Station WAKR-TV. We also recognize that, due to the relatively large common service areas of Station WAKR-TV and the television stations licensed to Cleveland, Ohio, program suppliers appear to be reluctant to sell programming to WAKR-TV at prices lower than to the Cleveland stations, or to permit a duplication of programming on more than one station in the same market. From the data filed by Station WAKR-TV, we cannot find that Station WAKR-TV has been able to secure additional programming on a more satisfactory basis with the existence of the provisions of Note 2 to Section 73.658(m) of the Commission's Rules. Station KLOC-TV, Modesto, California, the other station covered in Note 2, did not file any data concerning its programming negotiations under the provisions of Note 2.

12. The Commission believes that the two-year test period has assisted us in our consideration of the Cleveland-Akron syndicated programming territorial exclusivity question. However, we are of the opinion that little, if any, programming was secured by Station WAKR-TV through the provisions of Note 2 to Section 73.658(m). Therefore, we conclude that we should leave non-network program negotiations to the free market forces, and will not issue a Further Notice of Proposed Rule Making which would consider the question of special territorial restrictions in non-network programming contracts in the Cleveland-Akron market.

13. Also the Commission finds that the data submitted by Summit is not factually sufficient to institute, on an ad hoc basis, an inquiry into the negotiations concerning syndicated programming in the Cleveland-Akron-Lorain, Ohio, mar-

ket. Thus, the Scripps-Howard request for clarification will become moot on May 10, 1976, so we take no action on this request, as well as on the request of McClatchy Newspapers involving the Stockton-Modesto, situation.

§ 73.658 [Amended]

14. Accordingly, the request of Summit Broadcasting Corporation, as contained in its filing of April 6, 1976, is denied; the request for clarification filed on July 18, 1974, by Scripps-Howard Broadcasting Corporation is moot; the request for clarification filed on June 3, 1974, by McClatchy Newspapers is moot; and Note 2 to Section 73.658(m) is outdated, deleted, and designated [Reserved].

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Adopted: May 6, 1976.

Released: May 14, 1976.

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

[FR Doc.76-14295 Filed 5-14-76;8:45 am]

[Docket No 20544; RM-2478]

PART 73—RADIO BROADCAST SERVICES

Table of Assignments; Billings, Montana

In the matter of amendment of 73.202 (b), table of assignments, FM broadcast stations (Billings, Montana).

1. The Bureau here considers the Notice of Proposed Rule Making, adopted July 9, 1975 (40 Fed. Reg. 30290), proposing amendment of the FM Table of Assignments (Section 73.202(b) of the Commission's Rules) by assigning Channel 275 to Billings, Montana, as a fourth FM assignment. Comments were filed by petitioner, Matteo, Inc., licensee of AM Station KOOK, Billings; and comments and a counterproposal were filed by Radio Billings, Inc. (RBI), licensee of AM Station KBMY, Billings.

2. Billings (pop. 61,581)[1] is the seat of Yellowstone County (pop. 87,367). It is presently served by five AM stations—KBMY (Class IV, unlimited-time) licensed to RBI; KGHL (Class III, unlimited-time); KOOK (Class III, unlimited-time), licensed to petitioner; KOYN (Class III, daytime-only); KURL (Class II, daytime-only); and three FM stations—KOYN-FM (Channel 227); KURL-FM (Channel 246); and KBMS (Channel 253).

3. In its comments, petitioner has reaffirmed its intention to apply for Channel 275 if assigned herein and if authorized, will build a station promptly. RBI, in its comments and counterproposal, notes that petitioner and itself are the only AM licensees in Billings which do not also operate FM stations.[2] It states that it supports the present proposal to assign a fourth FM channel to Billings and that it intends to apply for the channel if assigned. In addition, RBI counterproposes to assign a fifth FM channel to Billings, Channel 223, in order to alleviate competitive disparities and to avoid a lengthy hearing between itself and Mattco for Channel 275.

4. Initially, we believe that it would not be appropriate to consider RBI's proposal to assign a fifth channel to Billings in this proceeding. The proposals to assign Channel 275 and Channel 223 to Billings as additional channels can be made independently of each other. There are no mutually exclusive considerations at this point. In fact, RBI has offered no reasons why we should consolidate the two proposals. We believe that different considerations exist for the proposal to assign a fifth channel to Billings that should be pursued in a separate rule making (such as our population criteria, preclusion impact, and the suggestion that the proposal was made in part to avoid a comparative hearing). Therefore, we will proceed separately with RBI's proposal in another proceeding (RM-2631).

5. Regarding the present proposal to assign Channel 275 to Billings, we believe it would be in the public interest to make the assignment. Relevant economic considerations were set forth in the Notice. We also noted therein that significant preclusion would result. However, the great number of available channels in the precluded areas make this consideration insignificant. We have received an expression of interest in Channel 275 by two parties. Finally, the assignment of Channel 275 as a fourth FM frequency to Billings is in accord with our population guidelines which allots 2 to 4 channels to communities between 50,000 and 100,000 population.[3]

6. Canadian concurrence in the assignment of Channel 275 to Billings has been obtained.

7. *Accordingly, it is ordered*, That effective June 16, 1976, the FM Table of Assignments (§ 73.202(b) of the Commission's Rules) is amended, to read as follows for the community listed below:

City: Billings, Montana—Channel Nos. 227, 246, 253, 275.

8. Authority for the actions taken herein is found in Sections 4(i), 303(g) and (r) 307(b) and 310(a) of the Communications Act of 1934, as amended, and Section 0.281(b) of the Commission's Rules.

9. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 307, 310, 48 Stat., as amended, 1066, 1082, 1083, 1086, 47 U.S.C. 154, 303, 307, 310)

FEDERAL COMMUNICATIONS COMMISSION
[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

Adopted: May 6, 1976.

Released: May 10, 1976.

[FR Doc.76-14296 Filed 5-14-76;8:45 am]

[1] All population figures are taken from the 1970 U.S. Census.

[2] The two daytime-only AM station licensees are also FM licensees. Both petitioner and RBI have full-time AM stations.

[3] Further Notice of Proposed Rule Making in Docket No. 14185, 27 FR 7797 (1962), incorporated by reference in Third Report, Memorandum Opinion and Order in Docket No. 14185, para. 25, 40 F.C.C. 747, 758 (1963).

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

[OST Docket No. 1, Amdt. I-113]

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Correction

In FR Doc. 75-25436, appearing at page 43901, in the issue for Wednesday, September 24, 1975, in § 1.47(k), the second line should read "the Secretary by 49 U.S.C. 1807 as it re-".

proposed rules

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 3]

MERCHANT MARINE AND FISHERIES CAPITAL CONSTRUCTION FUND

Public Hearing on Proposed Regulations

Proposed regulations under section 607 of the Merchant Marine Act of 1936, as amended by section 21 of the Merchant Marine Act of 1970, relating to Merchant Marine and Fisheries Capital Construction Fund appear in the FEDERAL REGISTER for January 29, 1976 (41 FR 4280).

A public hearing on the provisions of such proposed regulations will be held on July 7, 1976, beginning at 10 a.m. in the George S. Boutwell Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

Section 21 of the Merchant Marine Act of 1970 (Pub. L. 91-469, 84 Stat. 1026) provides that the Secretary of the Treasury and the Secretary of Commerce shall jointly prescribe all rules and regulations, as may be necessary or appropriate to determine the tax liability under this section (section 607 of the Merchant Marine Act of 1936, as amended by section 21 of the Merchant Marine Act of 1970). For this reason, the Internal Revenue Service has invited representatives of the Department of Commerce to be present at the scheduled hearing, and these representatives may address questions to persons making oral presentations at the hearing.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to such public hearing. Copies of these rules may be obtained by a request directed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, or by telephoning (Washington, D.C.) 202-964-3935. Under such § 601.601(a)(3) persons who have submitted written comments within the time prescribed in the notice of proposed rule making and who desire to present oral comments at the hearing on such proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by June 28, 1976. Such outlines should be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224. Under § 601.601(a)(3) (26 CFR Part 601) each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers thereto.

Persons who desire a copy of such written comments or outlines and who desire to be assured of their availability on or before the beginning of such hearing should notify the Commissioner, in writing, at the above address by July 2, 1976. In such a case, unless time and circumstances permit otherwise, the desired copies are deliverable only at the above address. The charge for copies is ten cents ($.10) per page.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of this agenda will be available free of charge at the hearing, and information with respect to its contents may be obtained on July 6, 1976, by telephoning (Washington, D.C.) 202-964-3935.

JAMES F. DRING,
Director, Legislation and Regulations Division.

[FR Doc.76-14325 Filed 5-14-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 128]

[CGD 74-281]

APRA OUTER HARBOR, GUAM

Regulated Navigation Areas

The Coast Guard is considering amending the regulations for Apra Outer Harbor, Guam Regulated Navigation Area by removing the exemption for public vessels and reversing the order in which vessels may pass through the harbor entrance. The authority for this regulated navigation area is also being changed from the Magnuson Act (50 U.S.C. 191) to the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221).

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments concerning the proposal to Commander, Fourteenth Coast Guard District, 677 Ala Moana, Honolulu, Hawaii 96813. Each person submitting comments should include his name and address and organization, if any, identify the notice number (CGD 74-281), and give reasons for any recommended change in the proposal. Copies of all written comments received will be available for examination at the Office of the Commander, Fourteenth Coast Guard District. All comments received on or before June 16, 1976 will be fully considered before final action is taken on this proposal.

Existing § 128.1401(b) (1), (2) and (3) exempts public vessels from operating requirements. This proposal would eliminate the exemption for public vessels. To have effective safety regulations in Apra Harbor vessels should comply with the requirements regardless of their status as private or public vessels.

Section 128.1401(b)(3) would be amended by deleting paragraph (3)(ii). This paragraph is being deleted instead of being amended since the new requirement that would reverse the order of priority before vessels may pass through the harbor entrance would apply to all vessels instead of just vessels over 100 gross tons as in paragraph (b)(3). A new paragraph (b)(6) would be added that would require all outbound vessels to wait before they may leave the harbor until inbound vessels over 65 feet in length clear the harbor entrance. Adverse currents at the mouth of Apra Harbor and slightly offshore create difficulties for inbound vessels: therefore, inbound vessels should have the right of way over outbound vessels at the harbor entrance.

The Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221 et seq.) would be cited as the authority for the Apra Harbor Regulated Navigation Area. Except for Apra Harbor, Part 128 Regulated Navigation Areas is under the authority of this Act; therefore, this proposed change would update the Apra Harbor authority citation to be consistent with the other Regulated Navigation Areas.

In consideration of the foregoing it is proposed to amend Part 128 of Title 33 Code of Federal Regulations as follows:

§ 128.301 [Amended]

1. By deleting the authority citation immediately following § 128.301 *Delaware Bay and River.*

2. By amending § 128.1401 Apra Outer Harbor, Guam, as follows:

§ 128.1401 Apra Outer Harbor, Guam.

* * * * *

(b) *Regulations.* (1) No vessel may enter Apra Outer Harbor without permission of the Captain of the Port if it has on board more than 25 tons of high explosives.

(2) Except for vessels not more than 65 feet in length, towboats or tugs without tows, no vessel may pass another vessel in the vicinity of the Outer Harbor Entrance.

(3) Vessels over 100 gross tons:

(i) Shall steady on the entrance range at least 2 miles west of the entrance when approaching Apra Outer Harbor.

(ii) [Reserved]

(iii) Shall steady on the range when leaving Apra Harbor.

* * * * *

(6) No vessel may leave Apra Outer Harbor until any inbound vessel over 65 feet in length has cleared the Outer Harbor entrance.

§ 128.1401 [Amended]

3. By deleting the authority citation immediately following § 128.1401 Apra Outer Harbor, Guam.

(Secs. 101, 104 P.L. 92-340, 86 Stat. 424, 427; 33 U.S.C. 1224, 1226; 49 CFR 1.46(n)(4)).

Dated: May 11, 1976.

R. I. PRICE,
Chief, Office of Marine Environment and Systems.

[FR Doc.76-14286 Filed 5-14-76;8:45 am]

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 76-CE-16-AD]

BEECH MODELS E55, E55A, 58, 58A AND B60 AIRPLANES

Airworthiness Directive

The FAA is considering amending Part 39 of the Federal Aviation Regulations by adding an Airworthiness Directive (AD) applicable to Beech Models E55, E55A, 58, 58A and B60 airplanes.

The manufacturer has reported an incident involving a Beech Model B60 airplane in which a current limiter terminal bolt head protruding through the current limiter terminal block base, shorted and burned a hole in the engine firewall on which it was mounted. The manufacturer's investigation of this incident disclosed that faulty current limiter terminal blocks which could cause a short may be installed on Beech Models E55, E55A, 58, 58A, C90, E90, 99A, B99, A100 and 200 airplanes as well as on Beech Model B60 airplanes. A fault analysis conducted by the manufacturer of the electrical systems installed on these airplanes has shown that, with the exception of Beech Models E55, E55A, 58 and 58A airplanes, a shorted current limiter terminal block would cause at most a loss of a portion of the aircraft's electrical system which would not affect the safe operation of the airplanes. Accordingly, AD action is not considered appropriate for Beech Models C90, E90, 99A, B99, A100 and 200 airplanes. However, with respect to Beech Models E55, E55A, 58, 58A and B60 airplanes, should the aforementioned short occur, these airplanes could experience either a hole burned in the engine firewall, or a complete loss of electrical power which in turn could result in an unsafe condition under certain operating conditions. To prevent this potentially hazardous situation from occurring an AD is being proposed, applicable to Beech Models E55, E55A, 58, 58A and B60 airplanes, which would require inspection of the terminal block assemblies for improperly installed terminal bolts (bolt heads not recessed) and a rework or replacement of any faulty terminal block assemblies discovered during said inspection.

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 regulatory docket or notice number and be submitted in duplicate to the Federal Aviation Administration, Office of the Regional Counsel, 1558 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before June 16, 1976, will be considered before action is taken 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 Airworthiness 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)).

BEECH. Applies to Models E55 and E55A (Serial Numbers TE-969 thru TE-1009, TE-1011 thru TE-1021, TE-1023 thru TE-1029 and TE-1032 thru TE-1034) airplanes; and Models 58 and 58A (Serial Numbers TH-441 thru TH-482, TH-484 thru TH-541, TH-543 thru TH-547, TH-549 thru TH-555, TH-557 thru TH-595, TH-597 thru TH-602, TH-604, TH-605, TH-607 and TH-609) airplanes; and Model B60 (Serial Numbers P-272 thru P-307, P-309 thru P-326, P-328 thru P-330) airplanes.

Compliance: Required as indicated, unless already accomplished.

To prevent complete loss of electrical power or damage to the engine firewall, either within the next 100 hours' time in service after the effective date of this AD, or at the next 100 hour, annual or progressive inspection after the effective date of this AD, which ever alternative occurs first, accomplish the following:

(A) Inspect the terminal block assemblies and rework or replace where necessary in accordance with the following procedures:

1. Locate the terminal block assemblies mounted on:

(a) The aft right side of the forward cabin bulkhead on Models E55, E55A, 58 and 58A.

(b) The inboard side of the left nacelle firewall and the outboard side of the right nacelle firewall on Model B60. Both are on the forward side of the firewall.

2. Disconnect the battery and remove structure as necessary to gain access to the terminal block assemblies.

3. Remove the current limiters from the terminal block assemblies and then remove the terminal block assemblies.

4. Visually inspect the terminal block assemblies to determine if the bolt heads are properly recessed. A properly recessed bolt should be mounted from .010 inches to .070 inches below flush within the terminal block base.

5. If the bolt heads are not properly recessed, either remove the bolts and rework the holes to accept the bolt heads at the correct depth or discard the terminal block assembly and install a Beech P/N 103-27 terminal block assembly.

6. Inspect the insulator strips. If they are cracked or broken, either fabricate new strips from equivalent phenolic material or obtain new strips, Beech P/N 103-26.

7. Reinstall the terminal block assemblies, current limiters and all removed structure. Reconnect the battery.

(B) Any equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

Beechcraft Service Instruction No. 0754-350 or later FAA-approved revisions cover the subject matter of this AD.

Issued in Kansas City, Missouri, on May 6, 1976.

C. R. MELUGEN, Jr.,
Director, Central Region.

[FR Doc.76-14072 Filed 5-14-76;8:45 am]

[14 CFR Part 39]

[Docket No. 15708]

BRITISH AIRCRAFT CORPORATION BAC 1-11 200 AND 400 SERIES AIRPLANES

Airworthiness Directive

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to British Aircraft Corporation Model BAC 1-11 200 and 400 series airplanes. There have been cases reported of chafing of ring main oxygen ducts, where attached to main hatrack diaphragms, which in one case resulted in an oxygen leak on a BAC 1-11 airplane. Since this condition is likely to exist or develop in other airplanes of the same type design, the proposed airworthiness directive would require a one time inspection and rework, as necessary, of the passenger oxygen ducts located in the main overhead hatrack and the installation of a placard, if necessary, on Model BAC 1-11 200 and 400 series 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, S.W. Washington, D.C. 20591. All communications received on or before June 16, 1976, 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:

BRITISH AIRCAFT CORPORATION. Applies to Model BAC 1-11, 200 and 400 series airplanes, certificated in all categories.

Compliance is required within the next 500 hours time in service after the effective date of this AD, unless already accomplished.

To prevent possible leaks in the ring main ducts of the passenger oxygen system, accomplish the following:

(a) Gain access to and conduct a one-time inspection of the passenger oxygen ring main ducts in accordance with paragraph 2.1.1. of the "Accomplishment Instructions" of British Aircraft Corporation Alert Service Bulletin 35-A-PM 5124, Issue No. 1,

dated February 12, 1973, or an FAA-approved equivalent.

(b) If during the inspection required by paragraph (a) of this AD, chafing of any of the oxygen ducts is found or the clearance with adjacent structure is less than 0.050 inches, comply with the applicable provisions specified in paragraph 2.1.2, 2.1.3, 2.1.4, or 2.1.5 of BAC Alert Service Bulletin 35-A-PM 5124, dated February 12, 1973, or an FAA-approved equivalent.

(c) If, as a result of any of the actions required by paragraph (b) of this AD, the use of the passenger oxygen system is restricted, install an FAA-approved placard in full view of the pilot which defines the restriction and states that flight operations must be limited to those allowed by the applicable operating rules for the particular airplane.

Issued in Washington, D.C., on May 7, 1976.

J. A. FERRARESE,
Director,
Flight Standards Service.

[FR Doc.76-14075 Filed 5-14-76;8:45 am]

[14 CFR Part 39]

[Docket No. 76-NE-17]

PRATT & WHITNEY AIRCRAFT WASP JR. AND R-985 MODEL ENGINES

Airworthiness Directive

In the June 24, 1975, issue of the FEDERAL REGISTER (40 FR 26541), the Federal Aviation Administration published a Notice of Proposed Rulemaking (Docket No. 75-NE-20) to amend Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Pratt & Whitney Aircraft Wasp Jr. and R-985 model engines. The proposed airworthiness directive required that the cylinder heads be removed prior to 8000 hours time in service. The proposed 8000-hour time limit had been based on the available data.

Numerous comments were received from interested persons in response to the Notice. After reviewing the comments, the agency believes that a periodic inspection at 100-hour intervals and an inspection at overhaul would be an effective method of detecting fatigue cracks which could result in cylinder head separation and would be more practical than requiring the removal of cylinder heads at an arbitrary time limit. Accordingly, it was determined that the proposed 8000-hour time limit should be withdrawn. The agency is now considering amending Part 39 of the Federal Aviation Regulations by proposing an airworthiness directive that would require inspection of Wasp Jr. and R-985 cylinder assemblies having over 4000 hours time in service since new or rebarreled at intervals of 100 hours time in service and at overhaul. In addition, all new and newly rebarreled cylinder heads will be marked to indicate time in service.

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, New England Region, Office of the Regional Counsel, 12 New England Park, Burlington, Massachusetts 01803. All communications received on or before June 30, 1976, will be considered 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 Office of the Regional Counsel 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, 1423) and 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 Section 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

PRATT & WHITNEY AIRCRAFT. Applies to Pratt & Whitney Aircraft Wasp Jr. and R-985 model engines.

Compliance required as indicated.

To prevent cylinder head barrel separations due to fatigue cracks in the cylinder head threads, accomplish the following:

1. Visually inspect cylinder assemblies having over 4000 hours time in service since new or rebarreled for oil leakage at the barrel thread junction area, prior to the accumulation of 100 hours time in service after the effective date of this AD. Inspect thereafter at intervals not to exceed 100 hours time in service. Remove cylinder assemblies with evidence of leakage from service before further flight.

2. Inspect cylinder assemblies having over 4000 hours time in service since new or rebarreled, prior to installation of an engine by the following method or equivalent approved by the Chief, Engineering and Manufacturing Branch, FAA, New England Region:

a. Sealing all openings for pressure check.

NOTE: Pratt & Whitney Aircraft of Canada Ltd., Tool No. TAM-4164 may be used.

b. Apply 500 psi, minimum, water pressure to barrel cavity.

c. Observe barrel/head junction for evidence of water leakage.

d. Cylinder assemblies with evidence of leakage shall not be installed on engines.

NOTE: Operators who have not kept records of total time in service on cylinder heads shall assume cylinder heads have over 4000 hours time in service since new or rebarreled.

3. On each new and newly rebarreled cylinder head, scribe AD number above the intake port prior to installation on an engine. Thereafter, each time the cylinder assembly is removed from the engine mark a drill dot on the cylinder head for each 1000 hours total time in service after the AD number.

Upon submission of substantiating data through an FAA maintenance inspector by an owner or operator, the Chief, Engineering and Manufacturing Branch, FAA, New England Region, may adjust the compliance time.

Issued in Burlington, Massachusetts, on May 7, 1976.

QUENTIN S. TAYLOR,
Director, New England Region.

[FR Doc.76-14073 Filed 5-14-76;8:45 am]

[14 CFR Part 39]

[Docket No. 75-NE-20]

PRATT & WHITNEY AIRCRAFT WASP JR. AND R-985 MODEL ENGINES

Airworthiness Directive

In the June 24, 1975, issue of the FEDERAL REGISTER (40 FR 26541), the Federal Aviation Administration published a Notice of Proposed Rulemaking (Docket No. 75-NE-20) to amend Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Pratt and Whitney Aircraft Wasp Jr. and R-985 model engines. The proposed airworthiness directive required that the cylinder heads be removed prior to 8000 hours time in service. The proposed 8000 hour time limit had been based on the available data.

Numerous comments were received from interested persons in response to the Notice. The majority of the comments did not favor the directive as proposed for several reasons. Some commentators felt that improper power management causes the cylinder head separations. Other commentators felt that the issuance of an airworthiness directive would create an extreme hardship on the agricultural industry and these aircraft should be exempt. A few comments were received stating that proper notification was not afforded the industry.

The agency notes that the investigations of failed cylinder assemblies and associated hardware indicate the separations have resulted from fatigue cracks, without evidence of improper engine operation. There have also been numerous cases of cylinder head separations occurring on all types of Wasp Jr. and R-985 powered aircraft, including agricultural aircraft. Therefore, there would be no valid reason to exclude this class of aircraft from the AD. Regarding the claim of improper notification, the Notice was published in the FEDERAL REGISTER with a ninety (90) day period for comment, which does constitute proper and adequate notification.

Numerous commentators objected to the use of an hourly limit for retiring cylinder heads. The experience of these commentators has indicated that prior to a cylinder head separation, oil leakage was noted at the base of the head fin area where the cylinder head and barrel are threaded together. It was suggested that as an alternate to the proposed mandatory time replacement, that a periodic inspection at 100 hour intervals in conjunction with an overhaul inspection be utilized.

The Federal Aviation Administration agrees that a periodic inspection at 100 hour intervals would be an effective method of detecting fatigue cracks which could result in cylinder head separation and would be more practical than requiring the removal of cylinder heads at an arbitrary time limit.

Accordingly, the Notice of Proposed Rulemaking issued on June 24, 1975, (40 FR 26541), is being withdrawn and a new Notice of Proposed Rulemaking requiring

a periodic inspection at 100 hour intervals will be published.

In consideration of the foregoing, the Notice of Proposed Rulemaking published in the FEDERAL REGISTER on June 24, 1975 (40 FR 26541), Docket No. 75–NE–20, is hereby withdrawn.

(Section 313(a) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1345(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Burlington, Massachusetts, on May 7, 1976.

QUENTIN S. TAYLOR,
Director, New England Region.

[FR Doc.76–14074 Filed 5–14–76;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76–GL–10]

ALTERATION OF FEDERAL AIRWAYS

Quincy, Ill. et al.

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would establish the upper vertical extent of certain segments of V–50, V–63, V–67, V–116 and V–129 at 9,000 feet MSL during those times that the Allen Military Operations Area (MOA) or the Howard MOA, is in use. When either of these MOAs is not in use, the airway segments would have their normal vertical extent of up to but not including 18,000 feet MSL.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, Ill. 60013. All communications received on on before June 16, 1976 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–24, 800 Independence Avenue, S.W., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

Request for copies of this Notice of Proposed Rule Making should be addressed to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–230, 800 Independence Avenue, S.W., Washington, D.C. 20591.

The proposed action would amend V–63, V–67, V–116 and V–129 airways to exclude the airspace above 9,000 feet MSL during the time that the Allen MOA is in use (activated by NOTAM) and also including V–50 airway when the Howard MOA is in use (also activated by NOTAM), in the following segments:

a. V–50 from Quincy, Ill., to Capital, Ill.

b. V–63 from Quincy to 32 NM north of Quincy.

c. V–67 from Capital to 28 NM south of Burlington, Iowa.

d. V–116 from Quincy to 26 NM southwest of Peoria, Ill.

e. V–129 from Capital to 25 NM north of Capital.

The Howard MOA would be established by nonrule making action as follows:

HOWARD MOA

Boundaries. Beginning at Lat. 40°13'05" N., Long. 89°37'10" W.; to Lat. 39°19'36" N., Long. 90°15'30" W.; thence via a 30 NM radius arc centered on the St. Louis, Mo. VORTAC at Lat. 38°51'38.3" N., Long. 90°28'56'1" W. to Lat. 39°19'36" N., Long. 90°43'36" W.; to Lat. 40°12'00" N., Long. 91°23'30" W.; thence via to a 90 NM radius arc centered on the St. Louis VORTAC to the point of beginning, excluding the Quincy, Ill., control zone.

Altitudes, 10,000 feet MSL to but not including FL 180.

Time of use. Intermittent by NOTAM.

Controlling agency. Federal Aviation Administration, Kansas City ARTC Center.

Scheduling agency. 183rd Tactical Fighter Group, Capital Airport, Springfield, Ill.

The Allen MOA would be established by nonrule making action as follows:

ALLEN MOA

Boundaries. Beginning at Lat. 40°13'05" N., Long. 89°37'10" W.; to Lat. 39°58'00" N., Long. 89°49'00" W.; to Lat. 39°55'00" N., Long. 91°10'55" W.; to Lat. 40°12'00" N., Long. 91°23'30" W.; thence via a 90 NM radius arc centered on the St. Louis VORTAC at Lat. 38°51'38.3" N., Long. 90°28'56.1" W. to the point of beginning, excluding the Quincy, Ill., control zone.

Altitudes. 10,000 feet MSL to but not including FL 180.

Time of use. Intermittent by NOTAM.

Controlling agency. Federal Aviation Administration, Kansas City ARTC Center.

Scheduling agency. 183rd Tactical Fighter Group, Capital Airport, Springfield, Ill.

The Brown MOA would be established by nonrule making action as follows:

BROWN MOA

Boundaries. Beginning at Lat. 39°49'00" N., Long. 89°54'30" W.; to Lat. 39°19'36" N., Long. 90°15'30" W.; thence via a 30 NM radius arc centered on St. Louis, Mo. VORTAC at Lat. 38°51'38.3" N., Long. 90°28'56.1" W. to Lat. 39°19'36" N., Long. 90°43'36" W.; to Lat. 39°47'30" N., Long. 91°05'00" W.; to the point of beginning.

Altitudes. 8,000 feet MSL to but not including FL 180.

Time of use. Intermittent by NOTAM.

Controlling agency. Federal Aviation Administration, Kansas City ARTC Center.

Scheduling agency. 183rd Tactical Fighter Group, Capital Airport, Springfield, Ill.

The proposed amendment to Part 71 would provide airspace for a type of training that is not permitted in airways. MOAs are established and charted to identify portions of airspace which are used by the military for various flight training activities and to alert nonparticipating pilots to such activities. They do not impose any flight restrictions or communication requirements on Visual Flight Rule (VFR) flight operations. Instrument Flight Rule (IFR) flights will continue to be separated procedurally. The Howard, Allen and Brown MOAs will be used for combat maneuvers, aerobatics and interceptor training.

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

Issued in Washington, D.C., on May 10, 1976.

EDWARD J. MALO,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76–14253 Filed 5–14–76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 20796; RM–2619]

FM BROADCAST STATIONS

Table of Assignments, FM Broadcast Stations (Salisbury, Maryland)

1. *Petitioner, Proposal, and Comments.* (a) Notice of Proposed Rule Making is hereby issued concerning the amendment of the FM Table of Assignments (§ 73.202(b) of the Commission's Rules and Regulations) with regard to the community of Salisbury, Maryland.

(b) A "Petition for Rule Making"[1] was filed on behalf of James J. Jester ("Jester")[2] proposing the assignment of Channel 296A to Salisbury, Maryland, as a second FM assignments to the community. No opposition responses to the filing of the petition have been received.

2. *Community Data.* (a) *Location:* Salisbury, the seat of Wicomico County, is located 106 miles southeast of Baltimore, Maryland, 118 miles east of Washington, D.C., and 132 miles north of Norfolk, Virginia.

(b) *Population:* Salisbury—15,252; Wicomico County—54,236.[3]

(c) *Local Broadcast Service:* Salisbury is served by AM station WJDY, licensed to Salisbury Broadcasting Co., and by two AM–FM combinations; WBOC, and WBOC–FM, Channel 284, Ocean City-Salisbury, licensed to WBOC, Inc.; and WICO and WICO–FM, Channel 232A, Salisbury, licensed to Delmarva Broadcasting Co.

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[1] Public Notice of the filing of the petition was issued on November 25, 1975 (Rpt. No. 957).

[2] In the petition itself, the proponent was identified as "Broadcasters of Salisbury," however, by letter dated November 11, 1975, from counsel for the petitioner, the proponent was described as James J. Jester. Commission records and the Public Notice reflect that change.

[3] All population statistics cited are from the 1970 U.S. Census.

3. *Economic Data:* Petitioner describes Salisbury as a retail trade center for a nine-county area. The community is said to have a diversified manufacturing base. Wicomico County is reported to have 19,700 households with a 1974 retail trade estimate of $236,626,000.

4. *Preclusion Studies:* Preclusion is limited to Channel 296A. Five communities with populations greater than 1,000 persons would be precluded as a result of the proposed assignment of Channel 296A to Salisbury. With the exception of Denton, Maryland, each of the communities located within the preclusion area has at least one alternate channel available for assignment. Denton presently has no local aural service, and Channel 296A is the last channel available for assignment to that city. A staff engineering analysis indicates that Channel 296A could be retained for future assignment to Denton by assigning Channel 288A to Salisbury.

5. *Additional Considerations:* Inasmuch as a second FM channel could be assigned to Salisbury, we request the petitioner and other interested parties to indicate whether the assignment of Channel 288A or 296A would be more consistent with the public interest and whether, if Channel 288A is assigned, the petitioner and other interested parties will promptly seek broadcast authority for the operation of a station on that channel.

6. *Proposed Amendment to the FM Table of Assignments:* For the purpose of eliciting comments on whether such actions would benefit the public interest, the Commission proposes to amend the FM Table of Assignments (Section 73.202 (b) of the Commission's Rules and Regulations) with regard to the community of Salisbury, Maryland, as follows:

City	Channel No.	
	Present	Proposed
Salisbury, Md.	232A	232A, 296A, or 232A, 288A.

7. *Authority:* The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

8. Comments and Replies: Interested parties may file comments on or before June 21, 1976, and reply comments on or before July 12, 1976.

Adopted: May 5, 1976.

Released: May 10, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, It Is Proposed To Amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc.76-14297 Filed 5-14-76;8:45 am]

FEDERAL POWER COMMISSION

[18 CFR Part 154]

[Docket No. R-406]

NATURAL GAS PIPELINE COMPANIES' FPC GAS TARIFFS

Purchased Gas Cost Adjustment Provision

MAY 10, 1976.

In Order Nos. 452, 452-A and 452-B, issued in Docket No. R-406, the Commission amended § 154.38(d) of the Regulations Under The Natural Gas Act to permit the inclusion of a purchased gas adjustment provision (PGA clause) in natural gas pipeline companies' FPC Gas Tariffs under certain specified conditions. It now appears that the number and frequency of PGA filings have reach such a magnitude that they impose an undue burden upon the pipeline companies, their customers, the Commission and the ultimate consumers. We issue this notice to advise that the Commission has under consideration a proposal to limit the number and timing of future PGA filings.

The basic authority of the Commission to initiate this proposed rulemaking action is the Natural Gas Act as amended, particularly Sections 4, 5, 8, 10 and 16 (52 Stat. 822, 823, 825, 826, 830; 76 Stat. 72; 15 U.S.C. 717 c, d, g, i and o) and the Administrative Procedure Act, 5 U.S.C. 553. The responses received will be utilized to determine whether this proposal should be adopted. Parties are urged to comment on the proposal as well as to present any alternate proposals which they feel the Commission should consider.

On April 14, 1972, the Commission issued Order No. 452, in Docket No. R-406, wherein § 154.38(d) of its Regulations Under the Natural Gas Act was amended to permit the inclusion in pipeline tariffs of PGA clauses. Order No. 452 recognized that the cost of purchased gas constituted the largest single component of a pipeline's cost of service and expressed the Commission's desire to curb the frequency of general rate increase filings. The Commission reasoned that the inclusion in pipeline tariffs of PGA clauses would: (1) Enable pipeline companies to protect themselves against supplier rate increases; (2) limit the number of general rate increases filed and the dollars collected subject to refund; (3) reduce the frequency of extensive shifts in charges to consumers of natural gas; and (4) help prevent a backlog of "pancaked" rate filings. Virtually all of the natural gas pipeline companies now have effective PGA clauses.

Order No. 452, as amended by Order Nos. 452-A and 452-B, provided in pertinent part for the separate computation of pipeline and producer supplier costs and a minimum triggering level of 1 mill (0.1¢) per Mcf of jurisdictional sales. Pipeline supplier changes could be tracked concurrently and producer supplier costs could be tracked semi-annually. To assure recovery of all purchased gas costs the companies were permitted to establish a deferred purchase gas account (Account 191) and amounts recorded in this account were to be recovered through a surcharge over the succeeding 6- month period. Order No. 452 prohibited the inclusion in rate base of amounts included in the deferred account and stated that carrying charges would not be allowed on any balance pertaining to unrecovered purchased gas costs. Order No. 452-A modified this prohibition to provide that the question of

rate base treatment would be considered on the merits in rate proceedings involving individual companies. The effect of this modification was to require a showing by the individual pipeline company that the normal operation of its PGA clause resulted in amounts recorded in the deferred account of sufficient magnitude to warrant rate base treatment.

Due to the rising costs of labor, materials and supplies, capital and taxes along with a diminishing gas supply which affects sales and the rates of depreciation, pipeline companies have found it necessary to file general rate changes in ever increasing numbers. The number of annual pipeline general rate change filings totaled 69 in 1975. The number of purchaser gas adjustments are averaging roughly 250 each year with filings in excess of 300 annually. The preparation of this magnitude of filings imposes a substantial burden upon the pipeline companies. The review and evaluation of these filings presents a formidable task for the Commission and its staff. The number of rate changes create problems for distributors seeking to track them in their rates and results in a lack of rate stability for natural gas consumers.

To alleviate this problem we propose to limit the number of purchased gas adjustments to two a year and to prescribe the semi-annual adjustment dates. Both pipeline and producer supplier costs would be included in the semi-annual adjustments. We recognize that pipelines purchasing from other pipelines sometimes encounter difficulty in determining the rate levels of their supplier pipelines in sufficient time to make a timely filing and still be able to obtain concurrent adjustment dates. Supplier pipelines should make new effort to provide information on proposed rate levels sufficiently in advance to enable their purchasers to make timely filings. We recognize also that certain pipeline companies, e.g., Colorado Interstate Gas Company, Kansas-Nebraska Natural Gas Company and Northern Natural Gas Company, presently have effective PGA clauses which provide for annual adjustments; these clauses are consistent with our objective of reducing the number of PGA filings and it is not contemplated that these clauses would be affected by this proposed rulemaking.

Under presently effective PGA regulations, pipelines are permitted to file semi-annual adjustments to recover the cost of gas purchased from their producer suppliers, but adjustments are permitted at any time to coincide with the effective dates of their pipeline suppliers' adjustments. This latter feature has resulted in an unexpectedly large number of filings due primarily to (1) the varying adjustment dates selected by the different pipeline companies, and (2) the fact that some pipelines purchase from a number of different pipelines. To remedy this situation it appears necessary to prescribe uniform adjustment dates. However, to require that all companies file adjustments to be effective on the same dates would impose an impossible administrative burden. Accordingly, we propose to separate the pipelines into groups and assign different semi-annual adjustment dates for each group. The pipelines to be included in each group are identified on the attached Appendix. The adjustment dates for each group are also shown on the attached Appendix.

Accordingly, the Commission proposes to amend § 154.38(d) (4) (iv) of Part 154, Subchapter E, Chapter I, Title 18 of the Code of Federal Regulations, to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) * * *

(iv) Rate changes shall be computed and filed not more frequently than semi-annually to reflect the current cost of gas from both pipeline and producer suppliers The PGA clause shall specify the adjustment dates consistent with Commission Order No. ------, in Docket No. R-406.

* * * * *

Any interested person including Commission Staff may submit to the Federal Power Commission, Washington, D.C. 20426, not later than June 22, 1976, data, views, comments or suggestions in writing concerning all or part of the amendment proposed herein. Written submittals will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, 825 North Capitol Street, Washington, D.C. 20426, during regular business hours. The Commission will consider all such written submittals before acting on the matters herein proposed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Submittals to the Commission should indicate the name, title, and mailing address of the person to whom communications concerning the proposal should be addressed and whether the person filing them requests a conference with the staff of the Federal Power Commission. The staff, in its discretion may grant or deny requests for a conference.

We recognize that the limiting of PGA adjustments to two each year may require that pipeline companies carry larger amounts in the deferred purchased gas account. To avoid irreparable harm it may be necessary to grant some form of protection such as rate base treatment or carrying charges for the deferred amounts. We urge that parties filing comments address themselves both to the need for such protection and the form recommended. Pipelines should include in their comments a quantification of their dollar exposure, their normal method of financing such costs, and the potential impact upon their earnings. Estimates based upon possible future Commission actions on rulemakings related to producer pricing should not be included both because of the speculative nature and because special treatment has been afforded these costs.

The Secretary shall cause prompt publication of this notice to be made in the FEDERAL REGISTER.

By Direction of the Commission.

KENNETH F. PLUMB,
Secretary.

APPENDIX

January 1 and July 1.—Sea Robin, Southern, S. Georgia, United, Mid Louisiana, Tenn., Ala. Tenn., East Tenn., Granite St., Tenn. Lines, Chattanooga.

February 1 and August 1.—Nat. Fuel, N. Penn, Texas East., Transco, Texas Gas, Lawrenceburg, Algonquin, Con Gas, Col. Gas, E. Shore.

March 1 and September 1.—Panhandle, Trunkline, Fla. Gas, MRT.

April 1 and October 1.—El Paso, Northwest, Transwestern, Southwest, Raton, Arkla, Western Gas Interstate.

May 1 and November 1.—Mont Dak., Okla Nat., Valley, Ky West Va., McCulloch, Cascade.

June 1 and December 1.—Natural, Great Lakes, Mich Wis., Midwestern, La. Nev., S. Texas.

January 23 and July 23.—Cities, Commercial.

October 1.—CIG, Northern No. 4.

November 1.—Inter City.

December 1.—Kan Neb.

December 27.—Northern No. 1.

[FR Doc.76-14208 Filed 5-14-76;8:49 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.

[Docket No. ER76-667]

FEDERAL POWER COMMISSION

CAROLINA POWER & LIGHT CO.

Notice of Filing

MAY 7, 1976.

Take notice that Carolina Power & Light Company, on May 3, 1976, tendered for filing with the Federal Power Commission changes outlined below in its filed Agreements for certain Electric Membership Corporations.

1. Brunswick EMC—The establishment of two new delivery points to be known as Prospect 230 KV and Southport 23 KV.

2. Carteret-Craven EMC—The establishment of two new delivery points and the cancellation of three existing delivery points. The Atlantic Beach 115 KV delivery point supersedes and cancels the existing 33 KV Salter Path Point of Delivery. The Harlowe 115 KV Point of Delivery supersedes and cancels the existing 33 KV points of delivery known as Harlowe and North Harlowe.

3. Pitt & Greene EMC—The establishment of a new 115 KV point of delivery to be known as Davenport. This point of delivery is subject to be converted to 230 KV when Company converts its existing Lee-Rocky Mount-Farmville 115 KV line to 230 KV.

4. Wake EMC—The establishment of a new point of delivery to be known as Franklinton 23 KV.

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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1976. 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.76-14225 Filed 5-14-76;8:45 am]

[Docket No. ER76-229]

CENTRAL LOUIS ANA ELECTRIC CO.

Notice of Supplemental Filing

MAY 7, 1976.

Take notice that on April 23, 1976, Central Louisiana Electric Company tendered for filing supplemental cost information in support of its proposed Rate Schedule REA-10X for service to Southwest Louisiana Electric Membership Corporation at Melville, Louisiana. CLECO has proposed to make Rate Schedule REA-10X effective for deliveries to SLEMCO at Melville as of October 21, 1975.

CLECO has stated that on April 23, 1976 it tendered for filing a proposed Rate Schedule WR-1 which is applicable to certain of its other wholesale customers. CLECO has proposed to make the Rate Schedule WR-1 effective to SLEMCO at Melville at the same time and under the same conditions as it becomes effective to such other customers. CLECO has stated that its billings to Melville from October 1975 to May 1977 will not exceed 80% of billings under CLECO's proopsed Rate Schedule WR-1.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1976. 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.76-14221 Filed 5-14-76;8:45 am]

[Docket No. ER76-661]

CENTRAL LOUISIANA ELECTRIC CO.

Notice of Filing

MAY 7, 1976.

Take notice that on April 30, 1976, Central Louisiana Electric Company (CLECO) tendered for filing the following agreements:

(a) Letter Agreement dated April 15, 1976 between CLECO and Cajun Electric Power Cooperative, Inc. (Cajun) amending the Agreement for Electric Service between CLECO and Cajun dated May 25, 1970 (Rate Schedule FPC No. 21).

(b) Electric System Interconnection Agreement between CLECO and Cajun dated April 27, 1976, providing for service under the following service schedules: Service Schedule A—Emergency Assistance, Service Schedule B—Transmission Service, Service Schedule C—Supplemental Power, Service Schedule D—Surplus Power, Service Schedule E—Economy Energy.

(c) Letter Agreement dated April 15, 1976 with respect to implementation of the Electric System Interconnection Agreement.

CLECO states that Rate Schedule FPC No. 21 is a fixed-rate contract for firm service. Under the Letter Agreement dated April 15, 1976, the fuel cost adjustment clause included in that rate schedule is modified, and the capacity and energy delivered under that contract is limited to the amount of capacity and energy delivered by CLECO to Cajun during 1975. CLECO states that all additional capacity and energy required by Cajun will be delivered under the Electric System Interconnection Agreement.

CLECO has requested waiver of Section 35.3 of the Commission's Regulations under the Federal Power Act in order to permit these agreements to become effective in accordance with their terms as of January 1, 1976. Although CLECO states that the proposed rates will result in an increase of revenue in excess of $1,000,000 for the test period ending September 30, 1975, CLECO has also requested waiver of Section 35.13 of the Commission's regulations with respect to preparation of a cost of service study for Period II. CLECO states that approval of these agreements will result in an increase in its revenues from Cajun of $662,887 during the twelve months ending December 31, 1976.

Copies of the letter of transmittal, the rate schedules and the billing comparisons were mailed to Cajun and to the Louisiana Public Service Commission.

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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 20, 1976. 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 persons 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.76-14223 Filed 5-14-76;8:45 am]

[Docket No. ER76-653]

THE CONNECTICUT LIGHT AND POWER CO.

Notice of Amendment To Purchase Agreement

MAY 7, 1976.

Take notice that on April 29, 1976, The Connecticut Light and Power Company (CL&P), tendered for filing a proposed Amendment to Purchase Agreement with respect to Various Gas Turbine Units, (Amendment), dated April 1, 1976 between (1) CL&P and Western Massachusetts Electric Company (WMECO), and (2) Central Maine Power Company (CMP).

CL&P states that the Amendment provides for a change in the Percentages of Capability to be purchased by CMP for the period from April 1, 1976 to April 30, 1976.

CL&P therefore requests that the Commission waive the thirty-day notice period and permit the Amendment filed to become effective on April 1, 1976.

WMECO has filed a certificate of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, Hartford, Connecticut, WMECO, West Springfield, Massachusetts and CMP, Augusta, Maine.

CL&P also states that no facilities are to be installed or modified in order to supply the service to be furnished under the Amendment.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1976. Protests will be considerd by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.76-14219 Filed 5-14-76;8:45 am]

[Docket No. ER76-669]

FITCHBURG GAS AND ELECTRIC LIGHT CO.

Notice of Initial Rate Filing

MAY 7, 1976.

Take notice that Fitchburg Gas and Electric Light Company (Fitchburg) and Bangor Hydro Electric Company (Bangor) on May 3, 1976, tendered for filing as an Initial Rate Schedule an Electric Generating Capability Sales Agreement. The Agreement provides for the sale by Fitchburg to Bangor of 12.3 MW of electric generating capability during November 1, 1974 through April 30, 1975, and 22 MW March 1, 1975 to April 30, 1975.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 20, 1976. 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.76-14226 Filed 5-14-76;8:45 am]

[Docket No. ER76-671]

FITCHBURG GAS AND ELECTRIC LIGHT CO.

Notice of Initial Rate Filing

MAY 7, 1976.

Take notice that Fitchburg Gas and Electric Light Company (Fitchburg) and Montaup Electric Company (Montaup) on May 3, 1976, tendered for filing as an Initial Rate Schedule an Electric Generating Capability Sales Agreement. The Agreement provides for the sale by Fitchburg to Montaup of 10.0 MW of electric generating capability from January 1, 1974 through April 30, 1974.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 20, 1976. 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.76-14227 Filed 5-14-76;8:45 am]

[Docket No. ER76-670]

FITCHBURG GAS AND ELECTRIC LIGHT CO.

Notice of Initial Rate Filing

MAY 7, 1976.

Take notice that Fitchburg Gas and Electric Light Company (Fitchburg) and New England Power Company (New England) on May 3, 1976, tendered for filing as an Initial Rate Schedule an Electric Generating Capability Sales Agreement. The agreement provides for the sale by Fitchburg to New England of 20 MW of electric generating capability from February 1, 1973 to April 30, 1974 and 15 MW during the period February 1, 1973 and April 30, 1973.

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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 20, 1976. 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.76-14224 Filed 5-14-76;8:45 am]

[Docket No. RP76-93]

KENTUCKY WEST VIRGINIA GAS CO.

Notice of Proposed Change in FPC Gas Tariff

MAY 7, 1976.

Take notice that Kentucky West Virginia Gas Company (Kentucky West), on April 29, 1976, tendered for filing its FPC Gas Tariff, First Revised Volume No. 1, in place of Kentucky West's FPC Gas Tariff, Original Volume No. 1. First Revised Volume No. 1 of Kentucky West's FPC Gas Tariff contains proposed rates which would increase revenues from jurisdictional sales and service by approximately $6.3 million. The proposed increase is based on the twelve-month period ended December 31, 1975, adjusted for known and measurable changes which will occur within nine months subsequent to that date, as provided in the Commission's Regulations. Kentucky West requests that the subject rates become effective on May 31, 1976.

Kentucky West states that copies of this filing have been served on Kentucky West's jurisdictional customers and interested public commissions.

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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1976. 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.76-14211 Filed 5-14-76;8:45 am]

[Docket No. RP76-50]

MICHIGAN WISCONSIN PIPE LINE CO.

Order Granting Late Interventions

MAY 10, 1976.

Before Commissioners: Richard L. Dunham, Chairman; John H. Holloman III, and James G. Watt.

On December 29, 1975, Michigan-Wisconsin Pipe Line Company (Mich-Wisc) tendered for filing, in Docket No. RP76-50, seven tariff sheets, setting forth its proposed curtailment plan to be effective February 1, 1976. Notice of Mich-Wisc's filing was issued on January 14, 1976, with protests and petitions to intervene due on or before January 21, 1976.

Late petitions to intervene were received from: Iowa Electric Light & Power Company, March 4, 1976, Wisconsin Public Service Corporation, March 11, 1976, Charmin Paper Products Company, March 15, 1976.

Having reviewed the above petitions to intervene, we believe the above petitioners have sufficient interest in the proceedings to warrant intervention.

The Commission finds: It is desirable and in the public interest to allow the above-named petitioners to intervene.

The Commission orders: (A) The above-named petitioners are hereby permitted to intervene in these proceedings subject to the Rules and Regulations of the Commission; *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; and *Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) The interventions granted herein shall not be the basis for delaying or deferring any procedural schedules heretofore established for the orderly and expeditious disposition of this proceeding.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.76-14215 Filed 5-14-76;8:45 am]

[Docket No. CP75-125]

MICHIGAN WISCONSIN PIPE LINE CO.

Notice of Amendment to Application

MAY 7, 1976.

Take notice that on April 8, 1976, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP75-125 an amendment to its amended application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to authorize a conditional offshore and onshore transportation service for Natural Gas Pipeline Company of America (Natural) in addition to the proposed construction and operation of facilities and the proposed transportation services for others for which authorization was previously requested in this docket, all as more fully set forth in the subject amendment which is on file with the Commission and open to public inspection.

Michigan Wisconsin states that by an amendment filed February 18, 1976, to amended applications pending in Docket Nos. CP75-104, CP75-81, and CP75-16, High Island Offshore System (HIOS) requested, among other things, additional authorization to transport natural gas for the account of Natural in an offshore pipeline system proposed to be constructed in offshore Texas and Louisiana. Further, it is said that to provide further transportation of its gas supplies between the northerly terminus of the HIOS system in Block 167 and its existing onshore system, Natural has formed a wholly-owned subsidiary which collectively with subsidiaries previously formed by Transcontinental Gas Pipe Line Corporation (Transco) and United Gas Pipe Line Company (United) would succeed in interest to the U-T offshore System (U-T) including U-T's pending application filed on October 6, 1975, in Docket No. CP76-118. It is indicated that U-T's pending application requested, among other things, authorization to construct a new pipeline facility between Block 167 and the onshore system of Transco including the performance of transportation services for Transco, United, and other companies desiring to have their gas supplies transported thereby.

Michigan Wisconsin states that by its amended application filed October 7, 1975, in the subject docket, it requested authorization to install and operate approximately 12 miles of 30-inch pipeline extending from the northerly terminus of the proposed HIOS pipeline in Block 167, West Cameron Area, offshore Louisiana, to the southerly terminus of the West Leg of its existing offshore pipeline system in Block 171, West Cameron Area, offshore Louisiana, and to perform an offshore and onshore transportation service for Texas Gas Transmission Corporation (Texas Gas). It is asserted that the amended application further requested authorization to provide conditionally a comparable transportation service for United and Transco in the event U-T did not receive timely certificate authorization to construct the facilities and render the transportation service for Transco and United as proposed in U-T's pending application. In view of Natural's participation in both the HIOS and U-T projects, Michigan Wisconsin proposes to provide a conditional natural gas transportation service for Natural to facilitate the onshore delivery of Natural's projected supplies. Michigan Wisconsin states that to effectuate the conditional service, it has entered into a transportation agreement with Natural, dated February 15, 1976, which would provide for the conditional transportation of gas for the acount of Natural from West Cameron Block 167 to North Tepetate, Louisiana.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 1, 1976, 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 apppropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Persons who have heretofore filed petitions to intervene, notices of intervention, or protests need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-14229 Filed 5-14-76;8:45 am]

[Docket No. E-9161]

MONONGAHELA POWER CO.

Order Accepting Settlement Agreement

MAY 10, 1976.

Before Commissioners: Richard L. Dunham, Chairman; John H. Holloman III, and James G. Watt.

This proceeding concerns an agreement between UGI Corporation (UGI) and the three affiliates of Allegheny Power Service Corporation (APSC)[1] for purchase by UGI of 50,000 kw of electric power and energy from the Harrison Steam Electric Generating Station jointly owned by the three APS' companies, for a six year term commencing January 1, 1975. On March 18, 1976, APSC on behalf of its affiliates filed an Offer of Settlement in the form of an amendment to the sales agreement executed by all parties and a motion for approval of the settlement. This settlement offer resolves reasonably all issues in this proceeding and will be accepted as of May 1, 1976.

The original purchase agreement, dated December 1, 1974, was tendered for filing on December 9, 1974. By order issued March 10, 1975, the Commission permitted the agreement to become effective January 1, 1975, and ordered an investigation under Section 206 of the Federal Power Act. As a settlement offer, APSC filed on March 18, 1976, an amendment to the purchase agreement executed by UGI and the APS companies. Notice of the settlement offer was issued on March 30, 1976, with comments due on or before April 14, 1976. The Commission Staff filed comments supporting the settlement offer on March 29, 1976.

The purchase agreement set a capacity charge of $3.95 per Kw and an energy charge of 110% of the actual energy cost of each Kwh delivered. The settlement

[1] Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (jointly the APS' Companies).

amendment to the purchase agreement modifies the energy charge by deleting the additional charge of 10% of the actual energy costs and substituting a fixed charge of $21,000 per month plus an amount equal to the net cost of energy purchased for delivery to UGI. The $21,000 fixed charge reflects a charge for administrative and general expense of $6,000 per month. The balance, $15,000, represents the amortized additional costs of burning oil rather than coal to meet environmental regulations over the six year term of the contract.

The settlement amendment limits the total amount of the fixed charge plus purchased energy costs to 10% of UGI's share of actual energy costs. The APS companies are also required to maintain a record of oil burned and power purchased and to adjust billings during the last year of the agreement if this $15,000 monthly charge for estimated oil expenses exceeds the costs actually incurred. The settlement provides for a 9.26% overall rate of return including a 12.00% return on common equity.

Upon its review, the Commission has concluded that the proposed settlement reflects a just and reasonable resolution of all issues in this proceeding and should be approved and made effective on May 1, 1976, without modification.

The Commission finds: Good cause has been shown to accept and approve the contract amendment tendered by APSC as an offer of settlement on March 18, 1976.

The Commission orders: (A) The offer of settlement and contract amendment tendered by APSC on March 18, 1976, and incorporated herein by reference is hereby accepted and approved.

(B) The tendered contract amendment is hereby accepted for filing and permitted to become effective on May 1, 1976.

(C) This order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its staff, APSC, or by any other party or person affected by this order in any proceeding now pending or hereinafter instituted by or against APSC or any other person or party.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.76-14217 Filed 5-14-76;8:45 am]

THE NATIONAL GAS SURVEY ADVISORY

Order Designating New Member Committee

MAY 7, 1976.

Before Commissioners: Richard L. Dunham, Chairman; John H. Holloman III, and James G. Watt.

The Federal Power Commission by Order issued September 15, 1975, announced a new program for the National Gas Survey Executive Advisory Committee and initial membership for this Committee.

1. Membership. New members to the Executive Advisory Committee as selected by the Chairman of the Commission with the approval of the Commission, are as follows:

John N. Nassikas, Cox, Langford & Brown, Washington, D.C.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-14209 Filed 5-15-76;8:45 am]

[Docket Nos. RP67-21 and RP68-17]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Notice of Filing of Report of Refunds

MAY 7, 1976.

Take notice that Natural Gas Pipeline Company of America (Natural), on April 21, 1976 tendered for filing a report of refund distribution that it has made to Mississippi River Transmission Corporation. The refund was made in compliance with the Commission Order Directing Disbursement and Flow-Through of Refunds issued March 8, 1976.

Natural states that it made a refund on March 19, 1976 in Docket Nos. RP67-21 and RP68-17.

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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before May 28, 1976. 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.76-14210 Filed 5-14-76;8:45 am]

[Docket Nos. RI74-56; RI74-57]

PHILLIPS PETROLEUM CO.

Order Denying Petition for Special Relief and Directing Disbursement and Flow Through of Refunds

MAY 10, 1976.

Before Commissioners: Richard L. Dunham, Chairman; John H. Holloman III, and James G. Watt.

On September 26, 1973 and September 27, 1973, Phillips Petroleum Company (Phillips) and Kerr-McGee Corporation (Kerr-McGee), respectively, filed notices of proposed rate increases to the ceiling provided in Opinion No. 598[1] for new gas sales with respect to the sale of flash vapor gas[2] under Phillips FPC Gas Rate Schedule No. 411 and Kerr-McGee's FPC Gas Rate Schedule No. 85. In an order issued on October 26, 1973, the Commission suspended these rate increases insofar as the proposed rates exceeded the flowing gas ceiling prescribed in Opinion No. 598, pending a determination as to the appropriate vintage of the gas involved. In that order, the Commission also required Phillips and Kerr-McGee to submit briefs explaining either the contractual justification for the proposed rates in accordance with the vintaging policy set forth in Opinion No. 598, or the economic justification for the proposed rates pursuant to the special relief provisions of Section 2.77 of the Commission's General Policy and Interpretations.

Subsequently, Phillips and Kerr-McGee filed rate increases, as shown in the attached appendix, proposing new gas ceiling rates prescribed by Opinion No. 598 and 699-H with respect to the flash vapor gas sold pursuant to the aforementioned rate schedules. Phillips and Kerr-McGee contend that the flash vapor gas had not previously been sold in interstate commerce prior to January 1, 1973 and should be considered "new" gas. The subject flash vapor gas is produced from acreage dedicated to a 1965 contract with Michigan Wisconsin Pipe Line Company (Michigan-Wisconsin) but is sold pursuant to a contract amendment dated August 24, 1973.

The basic contracts dated March 5, 1965 commit to the interstate market all gas from certain depths in the Hog Bayou Field, Cameron Parish, Louisiana. Accordingly, the flash vapor gas was always dedicated to the original contracts and cannot be considered "new" gas for contract vintaging purposes. As such, the sales of flash vapor gas are subject to the flowing gas ceilings under Opinion No. 598 and Opinion No. 749.

We now turn to the economic considerations advanced by Phillips and Kerr-McGee. On November 23, 1973, Phillips and Kerr-McGee filed a joint brief stating that the flash vapor gas could not be economically recovered and sold under the basic contracts because installation of a low pressure separation system was required. The estimated cost of such a recovery system and compression facilities was in excess of $99,000. Phillips and Kerr-McGee argue that the contract amendment with Michigan Wisconsin, providing for a higher rate, has made possible the recovery and sale of such flash vapor gas which would otherwise be vented, and that special relief pursuant to Section 2.77 is appropriate.

Based on the amount of gas involved, approximately 400 Mcf per day, Phillips and Kerr-McGee contend that the total amount in controversy will not enable them to recoup their investment within any reasonable period. Phillips and Kerr-McGee, however, overlook the fact that the flash vapor gas will be produced whether or not the recovery and compression system is installed. This flash vapor gas is produced in association with crude oil, condensate and casinghead gas produced on this previously committed acreage. Applying the flowing gas ceiling

[1] *Area Rate Proceeding, et al. (Southern Louisiana Area)*, Docket Nos. AR61-2, *et al.*, AR69-1 (Issued July 16, 1971).

[2] The gas is stock tank and low pressure separation vapor gas resulting after the separation of crude oil and condensate.

of 23.75 cents per Mcf, established in Opinion No. 598 for gas sales under contracts dated prior to October 1, 1968, to the flash vapor gas sales results in annual revenues of $34,675 which permits recoupment of investment, exclusive of operating expenses, in less than three years. Since this is a reasonable period in which to recoup the investment, there is not sufficient need to justify the granting of special relief.

In view of the foregoing, we shall require Phillips and Kerr-McGee to refund all amounts collected in the above-entitled proceedings in excess of the applicable flowing gas ceilings under Opinion Nos. 598 and 749.

Michigan Wisconsin is the purchaser under the subject contracts. In accordance with Section 15.3 of the general terms and conditions of its FPC Gas Tariff, Michigan Wisconsin shall credit the jurisdictional portion of the refunds received to its unrecovered purchased gas cost account.

The Commission orders: (A) The request by Phillips and Kerr-McGee in Docket Nos. RI74–56 and RI74–57 for special relief is denied.

(B) On or before May 14, 1976, Phillips and Kerr-McGee shall each (1) file three copies of a refund report showing all amounts collected in the above-entitled proceedings in excess of the flowing gas ceiling under Opinion No. 598 for the period prior to January 1, 1976, and the ceiling prescribed in Opinion No. 749 for the period on and after January 1, 1976, together with interest thereon at 7 percent per annum from the date of collection to the date of the refund report, subject to the limitations in Section 154.102(f) of the Commission's Regulations, (2) disburse the refunds to the purchaser, Michigan Wisconsin, and (3) file a copy of a release from Michigan Wisconsin with respect to such refunds.

(C) Michigan Wisconsin shall credit the jurisdictional portion of the refunds received to its unrecovered purchased gas cost Account No. 191, shall notify the Commission's Secretary thereof and shall send a copy of the notification to each customer and interested state regulatory commission.

(D) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX

Filing date	Rate schedule and supplemental designation	Effective date
Jan. 2, 1974	Phillips rate schedule No. 411, supp. No. 8 [1]	Jan. 1, 1974
Jan. 21, 1974	Kerr-McGee's rate schedule No. 85, supp. No. 9 [1]	Do.
Jan. 13, 1975	Phillips rate schedule No. 411, supp. No. 9	June 21, 1974
		Jan. 1, 1975
Jan. 28, 1975	Kerr-McGee's rate schedule No. 85, supp. No. 12	Apr. 3, 1975
Nov. 18, 1975	Phillips rate schedule No. 411, supp. No. 10	Jan. 1, 1976
Dec. 4, 1975	Kerr-McGee's rate schedule No. 85, supp. No. 13	Do.

[1] Also covers proposed rate increases other than flash vapor gas.

[FR Doc.76–14230 Filed 5–14–76;8:45 am]

[Docket No. CP76–349]

TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF TENNECO INC.

Notice of Application

MAY 7, 1976.

Take notice that on April 26, 1976, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP76–349 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 facilities onshore and offshore Louisiana as part of Applicants' existing Blue Water Project, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants propose to construct and operate (1) 40.7 miles of 36-inch pipeline looping the East Leg of the Blue Water Project between the Cocodrie compressor station in Terrebonne Parish, Louisiana, and Block 144, Ship Shoal Area, offshore Louisiana, and (2) separation, dehydration, and related facilities at the Cocodrie compressor station. The estimated project cost is $49,623,000, of which Tennessee would pay $26,763,600 and Columbia Gulf would pay $22,859,400. Columbia Gulf would finance its part with current working funds and Tennessee would finance its part with general funds and/or revolving credit. The application states that the direct costs of and the additional capacity provided by the project would be shared equally.

Applicants state that the proposed facilities would make available 340,200 Mcf per day of additional capacity in the Blue Water Project. When added to presently available capacity, including that proposed in Docket No. CP75–262,[1] of 1,623,800 Mcf per day, the Blue Water Project would have a total design capacity of 1,964,000 Mcf per day, of which 1,187,400 Mcf per day would be available to Tennessee and 776,600 Mcf per day would be available to Columbia Gulf.

[1] Notice published February 24, 1976 (41 FR 8124).

The application states that Tennessee would use its 170,100 Mcf per day of additional capacity to accommodate an expected increase in daily deliverability from existing reserves dedicated to Tennessee and attached to the Blue Water Project, to accommodate initial daily deliverability anticipated from new gas reserves to be attached to the Blue Water Project commencing in late 1976, and to accommodate gas under pending and proposed exchange and transportation arrangements. It is said that Tennessee anticipates daily deliverability from existing reserves attached to the Blue Water Project of 694,300 Mcf per day in 1976–77 and 555,900 Mcf per day in 1977–78 and from new reserves to be attached to the Blue Water Project of 205,700 Mcf per day in 1976–77 and 354,700 Mcf per day in 1977–78. Applicants state that these volumes and the exchange and transportation gas amount to total daily volumes available to Tennessee in the Blue Water Project of 1,190,000 Mcf per day during the 1976–77 winter season and 1,200,600 Mcf per day during the 1977–78 winter season. It is also noted that Tennessee has a reasonable expectation of attaching additional reserves to be developed in the area.

The application states that Columbia Gulf expects to utilize fully its 170,100 Mcf per day of additional capacity for the transportation of gas which Columbia Gas Transmission Corporation has acquired the right to purchase or which Columbia Gulf has agreed to transport for others. It is noted that an additional 133,000 Mcf of gas per day would be received into the Blue Water Project at Block 245, Vermilion Area, from facilities extending southwest from that location. Further, it is said that Columbia Gulf would also receive into the Blue Water Project additional volumes of gas as follows: (1) 10,000 Mcf per day from the area of Block 255, Vermilion Area, (2) 105,000 Mcf per day from the area of Block 250, Eugene Island Area, and (3) 44,000 Mcf per day from the area of Block 198, Ship Shoal Area, of which 30,000 Mcf are gas of Texas Gas Transmission Corporation which is negotiating with Columbia Gulf for transportation. Existing receipts of gas by Columbia Gulf into the Blue Water Project are said to be 476,000 Mcf per day.

Applicants state that absent the facilities proposed in the instant application Applicants would have insufficient capacity in the Blue Water Project to accommodate the daily volumes of gas which are expected to be available from reserves in the area which are already dedicated and/or authorized to be delivered to Applicants.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 26, 1976, 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 Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-14216 Filed 5-14-76;8:45 am]

[Docket No. RP76-99]

TENNESSEE NATURAL GAS LINES, INC.

Notice of Proposed Changes in FPC Gas Tariff

MAY 7, 1976.

Take notice that on April 30, 1976, Tennessee Natural Gas Lines, Inc. (Tennessee Natural) tendered for filing proposed changes in its FPC Gas Tariff, consisting of the following tariff sheets: Second Revised Sheet No. 1, First Revised Sheet No. 2, First Revised Sheet No. 4-A, First Revised Sheet No. 4-B, ------ Revised Sheet No. PGA-1 and ------ Revised Sheet No. PGA-2.

Tennessee Natural states that the proposed changes would increase revenues from jurisdictional sales by $1,005,503 based upon the twelve month period ending December 31, 1975, as adjusted, exclusive of increases in purchased gas costs otherwise be recovered through the purchased gas adjustment clause provisions of Tennessee Natural's tariff. Tennesee Natural requests an effective date of June 1, 1976.

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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1976. 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.76-14212 Filed 5-14-76;8:45 am]

[Docket Nos. RP73-3 (PGA76-2), RP73-69 and RP72-99 (EPGA76-3)]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Order Accepting for Filing and Suspending Proposed Purchased Gas Cost Adjustment, and Deferring Hearing Procedures With Respect to Certain Small Producer Purchases

APRIL 30, 1976.

Before Commissioners: John H. Holloman III, Acting Chairman; Don S. Smith, and James G. Watt.

On March 31, 1976, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing two sets of revised tariff sheets [1] to become effective May 1, 1976, and May 2, 1976, respectively, which reflect (1) an increase of 1.6¢ per Mcf to track increased gas costs pursuant to Transco's PGA clause, (2) an increase of 2.0¢ per Mcf to recover costs incurred by Transco during the 1973 Price Freeze and (3) a decrease of 1.4¢ per Mcf pursuant to its Emergency Purchase Gas Adjustment Clause (EPGAC). Transco states that the tariff sheets proposed to be made effective May 1, 1976, reflect the exclusion of that portion of small producer and 60 day emergency purchases in excess of the rate levels prescribed in Opinion Nos. 699-H and 742 respectively; whereas, those sheets proposed to be made effective as of May 2, 1976, subject to refund, reflect in addition to the above-described adjustments, an increase of 0.2¢ per Mcf to track pursuant Transco's PGA clause the portion of purchase gas costs in excess of the rate levels prescribed in Opinion Nos. 699-H and 742. Certain issues are raised by Transco's filing which may require development in an evidentiary hearing. Transco's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unlawful or unduly discriminatory. Accordingly, Transco's revised tariff sheets reflecting the inclusion of small producer and 60 day emergency purchases in excess of the prescribed rate levels will be accepted for filing, suspended for one day and permitted to become effective May 2, 1976, subject to refund. Those revised tariff sheets which reflect the exclusion of purchase gas costs in excess of the prescribed rate levels will be accepted for filing to become effective May 1, 1976, as hereinafter conditioned.

Public notice of Transco's filing was issued on April 8, 1976, with protests or petitions to intervene due on or before April 21, 1976.

With regard to the issue of the small producer purchases described above other than those small producer purchases made pursuant to the Commission's emergency sales regulations, we shall defer establishing a hearing schedule for this matter pending Commission action on rehearing of Opinion No. 742 [2] and the proposed rulemaking in Docket No. RP-76-5.[3]

Notwithstanding our deferral of a procedural schedule on the small producer issue, Transco shall file within 15 days of the date of this order, a list of the small producers, other than small producers making emergency sales, reflected in the instant filing in excess of the "130% formula" rates.

With regard to the 60-day emergency purchases the Commission noted in Opinion No. 699-B [4] that a pipeline would be entitled to include in its purchased gas costs a rate for such purchases "which a reasonably prudent pipeline purchaser would pay for gas under the same or similar circumstances." To assist in Commission review of the 60-day emergency purchases and in determining whether a public hearing is necessary thereon, Transco will be required to file and serve on all its customers and interested State commissions within thirty days of the issuance hereof the following information: (1) the pipeline's need for the gas, (2) the availability of other gas supplies, (3) the amount of gas purchased under each 60-day transaction, (4) a comparison of each emergency purchase price with appropriate market prices in the same or nearby areas, and (5) the relationship between the purchaser and the seller. Upon receipt of this information, it will be duly noticed for receipt of comments with respect thereto. If upon review of the information filed and any comments related thereto we find the criterion set forth in Opinion No. 699-B has been met the Commission shall terminate the proceedings and relieve Transco of its refund obligation. Should our review of the information and any comments related thereto indicate that further proceedings are required as to any or all of the 60-day emergency purchases, they would be established by subsequent order. Our review of Transco's claimed increased purchased gas cost indicates that they comply with the standards set forth in Docket No. R-406 with the exception of those claimed increased costs associated with that portion of small producer and emergency purchases in excess of the rate levels prescribed by the "130% formula" and Opinion 699-H, as applicable. Accordingly, Transco's tariff sheets

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[1] Twenty-Sixth Revised Sheet No. 5 and Twenty-First Revised Sheet No. 6 to be effective May 1, 1976, without suspension. Twenty-Seventh Revised Sheet No. 5 and Twenty-Second Revised Sheet No. 6 to be effective May 2, 1976, subject to refund.

[2] ------ FPC ------ issued August 28, 1975, in Docket No. R-389.

[3] Small Producers, Docket No. RM76-5, Notice of Proposed Rulemaking, issued August 28, 1975.

[4] ------ FPR ------ issued September 9, 1975, in Docket No. R-389-B.

reflecting the elimination of those costs discussed above will be accepted for filing to become effective May 1, 1976.

In addition to the normal tracking adjustments pursuant to Transco's PGA and EPGA clauses, Transco has included an increase of 2.0¢ per Mcf [1] to recover costs incurred by Transco during the 1973 Price Freeze. In its April 5, 1974 order approving the settlement agreement, the Commission deferred to the jurisdiction of the Cost of Living Council. Transco's application for approval by the Cost of Living Council concluded with the dismissal of court review proceedings as provided in a Stipulation between Transco and the Department of the Treasury, approved October 17, 1975, by Presiding United States District Court Judge Joseph C. Waddy, which stated that "because this action is moot, the implementation of Article IV of the Transco Settlement Agreement is subject to the exclusive jurisdiction of the Federal Power Commission under the Natural Gas Act * * *".

On April 21, 1976, the Public Service Commission of New York (New York), an intervenor in the proceedings in Docket No. RP73-69, filed a protest asking that the Commission reject the portion of Transco's filing which "* * * purports to provide for recovery over a six months period of the increased revenues which Transco was required to forego as a result of the wage-price freeze in effect between June 13, 1973 and August 12, 1973, * * *" or "to suspend this part of the proposed increase for such period of time as may be necessary for the Commission to receive and consider briefs from all interested parties on the legal and factual issues involved." New York argues that Transco's filing is an attempt to now recoup from its customers by a temporary surcharge the increased revenues foregone during the freeze. The stipulation dismissing as moot the judicial review of the orders of the Cost of Living Council and the Office of Economic Stabilization, New York states, contained authority relating solely to the court's jurisdiction to consider actions of the type brought by Transco. The Cost of Living Council and the Office of Economic Stabilization, rather than this Commission, were the governmental bodies with primary jurisdiction over the legal and policy questions relating to the Presidential freeze order. The fact that Transco could not secure direct judicial review of the declaratory orders of those bodies, New York contends, does not eliminate their significance or permit the Commission to ignore them in determining whether to permit the increase requested by Transco.

New York has raised issues related to the recovery of the subject costs which require additional development before a decision can be reached. Accordingly, to assist the Commission in its decision in this matter the parties shall be required to submit briefs on the subject. Initial Briefs shall be filed by all parties on or before May 21, 1976, with reply briefs due on or before June 4, 1976. Pending resolution of this issue, we shall suspend Transco's rates which may contain such costs. We note that Transco may also have included costs related to the Price Freeze issue in the tariff sheets proposed to become effective as of May 1, 1976. Therefore, Transco will be required to file revised tariff sheets reflecting the elimination of such costs from those rates proposed to be effective as of May 1, 1976.

The Commission finds: (1) It is necessary and appropriate to aid in the enforcement of the Natural Gas Act that hearing procedures on the issue of small producer purchases other than those small producer purchases made pursuant to the Commission's 60-day emergency sales regulation be deferred pending further Commission order, and that Twenty-Seventh Revised Sheet No. 5 and Twenty-Second Revised Sheet No. 6 be accepted for filing and suspended for one day, to become effective May 2, 1976, subject to refund.

(2) Transco's Twenty-Sixth Revised Sheet No. 5 and Twenty-First Revised Sheet No. 6 should be accepted for filing to become effective May 1, 1976, as hereinafter ordered and conditioned.

The Commission orders: (A) Transco's Twenty-Seventh Revised Sheet No. 5 and Twenty-Second Revised Sheet No. 6 are hereby accepted for filing and suspended for one day until May 2, 1976, when they shall become effective subject to refund.

(B) Transco's Twenty-Sixth Revised Sheet No. 5 and Twenty-First Revised Sheet No. 6 are hereby accepted for filing to become effective May 1, 1976, subject to the condition that within 15 days of the date of issuance of this order, Transco file revised tariff sheets reflecting the elimination of costs related to the Price Freeze issue.

(C) Initial Briefs shall be filed by all parties on the issues related to the recovery of the Price Freeze costs on or before May 21, 1976. Reply briefs shall be filed on or before June 4, 1976.

(D) The hearing procedures on the issue of small producer purchases, other than small producer purchases made pursuant to the Commission's 60-day emeregncy sales regulation, in excess of the rate levels prescribed by Opinion No. 742, are hereby deferred pending further Commission order.

(E) Within 15 days of the date of this order, Transco shall file with the Commission a list, including addresses, of the small producers other than small producers making 60-day emergency sales, from whom it purchased at rates in excess of the rate levels prescribed by Opinion No. 742.

(F) To assist in Commission review of the 60-day emergency purchases and in determining whether a public hearing is necessary thereon, Transco shall file and serve on all its customers and interested state commissions within thirty days of the issuance hereof the following information: (1) the pipeline's need for the gas, (2) the availability of other gas supplies, (3) the amount of gas purchased under each 60-day transaction, (4) a comparison of each emergency purchase price with appropriate market prices in the same or nearby areas, and (5) the relationship between the purchaser and the seller. Upon receipt of this information, it will be duly noticed for receipt of comments with respect thereto. Should our review indicate that the information filed and the comments related thereto meet the criterion set forth in Opinion No. 699-B, we shall terminate the proceedings and relieve Transco of its refund obligation. Should our review of the information and any comments related thereto indicate that further proceedings are required as to any or all of the 60-day emergency purchases they would be established by subsequent order.

(G) The Secretary shall cause prompt publication of this order to be issued in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.76-14214 Filed 5-14-76;8:45 am]

[1] Provided by Article IV of the Settlement Agreement in Docket No. RP73-69, approved by order issued April 5, 1974.

[Docket Nos. CP74-94, CI76-479]

UNITED GAS PIPE LINE CO.

Order Conditionally Granting Motion for Consolidation

MAY 10, 1976.

Before Commissioners: Richard L. Dunham, Chairman; John H. Holloman III, and James G. Watt.

On April 5, 1976, Basin Petroleum Corp. (Basin), a respondent in Docket No. CP74-94, filed an application in Docket No. CI76-479 seeking authorization under Section 7(b) of the Natural Gas Act to abandon a sale of natural gas under its small producer certificate in Docket No. CS71-1119 to Texas Eastern Transmission Corporation (Texas Eastern) under a contract dated November 18, 1975, together with a motion asking the Commission to consolidate the abandonment application with the proceeding which is pending in Docket No. CP74-94. The Commission Staff, on April 19, 1976, filed an answer opposing Basin's motion to consolidate.

In Opinion No. 740 issued in Docket No. CP74-94 on August 20, 1975, the Commission found that United Gas Pipe Line Company (United) was entitled to the natural gas produced from or attributable to the Butler B lease, McCaskill Field, Karnes County, Texas. But the record at that time was insufficient for the purpose of determining the amounts of United's volumetric entitlements and, consequently, the Commission remanded the proceeding to an Administrative Law Judge to make such determinations, among other matters, in conjunction with a settlement proposal which was then and is still pending before the judge.

On September 24, 1975, Basin among others, filed a motion in Docket No. CP74-94, asserting that the settlement

proposal therein contemplated the sale and delivery to United of the natural gas produced from five wells, including Basin's No. 1 Marie Fruge Well (the Fruge Well), Northwest Chalkley Field, Calcasieu Parish, Louisiana; that the Fruge Well was not being operated and, consequently, the underlying oil and gas leases were in danger of expiration for failure to produce; and that Basin, among others, was willing to sell and deliver the gas produced from the Fruge Well to United under certain conditions. As set out in Opinion No. 740–A issued in Docket No. CP74–94 on November 7, 1975, the conditions were not satisfactory to the Commission which, in turn, suggested different principles and, in any event, neither granted nor denied the motion since United withdrew its support from the settlement proposal.

Thereafter, in order to preserve the leases underlying the Fruge Well and, in turn, to preserve the Fruge Well for the settlement proposal in Docket No. CP74–94, if that proposal ultimately is approved, Basin, on March 24, 1976, commenced a sale and delivery of the gas produced from the Fruge Well to Texas Eastern under a gas purchase agreement dated November 18, 1975 (but executed on or about March 19, 1976), which provides, among other matters,

> * * * [S]hould the Federal Power Commission grant abandonment of the sales by Seller to Buyer of volumes of gas covered hereunder as part of Seller's settlement agreement in Docket No. CP74–94, then, in such case, this Agreement may be terminated by Seller or Buyer upon thirty days written notice to such other party.

The Staff opposes Basin's motion "on the grounds that the consolidation would delay and confuse the existing McCombs proceeding and prejudice the parties thereto." The McCombs proceeding has been pending some two and one-half years, according to the Staff, and during this period the disputed gas has been and still is being sold in intrastate commerce, and the underlying reserves are no longer sufficient to satisfy both current delivery and repayment obligations. "Under these conditions, any further delay in the ultimate resolution of the McCombs proceeding occasioned [sic] by the need to address additional issues will clearly prejudice United." Furthermore, according to the Staff the settlement proposal is inadequate, United has withdrawn its support and, consequently, it is unlikely that the settlement will be found to be in the public interest. And finally, the Staff argues, the McCombs proceeding is past the hearing stage and initial briefs are due for filing by May 11, 1976; and possible further hearings necessitated by the consolidation would prejudice United.

We do not agree that consolidation might delay the outcome of Docket No. CP74–94. Basin has been an active participant in that proceeding since its inception and, consequently, it is unlikely to assert a claim relating to Docket No. CI76–479 which might cause such a delay. And since Texas Eastern has entered into an agreement which would allow Basin to terminate its sale to Texas Eastern in the event that Basin needs the Fruge Well gas to satisfy a settlement of Docket No. CP74–94, it is also unlikely that Texas Eastern would assert a claim which might cause such a delay.

On the other hand, we would think that the same considerations that would support a finding that the settlement proposal is in the public interest, if that should be the Administrative Law Judge's decision, would also support a finding that abandonment of Basin's sale to Texas Eastern is in the public interest.[1] In other words, the contractual provision authorizing Basin to terminate the sale to Texas Eastern would be triggered only if the settlement proposal is found to be in the public interest, in which case Basin would ask for a finding that abandonment of that sale is also in the public interest, and, conversely, that contractual provision would not be triggered if the settlement proposal is not found to be in the public interest, in which case Basin's abandonment application in Docket No. CI76–479 would become moot. In any event, we will, in our discretion, allow the consolidation in the light of the common questions of law and fact which are involved in both dockets; but since the McCombs proceeding is past the hearing stage, according to the Staff, we will allow the consolidation only on the condition that Basin agrees to accept the record as it stands for the purpose of determining whether the present or future public convenience or necessity permit the proposed abandonment.

The Commission orders: (A) The motion of Basin Petroleum Corp. filed August 5, 1976, to consolidate Docket No. CI76–479 with Docket No. CP74–94 for the purpose of hearing, if any, and decision, is granted on the condition that Basin Petroleum Corp. agrees to accept the record in Docket No. CP74–94 as it stands for the purpose of determining in Docket No. CI76–479 whether the present or future public convenience or necessity permit the proposed abandonment; otherwise, the motion is denied.

(B) Basin Petroleum Corp. shall signify its acceptance or rejection of the foregoing condition by letter mailed to the Secretary and all persons on the service lists in both dockets within 15 days of the date of this order.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.76–14228 Filed 5–14–76;8:45 am]

[1] If Docket No. CI76–479 is not consolidated with Docket No. CP74–94 for the purpose of hearing and decision, it would be possible for the Administrative Law Judge to approve the settlement proposal in the latter docket without assurance that Basin would be able to comply with its obligations thereunder by abandoning its sale to Texas Eastern. We would think that Basin's physical and legal ability to commence an immediate sale under the settlement proposal should be considered among the public interest factors pertaining to the settlement proposal.

[Docket No. ER76–636]

UNITED ILLUMINATING CO.

Notice of Termination

MAY 7, 1976.

Take notice that on April 26, 1976, the United Illuminating Company (United) tendered for filing a notice of the termination of the initial rate schedule filed by United on December 15, 1975, in Docket No. ER76–361. United states that service to North Attleborough Electric Department (NAED) was terminated on April 8, 1976, pursuant to the terms agreed upon in Docket No. ER76–361. United requests an effective date of April 8, 1976 for this termination.

United states that a copy of this filing was mailed to NAED.

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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1976. 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 intevene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76–14218 Filed 5–14–76;8:45 am]

[Docket No. ER76–637]

UNITED ILLUMINATING CO.

Notice of Termination

MAY 7, 1976.

Take notice that on April 26, 1976 the United Illuminating Company (United) tendered for filing a notice of the termination of the initial rate schedule filed by United on December 5, 1975, in Docket No. ER76–362, United states that service to the Littleton Electric Department (Littleton) was terminated on April 8, 1976, pursuant to the terms agreed upon in Docket No. ER76–362. United requests an effective date of April 8, 1976, for this termination.

United states that a copy of this filing was mailed to Littleton.

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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1976. 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 pe-

tition to intevene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-14222 Filed 5-14-76;8:45 am]

[Docket No. ER76-662]

UPPER PENINSULA POWER CO.

Notice of Submission of Cost Support for Rates Subsequent to May 31, 1976

MAY 7, 1976.

Take notice that on April 30, 1976 Upper Peninsula Power Company (UPPCO) submitted cost support information ordered by the Commission in its letter of October 30, 1974 with respect to the proposed energy charges for the period subsequent to May 31, 1976.

UPPCO requests that the Commission permit this increase in rates to become effective as of June 1, 1975, the beginning of the current contract year.

UPPCO states that copies of the filing were served upon Escanaba and upon the Michigan Public Service Commission.

Any person desiring to be heard of to make any protest with reference to the subject matter of this notice 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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1976. 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 the filing referred to herein are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-14220 Filed 5-14-76;8:45 am]

[Docket No. E-9198]

WISCONSIN POWER AND LIGHT CO.

Notice of Compliance Filing

MAY 7, 1976.

Take Notice that on April 29, 1976, Wisconsin Power and Light Company (WPL) tendered for filing revised W-2 (Resale Service to Rural Cooperatives) and W-3 (Resale Service) Rate Schedules in compliance with paragraph (B) of the FPC Order dated April 12, 1976, in this Docket. WPL states that these revised schedules reflect the rates stated in the Settlement Agreement approved by the FPC Order dated April 12, 1976.

WPL states that a copy of the filing and the revised rate schedules have been provided to all W-2 and W-3 customers of WPL.

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 Paragraph 1.8 and Paragraph 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1976. 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 persons 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.76-14213 Filed 5-14-76;8:45 am]

[Docket No. ER76-151]

DELMARVA POWER AND LIGHT CO.

Further Extension of Time and Postponement of Hearing

MAY 11, 1976.

On April 26, 1976, the Virginia State Corporation Commission filed a motion to extend the procedural dates fixed by order issued October 31, 1975, as most recently modified by notice issued March 4, 1976, in the above-designated proceeding. On May 3, 1976, Counsel for the Public Service Commission, Delaware, filed an objection recommending denial of the motion, but if granted should be for a reasonable time. By letter dated May 4, 1976 Delaware Power and Light Company stated that they did not object to a reasonable extension.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Staff Testimony, June 15, 1976.
Service of Intervenor Testimony, June 29, 1976.
Service of Company Rebuttal, July 13, 1976.
Hearing, July 27, 1976 (10:00 A.M., EDT).

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-14289 Filed 5-14-76;8:45 am]

[Project No. 2746]

NEBRASKA PUBLIC POWER DISTRICT

Application for Amendment of Preliminary Permit

MAY 11, 1976.

Public notice is hereby given that an application was filed on March 17, 1976, under the Federal Power Act (16 U.S.C. §§ 791a-825r), by Nebraska Public Power District (Correspondence to: Mr. Durwood W. Hill, General Manager, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601, and Mr. Gene D. Watson, Esquire, General Counsel, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601, and a copy to: Mr. John C. Mason, Esquire, and Mr. Thomas C. Watson, Esquire, Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, D.C. 20036) for approval of certain amendments to the preliminary permit for the Boyd County Pumped Storage Project No. 2746. The project would be located on the Missouri River, a navigable waterway, in Boyd County, Nebraska.

The preliminary permit for Project No. 2746 was issued on March 10, 1975, effective March 1, 1975, for an 18-month period ending August 31, 1976. Nebraska Public Power District (Permittee) requests that the present period of the permit be extended for 18 months to February 28, 1978. Permittee states that the extended period is required for it to complete the necessary studies and investigations for the preparation of an application for license.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 25, 1976, file with the Federal Power Commission, 825 N. Capitol St., N.E., 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 the proceeding. Any person wishing to become 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.76-14290 Filed 5-14-76;8:45 am]

[Docket Nos. RP72-74 and RP74-6]

SOUTHERN NATURAL GAS CO. (SOUTH CAROLINA ELECTRIC & GAS CO.)

Petition for Extraordinary Relief

MAY 11, 1976.

Take Notice that on April 12, 1976, South Carolina Electric & Gas Company (Petitioner), Post Office Box 764, Columbia, South Carolina 29202, filed in Docket Nos. RP72-74 and RP74-6 a petition pursuant to Section 5 of the Natural Gas Act, and Section 2.78 of the Commission's General Policy and Interpretations (18 CFR 2.78) for temporary extraordinary relief under the Index of Requirements of Southern Natural Gas Company's (Southern's) existing interim curtailment plan.

Petitioner states that it presently has a new LNG storage plant at Charleston, South Carolina, which will be ready to take gas from Southern on June 1, 1976. Under Southern's existing seven-step interim curtailment plan which was promulgated by Opinion No. 747 (issued November 20, 1975), Priority No. 2 included gas for "pipeline customer storage injection requirements". As a result, Petitioner indicates that other customers on the Southern system such as Alabama Gas Company, and Atlanta Gas Light Company among others have existing LNG plants which have been taking gas in Priority No. 2 under the interim cur-

tailment plan, as is reflected in Southern's Index of Requirements.

Petitioner contends that since it has not received gas during the Index of Requirements base period, it reflects no gas in Priority No. 2 for Petitioner for storage injection purposes. Additionally, Petitioner states that the Auditing Committee has not met to recommend appropriate changes in the Index of Requirements, and therefore since such recommendation would not be made before June 1, 1976, Petitioner would not without extraordinary relief receive an additional allocation of natural gas to reflect storage requirements in Priority No. 2 by June 1, 1976. Therefore, Petitioner contends that it has the same right to receive natural gas from Southern in Priority No. 2 for its LNG requirements as do others of Southern's customers, and to deny such extraordinary and permanent relief to Petitioner would violate Section 4(b) of the Natural Gas Act which prohibits undue discrimination.

In support of its Petition and in compliance with the provisions of Section 2.78(b) Petitioner states that the daily requirements in Priority 2 requested for Petitioner's LNG processing plant are 6,200 Mcf per day, and on a monthly basis 186,000 Mcf. Petitioner presently purchases gas from Southern (its sole supplier) under a firm contract for 165,000 Mcf per day. Petitioner also states that the duration of the requested relief would be permanent since petitioner is seeking the same treatment as is afforded Southern's other customers with LNG processing facilities. Furthermore, Petitioner states that all requested volumes would be utilized for use in its LNG facilities subject to Southern's existing interim curtailment plan. In terms of fuel conservation activities Petitioner indicates that the LNG facility is operated primarily on electric energy. Finally, Petitioner states that the gas produced by its LNG peak shaving facility will be for high priority uses as contemplated by Order No. 467-B and Opinion No. 747.

In the alternative, Petitioner states that the instant petition be viewed as an anticipatory request that Southern be required to distribute gas in such a manner so as not to discriminate against one of its customers. Petitioner contends that under such a procedure it would not be necessary to comply with the requirements of Section 2.78(b) of the Commission's Rules—Part 2—General Policy and Interpretations.

It appears reasonable and consistent with the public interest in this case to provide a shortened period for the filing of petitions to intervene and protests. Therefore, any person desiring to be heard or to make any protest with reference to said petition should within two weeks from the date of issuance of this notice 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.76-14291 Filed 5-14-76;8:45 am]

[Docket No. ES76-52]

UTAH POWER & LIGHT CO.

Application

MAY 11, 1976.

Take notice that on April 30, 1976, Utah Power & Light Company (Applicant) filed an application with the Federal Power Commission seeking an order pursuant to Section 204 of the Federal Power Act authorizing the issuance and sale of not more than 1,000,000 additional shares of Common Stock.

The New Stock is proposed to be offered pursuant to competitive bidding procedures on or about June 23, 1976.

The proceeds from the sale of the New Stock will be applied to Applicant's construction program and the repayment of short-term indebtedness incurred for construction purposes.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 1, 1976, 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.76-14292 Filed 5-14-76;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

AUTOMOBILES FROM BELGIUM

Notice of Tentative Discontinuance of Antidumping Investigation

On July 8, 1975, information was received in proper form alleging that automobiles from Belgium were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of August 11, 1975 (40 FR 33755)

The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States. However, the evidence on record, as set forth in the proceeding notice, was such that the Secretary of the Treasury concluded that substantial doubt existed as to whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. Accordingly, the United States International Trade Commission was advised of such doubt pursuant to section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)).

On September 8, 1975, the United States International Trade Commission notified the Secretary of the Treasury that, on the basis of its inquiry it did not determine that there was no reasonable indication that 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 automobiles from Belgium. Accordingly, the Customs investigation in this proceeding was not terminated.

During the course of the investigation, the Secretary determined that a tentative determination could not reasonably be made within the normal 6-month investigatory period. Accordingly, the investigatory period in this case was extended to no more than 9 months from the date of publication of the "Antidumping Proceeding Notice" and a "Notice of Extension of Investigatory Period" to that effect was published in the FEDERAL REGISTER of January 23, 1976 (41 FR 3490).

TENTATIVE DISCONTINUANCE

On the basis of the information developed in the Customs investigation and for the reasons noted below, I hereby announced a tentative discontinuance of the antidumping investigation concerning automobiles from Belgium. This tentative discontinuance is made in accordance with the provisions of section 153.15(a), Customs Regulations (19 CFR 153.15(a)), which provides that a tentative discontinuance may be published "whenever the Secretary concludes that there are other circumstances on the basis of which it may no longer be appropriate to continue an antidumping investigation." The special considerations set forth below reflect the unique circumstances found to exist in the automobile industry, during the investigative period, and are indicative of why it has been determined that the usual procedures would be modified in this investigation.

STATEMENT OF CONDITIONS ON WHICH THIS TENTATIVE DISCONTINUANCE IS BASED

The conditions and bases for the above tentative discontinuance are as follows:

a. *Scope of the investigation.* The Customs investigation indicates that virtually all imports of the subject mer-

chandise from Belgium were manufactured and exported by General Motors Continental, N.V., Saab Europe, N.V., and Volvo Europe, N.V. Therefore, the investigation was limited to these three manufacturers.

b. *Bases of comparison.* For purposes of this tentative discontinuance, the proper basis of comparison is between the exporter's sales price and the home market price of such or similar merchandise. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used since the information gathered indicates that all of the subject merchandise was sold or agreed to be sold in the United States before or after the time of importation, by or for the account of the exporter. Home market price, as defined in section 153.3, Customs Regulations (19 CFR 153.3), was used since such or similar merchandise is sold in the home market in sufficient quantities to provide a basis of comparison for fair value purposes.

In acordance with section 153.31(b), Customs Regulation (19 CFR 153.31(b)), pricing information was obtained concerning imports of automobiles from Belgium during the period January 1, 1975 through August 31, 1975, and appropriate home market sales.

c. *Exporter's sales price.* Exporter's sale price was calculated on the basis of the resale price of the related firm to unrelated purchasers in the United States. Deductions were made for selling expenses, United States duty, ocean freight, marine insurance, handling costs and freight, as appropriate.

d. *Home market price.* Home market price was calculated on the basis of the price from an independent distributor to related and unrelated dealers for Saab, on the basis of Volvo Europe, N.V. price to unrelated dealers for Volvo, and on the basis of General Motors Corporation price to independent franchised dealers for General Motors Continental. Adjustments were made for credit terms, advertising, discounts, rebates, warranty, selling expenses, inland freight, differences in merchandise and differences in parking, as appropriate.

e. *Results of comparisons.* Information was collected on virtually 100 percent of the automobiles sold to the United States during the period of investigation in the Customs investigation and has indicated that during the period of investigation sales to the United States were made at prices below those of comparable models sold in the Belgium home market. However, this investigation is being tentatively discontinued on the condition that certain specialized commitments are received from the automobile exporters in Belgium who had sales to the United States at prices lower than comparable Belgian home market prices. In this case such commitments will reflect more accurately the competitive forces the antidumping law was designed to preserve and will avoid the severe adverse effects which would result from a withholding of appraisement.

The particular commitments will be devised in acordance with the data collected from the Belgium automobile manufacturers and will reflect the steps, if any, which have been taken by said manufacturers since the initiation of the investigation to reduce or eliminate the extent to which prices to the United States were lower than Belgian home market prices. If it is determined that additional price adjustments are necessary, such additional adjustments will be incorporated into the required commitments.

The described procedures are intended to make this tentative discontinuance responsive to certain unique circumstances found to exist in this investigation which must be taken into account. In the system of floating exchange rates and rapid currency fluctuations which existed during the period of investigation, it is recognized that the automobile industry could not constantly change prices to reflect short term variations in currency. For purposes of ascertaining the effects of exchange rate changes, therefore an average of the fluctuating exchange rates over a longer period was utilized to reflect the actual long-term effects on setting prices. This conversion method eliminates margins created artificially by factors beyond the control of the Belgian automobile manufacturers and reflects more realistically, for fair value purposes, the commercial environment in which prices are determined.

A second element concerns the costs of pollution and safety equipment required to be put on automobiles sold in the United States, but not required on automobiles sold in the home market. Since the foreign manufacturers have shorter production runs over which to allocate the costs of such equipment, special consideration has been given to this situation, especially in view of the recessionary nature of the U.S. auto market during the period of the investigation as the result of general economic conditions.

Additional factors affecting the final determination, which must be made within 90 days of this tentative discontinuance, may be given consideration as the Secretary deems appropriate.

Accordingly, the antidumping investigation of automobiles from Belgium is being tentatively discontinued in accordance with section 201(b)(1)(C) of the Act (19 U.S.C. 160(b)(1)(C)), and section 153.15(a), Customs Regulations (19 CFR 153.15(a)). Should commitments in satisfactory form not be received promptly after the terms and conditions of such commitments are conveyed to each company concerned, withholding of appraisement with respect to exports from each company not supplying such commitment will be ordered and, if appropriate, a final determination of sales at less than fair value will be made.

In accordance with section 153.15(b) and 153.37, Customs Regulations (19 CFR 153.15(b), 153.37), interested persons may present written views or arguments, or request in writing that the Secretary of Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to Assistant Secretary of the Treasury (Enforcement, Operations, and Tariff Affairs), Main Treasury, Washington, D.C. 20220, in time to be received by his office not later than ten days after publication of this notice in the FEDERAL REGISTER. Such requests must be accompanied by a statement outlining the issues wished to be discussed. Attendance at any conference for presentation of oral views shall be limited to interested persons who have requested and received permission to attend prior to the date of each conference.

Any written views or arguments likewise should be addressed to the Assistant Secretary in time to be received in his office no later than June 10, 1976.

This notice is published pursuant to section 153.15(a), Customs Regulations (19 CFR 153.15(a)).

JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

MAY 11, 1976.

[FR Doc.76-14260 Filed 5-14-76;8:45 am]

AUTOMOBILES FROM CANADA

Notice of Tentative Discontinuance of Antidumping Investigation

On July 8, 1975, information was received in proper form alleging that automobiles from Canada were being sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of August 11, 1975 (40 FR 33755).

The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States. However, the evidence on record, as set forth in the proceeding notice, was such that the Secretary of the Treasury concluded that substantial doubt existed as to whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. Accordingly, the United States International Trade Commission was advised of such doubt pursuant to section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)).

On September 8, 1975, the United States International Trade Commission notified the Secretary of the Treasury that, on the basis of its inquiry it did not determine that there was no reasonable indication that 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 automobiles from Canada. Accord-

ingly, the Customs investigation in this proceeding was not terminated.

During the course of the investigation, the Secretary determined that a tentative determination could not reasonably be made within the normal 6-month investigatory period. Accordingly, the investigatory period in this case was extended to no more than 9 months from the date of publication of the "Antidumping Proceeding Notice" and a "Notice of Extension of Investigatory Period" to that effect was published in the FEDERAL REGISTER of January 23, 1976 (41 FR 3488).

TENTATIVE DISCONTINUANCE

On the basis of the information developed in the Customs investigation and for the reasons noted below, I hereby announce a tentative discontinuance of the antidumping investigation concerning automobiles from Canada. This tentative discontinuance is made in accordance with the provisions of section 153.15(a), Customs Regulations (19 CFR 153.15(a)), which provides that a tentative discontinuance may be published "whenever the Secretary concludes that there are other circumstances on the basis of which it may no longer be appropriate to continue an antidumping investigation." The special considerations set forth below reflect the unique circumstances found to exist in the automobile industry, during the investigative period, and are indicative of why it has been determined that the unusual procedures would be modified in this investigation.

STATEMENT OF CONDITIONS ON WHICH THIS TENTATIVE DISCONTINUANCE IS BASED

The conditions and bases for the above tentative discontinuance are as follows:

a. *Scope of the investigation.* The Customs investigation indicates that virtually all imports of the subject merchandise from Canada were manufactured and sold by American Motors (Canada) Ltd., Fort Motors Canada Ltd., General Motors of Canada, Ltd., Volvo Canada, Ltd., and Chrysler Canada, Ltd.

b. *Basis of comparison.* For purposes of this tentative discontinuance, the proper basis of comparison is between the exporter's sales price and the home market price of such or similar merchandise. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used since the information gathered indicates that all of the subject merchandise was sold or agreed to be sold in the United States before or after the time of importation, by or for the account of the exporter. Home market price, as defined in section 153.3, Customs Regulations (19 CFR 153.3), was used since such or similar merchandise is sold in the home market in sufficient quantities to provide a basis of comparison for fair value purposes.

In accordance with section 153.31(b), Customs Regulations (19 CFR 153.31 (b)), pricing information was obtained concerning imports of automobiles from Canada during the period January 1, 1975, through August 31, 1975, and appropriate home market sales.

c. *Exporter's sales price.* Exporter's sales price was calculated on the basis of the resale price of the related firm to unrelated purchasers in the United States. Deductions were made for selling expenses, United States duties, ocean freight, wharfage, marine insurance, handling costs, U.S. federal excise tax, and freight, as appropriate. Additions have been made for drawback of Canadian import duties, and Canadian federal sales tax, as applicable.

(d) *Home market price.* Home market price was calculated on the basis of the billing price or whole sale price to unrelated dealers, as appropriate. Adjustments were made for credit terms, advertising, discounts, rebates, warranty, selling expenses, inland freight, differences in merchandise and differences in packing, as appropriate.

e. *Results of Comparisons.* Information collected in the Customs investigation indicates that sales to the United States were made at prices below those of comparable models sold in the Canadian home market. (The margins of sales at less than fair value for American Motors, however, were minimal.) However, this investigation is being discontinued tentatively on the condition that certain specialized commitments are received from the automobile manufacturers and exporters in Canada which had sales to the United States at prices below Canadian home market prices. In this case such commitments will reflect more accurately the integrated North American automobile industry which has developed under the auspices of the United States-Canadian Automobile Agreement.

The agreement, implemented by Congress in the Automotive Products Trade Act of 1965, fostered the integration of the United States and Canadian automobile industries through various mechanisms, most importantly, the duty-free treatment of automobiles imported from Canada, with similar treatment given to certain United States automotive products imported into Canada. In 1965, due to inefficiencies in the respective industries and the marketing situation prior to the Agreement, price differentials between the United States and Canadian models ranged from 21 percent to 45 percent. Since that time, however, there has been a constant and significant reduction in wholesale price differentials. There is good reason to believe that this trend will continue, and that a discontinuance of this investigation will promote that trend. It is anticipated that the United States and Canadian governments and automobile manufacturers will continue to cooperate in achieving this objective.

Accordingly, the antidumping investigation of automobiles from Canada is being tentatively discontinued in accordance with section 201(b)(1)(C) of the Act (19 U.S.C. 160(b)(1)(C)), and section 153.15(a), Customs Regulations (19 CFR 153.15(a)). Should commitments in satisfactory form not be received promptly after the terms and conditions of such commitments are conveyed to each company concerned, withholding of appraisement with respect to exports from each company not supplying such commitment will be ordered and, if appropriate, a final determination of sales at less than fair value will be made.

In accordance with section 153.15(b) and 153.37, Customs Regulations (19 CFR 153.15(b), 153.37), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to Assistant Secretary of the Treasury (Enforcement, Operations, and Tariff Affairs), Main Treasury, Washington, D.C. 20220, in time to be received by his office not later than ten days after publication of this notice in the FEDERAL REGISTER. Such requests must be accompanied by a statement outlining the issues wished to be discussed. Attendance at any conference for presentation of oral views shall be limited to interested persons who have requested and received permission to attend prior to the date of each conference.

Any written views or arguments likewise should be addressed to the Assistant Secretary in time to be received in his office no later than June 16, 1976.

This notice is published pursuant to section 153.15(a), Customs Regulations (19 CFR 153.15(a)).

JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

MAY 11, 1976.

[FR Doc.76-14261 Filed 5-14-76;8:45 am]

AUTOMOBILES FROM FRANCE

Notice of Tentative Discontinuance of Antidumping Investigation

On July 8, 1975, information was received in proper form alleging that automobiles from France were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of August 11, 1975 (40 FR 33756).

The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States. However, the evidence on record, as set forth in the proceeding notice, was such that the Secretary of the Treasury concluded that substantial doubt existed as to whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. Accordingly, the United States International

Trade Commission was advised of such doubt pursuant to section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)).

On September 8, 1975, the United States International Trade Commission notified the Secretary of the Treasury that, on the basis of its inquiry it did not determine that there was no reasonable indication that 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 automobiles from France. Accordingly, the Customs investigation in this proceeding was not terminated.

During the course of the investigation, the Secretary determined that a tentative determination could not be reasonably be made within the normal 6-month investigatory period. Accordingly, the investigatory period in this case was extended to no more than 9 months from the date of publication of the "Antidumping Proceeding Notice" and a "Notice of Extension of Investigatory Period" to that effect was published in the FEDERAL REGISTER of January 23, 1976 (41 FR 3488).

TENTATIVE DISCONTINUANCE

On the basis of the information developed in the Customs investigation and for the reasons noted below, I hereby announce a tentative discontinuance of the antidumping investigation concerning automobiles from France. This tentative discontinuance is made in accordance with the provisions of section 153.15(a), Customs Regulations (19 CFR 153.15(a)), which provide that a tentative discontinuance may be published "whenever the Secretary concludes that there are other circumstances on the basis of which it may no longer be appropriate to continue an antidumping investigation." The special considerations set forth below reflect the unique circumstances found to exist in the automobile industry, during the investigative period, and are indicative of why it has been determined that the usual procedures would be modified in this investigation.

STATEMENT OF CONDITIONS ON WHICH THIS TENTATIVE DISCONTINUANCE IS BASED

The conditions and bases for the above tentive discontinuance are as follows:

a. *Scope of the investigation.* The Customs investigation indicates that virtually all imports of the subject merchandise from France were manufactured and exported by Automobiles Peugeot and Regie Nationale des Usines Renault. Therefore, the investigation was limited to these two manufacturers.

b. *Bases of comparison.* For purposes of this tentative discontinuance, the proper basis of comparison is between the exporter's sales price and the home market price of such or similar merchandise. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used since the information gathered indicates that all of the subject merchandise was sold or agreed to be sold in the United States before or after the time of importation, by or for the account of the exporter. Home market price, as defined in section 153.3, Customs Regulations (19 CFR 153.3), was used since such or similar merchandise is sold in the home market in sufficient quantities to provide a basis of comparison for fair value purposes.

In accordance with section 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning imports of automobiles from France during the period January 1, 1975 through August 31, 1975, and appropriate home market sales.

c. *Exporter's sales price.* Exporter's sale price was calculated on the basis of the resale price of the related firm to unrelated purchasers in the United States. Deductions were made for selling expenses, United States duty, ocean freight, marine insurance, handling costs and freight, as appropriate.

d. *Home market price.* Home market price was calculated on the basis of the appropriate price to dealers for Peugot and Renault. Adjustments were made for credit terms, advertising, discounts, rebates, warranty, selling expenses, inland freight, differences in merchandise and differences in packing, as appropriate.

e. *Results of comparisons.* Information was collected on virtually 100 percent of the automobiles sold to the United States during the period of investigation in the Customs investigation and has indicated that during the period of investigation sales to the United States were made at prices below those of comparable models sold in the French home market. However, this investigation is being tentatively discontinued on the condition that certain specialized commitments are received from the automobile exporters in France who had sales to the United States at prices lower than comparable French home market prices. In this case such commitments will reflect more accurately the competitive forces the antidumping law was designed to preserve and will avoid the severe adverse effects which would result from a withholding of appraisement.

The particular commitments will be devised in accordance with the data collected from the French automobile manufacturers and will reflect the steps, if any, which have been taken by said manufacturers since the initiation of the investigation to reduce or eliminate the extent to which prices to the United States were lower than French home market prices. If it is determined that additional price adjustments are necessary, such additional adjustments will be incorporated into the required commitments.

The described procedures are intended to make this tentative discontinuance responsive to certain unique circumstances found to exist in this investigation which must be taken into account. In the system of floating exchange rates and rapid currency fluctuations which existed during the period of investigation, it is recognized that the automobile industry could not constantly change prices to reflect short term variations in currency. For purposes of ascertaining the effects of exchange rate changes, therefore an average of the fluctuating exchange rates over a longer period was utilized to reflect the actual long-term effects on setting prices. This conversion method eliminates margins created artificially by factors beyond the control of the French automobile manufacturers and reflects more realistically, for fair value purposes, the commercial environment in which prices are determined.

A second element concerns the costs of pollution and safety equipment required to be put on automobiles sold in the United States, but not required on automobiles sold in the home market. Since the foreign manufacturers have shorter production runs over which to allocate the costs of such equipment, special consideration has been given to this situation especially in view of the recessionary nature of the U.S. auto market during the period of the investigation as the result of general economic conditions.

Additional factors affecting the final determination, which must be made within 90 days of this tentative discontinuance, may be given consideration as the Secretary deems appropriate.

Accordingly, the antidumping investigation of automobiles from France is being tentatively discontinued in accordance with section 201(b)(1)(C) of the Act (19 U.S.C. 160(b)(1)(C)), and section 153.15(a), Customs Regulations (19 CFR 153.15(a)). Should commitments in satisfactory form not be received promptly after the terms and conditions of such commitments are conveyed to each company concerned, withholding of appraisement with respect to exports from each company not supplying such commitment will be ordered and, if appropriate, a final determination of sales at less than fair value will be made.

In accordance with section 153.15(b) and 153.37, Customs Regulations (19 CFR 153.15(b), 153.37), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to Assistant Secretary of the Treasury (Enforcement, Operations, and Tariff Affairs), Main Treasury, Washington, D.C. 20220, in time to be received by his office not later than ten days after publication of this notice in the FEDERAL REGISTER. Such requests must be accompanied by a statement outlining the issues wished to be discussed. Attendance at any conference for presentation of oral views shall be limited to interested persons who have requested and received permission to attend prior to the date of each conference.

Any written views or arguments likewise should be addressed to the Assistant Secretary in time to be received in his office no later than June 16, 1976.

This notice is published pursuant to section 153.15(a), Customs Regulations (19 CFR 153.15(a)).

JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

MAY 11, 1976.

[FR Doc.76-14262 Filed 5-14-76;8:45 am]

AUTOMOBILES FROM ITALY

Notice of Tentative Discontinuance of Antidumping Investigation

On July 8, 1975, information was received in proper form alleging that automobiles from Italy were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of August 11, 1975 (40 FR 33756).

The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States. However, the evidence on record, as set forth in the proceeding notice, was such that the Secretary of the Treasury concluded that substantial doubt existed as to whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. Accordingly, the United States International Trade Commission was advised of such doubt pursuant to section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)).

On September 8, 1975, the United States International Trade Commission notified the Secretary of the Treasury that, on the basis of its inquiry it did not determine that there was no reasonable indication that 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 automobiles from Italy. Accordingly, the Customs investigation in this proceeding was not terminated.

During the course of the investigation, the Secretary determined that a tentative determination could not reasonably be made within the normal 6-month investigatory period. Accordingly, the investigatory period in this case was extended to no more than 9 months from the date of publication of the "Antidumping Proceeding Notice" and a "Notice of Extension of Investigatory Period" to that effect was published in the FEDERAL REGISTER of January 23, 1976 (41 FR 3489).

TENTATIVE DISCONTINUANCE

On the basis of the information developed in the Customs investigation and for the reasons noted below, I hereby announce a tentative discontinuance of the antidumping investigation concerning automobiles from Italy. This tentative discontinuance is made in accordance with the provisions of section 153.15(a), Customs Regulations (19 CFR 153.15(a)), which provide that a tentative discontinuance may be published "whenever the Secretary concludes that there are other circumstances on the basis of which it may no longer be appropriate to continue an antidumping investigation." The special considerations set forth below reflect the unique circumstances found to exist in the automobile industry, during the investigative period, and are indicative of why it has been determined that the usual procedures would be modified in this investigation.

STATEMENT OF CONDITIONS ON WHICH THIS TENTATIVE DISCONTINUANCE IS BASED

The conditions and bases for the above tentative discontinuance are as follows:

a. *Scope of the investigation.* The Customs investigation indicates that virtually all imports of the subject merchandise from Italy were manufactured and exported by Fiat, S.p.A., and Alfa Romeo, S.p.A. Therefore, the investigation was limited to these two manufacturers.

b. *Bases of comparisons.* For purposes of this tentative discontinuance, the proper basis of comparison is between the exporter's sales price and the home market price of such or similar merchandise. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used since the information gathered indicates that all of the subject merchandise was sold or agreed to be sold in the United States before or after the time of importation, by or for the account of the exporter. Home market price, as defined in section 153.3, Customs Regulations (19 CFR 153.3), was used since such or similar merchandise is sold in the home market in sufficient quantities to provide a basis of comparison for fair value purposes.

In accordance with section 153.31(b), Customs Regulation (19 CFR 153.31(b)), pricing information was obtained concerning imports of automobiles from Italy during the period of January 1, 1975 through August 31, 1975, and appropriate home market sales.

c. *Exporter's sales price.* Exporter's sale price was calculated on the basis of the resale price of the related firm to unrelated purchasers in the United States. Deductions were made for selling expenses, United States duty, brokerage, ocean freight, marine insurance, handling costs and freight, as appropriate. An addition was made for the rebate of taxes upon export.

d. *Home market price.* Home market price was calculated on the basis of the retail price, with appropriate wholesale discounts, for both manufacturers. Adjustments were made for credit terms, advertising, discounts, rebates, warranty, selling expenses, inland freight, differences in merchandise and differences in packing, as appropriate.

e. *Results of comparisons.* Information was collected on more than 80 percent of the automobiles sold to the United States during the period of investigation in the Customs investigation and has indicated that during the period of investigation sales to the United States were made at prices below those of comparable models sold in the Italian home market. However, this investigation is being tentatively discontinued on the condition that certain specialized commitments are received from the automobile exporters in Italy who had sales to the United States at prices lower than comparable Italian home market prices. In this caae such commitments will reflect more accurately the competitive forces the antidumping law was designed to preserve and will avoid the severe adverse effects which would result from a withholding of appraisement.

The particular commitments will be devised in accordance with the data collected from the Italian automobile manufacturers and will reflect the steps, if any, which have been taken by said manufacturers since the initiation of the investigation to reduce or eliminate the extent to which prices to the United States were lower than Italian home market prices. If it is determined that additional price adjustments are necessary, such additional adjustments will be incorporated into the required commitments.

The described procedures are intended to make this tentative discontinuance responsive to certain unique circumstances found to exist in this investigation which must be taken into account. In the system of floating exchange rates and rapid currency fluctuations which existed during the period of investigation, it is recognized that the automobile industry could not constantly change prices to reflect short term variations in currency. For purposes of ascertaining the effects of exchange rate changes, therefore an average of the fluctuating exchange rates over a longer period was utilized to reflect the actual long-term effects on setting prices. This conversion method eliminates margins created artificially by factors beyond the control of the Italian automobile manufacturers and reflects more realistically, for fair value purposes, the commercial environment in which prices are determined.

A second element concerns the costs of pollution and safety equipment required to be put on automobiles sold in the United States, but not required on automobiles sold in the home market. Since the foreign manufacturers have shorter production runs over which to allocate the costs of such equipment, special consideration has been given to this situation, especially in view of the recessionary nature of the U.S. auto market during the period of the investigation as the result of general economic conditions.

Additional factors affecting the final determination, which must be made within 90 days of this tentative discontinuance, may be given consideration as the Secertary deems appropriate.

Accordingly, the antidumping investigation of automobiles from Italy is being tentatively discontinued in accordance with section 201(b)(1)(C) of the Act (19 U.S.C. 160(b)(1)(C)), and section 153.15(a), Customs Regulations (19 CFR 153.13(a)). Should commitments in satisfactory form not be received promptly after the terms and conditions of such commitments are conveyed to each company concerned, witholding of appraisement wtih respect to exports from each company not supplying such commitment will be ordered and, if appropriate, a final determination of sales at less than fair value will be made.

In accordance with section 153.15(b) and 153.37, Customs Regulations (19 CFR 153.15(b), 153.37), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to Assistant Secretary of the Treasury (Enforcement, Operations, and Tariff Affairs), Main Treasury, Washington, D.C. 20220, in time to be received by his office not later than 10 days after publication of this notice in the FEDERAL REGISTER. Such requests must be accompanied by a statement outlining the issues wished to be discussed. Attendance at any conference for presentation of oral views shall be limited to interested persons who have requested and received permission to attend prior to the date of each conference.

Any written views or arguments likewise should be addressed to the Assistant Secretary in time to be received in his office no later than June 16, 1976.

This notice is published pursuant to section 153.15(a), Customs Regulations (19 CFR 153.15(a)).

JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

MAY 11, 1976.

[FR Doc.76-14263 Filed 5-14-76;8:45 am]

AUTOMOBILES FROM JAPAN

Notice of Tentative Discontinuance of Antidumping Investigation

On July 8, 1975, information was received in proper form alleging that automobiles from Japan were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of August 11, 1975 (40 FR 33756).

The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States. However, the evidence on record, as set forth in the proceeding notice, was such that the Secretary of the Treasury concluded that substantial doubt existed as to whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. Accordingly, the United States International Trade Commission was advised of such doubt pursuant to section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)).

On September 8, 1975, the United States International Trade Commission notified the Secretary of the Treasury that, on the basis of its inquiry it did not determine that there was no reasonable indication that 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 automobiles from Japan. Accordingly, the Customs investigation in this proceeding was not terminated.

During the course of the investigation, the Secretary determined that a tentative determination could not reasonably be made within the normal 6-month investigatory period. Accordingly, the investigatory period in this case was extended to no more than 9 months from the date of publication of the "Antidumping Proceeding Notice" and a "Notice of Extension of Investigatory Period" to that effect was published in the FEDERAL REGISTER of January 23, 1976 (41 FR 3489).

TENTATIVE DISCONTINUANCE

On the basis of the information developed in the Customs investigation and for the reasons noted below, I hereby announce a tentative discontinuance of the antidumping investigation concerning automobiles, other than those manufactured and sold by Nissan and Toyota, from Japan. This tentative discontinuance is made in accordance with the provisions of section 153.15(a), Customs Regulations (19 CFR 153.15(a)), which provide that a tentative discontinuance may be published "whenever the Secretary concludes that there are other circumstances on the basis of which it may no longer be appropriate to continue an antidumping investigation." The special considerations set forth below reflect the unique circumstances found to exist in the automobile industry, during the investigative period, and are indicative of why it has been determined that the usual procedures would be modified in this investigation.

STATEMENT OF CONDITIONS ON WHICH THIS TENTATIVE DISCONTINUANCE IS BASED

The conditions and bases for the above tentative discontinuance are as follows:

a. *Scope of the investigation.* The Customs investigation indicates that virtually all imports of the subject merchandise from Japan were manufactured and exported by Fuji Heavy Industries, Ltd., Honda Motor Co., Ltd., Mitsubishi Motors, Ltd., Nissan Motor Co., Ltd., Toyo Kogyo Co., Ltd., and Toyota Motor Co., Ltd. Therefore, the investigation was limited to these six manufacturers.

b. *Bases of comparison.* For purposes of this tentative discontinuance, the proper basis of comparison is between either the purchase price or exporter's sales price, as appropriate, and the home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used where export sales appeared to be made to non-related parties in the United States. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used where the information gathered indicated that all of the subject merchandise was sold or agreed to be sold in the United States before or after the time of importation, by or for the account of the exporter. Home market price, as defined in section 153.3, Customs Regulations (19 CFR 153.3), was used since such or similar merchandise is sold in the home market in sufficient quantities to provide a basis of comparison for fair value purposes.

In accordance with section 153.31(b), Customs Regulation (19 CFR 153.31(b)), pricing information was obtained concerning imports of automobiles from Japan during the period January 1, 1975 through August 31, 1975, and appropriate home market sales.

c. *Purchase price.* Purchase price was calculated on the basis of the f.o.b. Japanese port packed price of the exporting firm to unrelated distributors in the United States. Deductions were made for inland freight and insurance, f.o.b. charges, royalty payments, ocean freight, marine insurance, and handling charges, as appropriate. An addition was made for Japanese commodity taxes.

d. *Exporter's sales price.* Exporter's sale price was calculated on the basis of the resale price of the related firm to unrelated purchasers in the United States. Deductions were made for selling expenses, United States duty, ocean freight, marine insurance, handling costs and freight, as appropriate. An addition was made for Japanese commodity taxes.

e. *Home market price.* Home market price was calculated on the basis of the adjusted ex-factory prices to related and unrelated dealers, as appropriate. Adjustments were made for credit terms, advertising, discounts, rebates, warranty, selling expenses, inland freight, differences in merchandise and differences in packing, as appropriate.

f. *Results of comparisons.* Information was collected on virtually 100 percent of the automobiles sold to the United States during the period of investigation in the Customs investigation and has indicated that during the period of investigation some sales to the United States were made at prices below those of comparable models sold in the Japanese home market. However, this investigation is being tentatively discontinued on the condition that certain specialized commitments are received from the automobile exporters in Japan who had sales to the United States at prices lower than comparable Japanese home market prices. In this case such commitments will reflect more accurately the competitive forces the antidumping law was designed to preserve and will avoid the severe adverse effects which would result from a withholding of appraisement.

The particular commitments will be devised in accordance with the data collected from the Japanese automobile manufacturers and will reflect the steps, if any, which have been taken by said manufacturers since the initiation of the investigation to reduce or eliminate the extent to which prices to the United States were lower than Japanese home market prices. If it is determined that additional price adjustments are necessary, such additional adjustments will be incorporated into the required commitments.

The described procedures are intended to make this tentative discontinuance responsive to certain unique circumstances found to exist in this investigation which must be taken into account. In the system of floating exchange rates and rapid currency fluctuations which existed during the period of investigation, it is recognized that the automobile industry could not constantly change prices to reflect short term variations in currency. For purposes of ascertaining the effects of exchange rate changes, therefore an average of the fluctuating exchange rates over a longer period was utilized to reflect the actual long-term effects on setting prices. This conversion method eliminates margins created artificially by factors beyond the control of the Japanese automobile manufacturers and reflects more realistically, for fair value purposes, the commercial environment in which prices are determined.

A second element concerns the costs of pollution and safety equipment required to be put on automobiles sold in the United States, but not required on automobiles sold in the home market. Since the foreign manufacturers have shorter production runs over which to allocate the costs of such equipment, special consideration has been given to this situation, especially in view of the recessionary nature of the U.S. auto market during the period of the investigation as the result of general economic conditions.

Additional factors affecting the final determination, which must be made within 90 days of this tentative discontinuance, may be given consideration as the Secretary deems appropriate.

Accordingly, the antidumping investigation of automobiles from Japan is being tentatively discontinued in accordance with section 201(b)(1)(C) of the Act (19 U.S.C. 160(b)(1)(C)), and section 153.15(a), Customs Regulations (19 CFR 153.15(a)). Should commitments in satisfactory form not be received promptly after the terms and conditions of such commitments are conveyed to each company concerned, withholding of appraisement with respect to exports from each company not supplying such commitment will be ordered and, if appropriate, a final determination of sales at less than fair value will be made.

Automobiles manufactured and sold by Nissan Motor Co., Ltd., and Toyota Motor Co., Ltd. are tentatively excluded from this investigation since virtually all export sales to the United States by these two companies during the representative period were examined, and it tentatively has been determined that the home market prices of Toyota and Nissan were lower than the respective exporter's sales price or purchase price, as appropriate, of such or similar merchandise in virtually every instance. For one company, Honda Motor Co., Ltd., no margins of sales at less than fair value were found on 1975 model year comparisons, however, information on sales of 1974 model year automobiles was not received in sufficient time to be verified and considered in making this tentative determination. Accordingly, absent consideration of all sales during the representative period, Honda tentatively does not now meet the Treasury criteria for exclusion.

In accordance with section 153.15(b) and 153.37, Customs Regulations (19 CFR 153.15(b), 153.37), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to Assistant Secretary of the Treasury (Enforcement, Operations, and Tariff Affairs), Main Treasury, Washington, D.C. 20220, in time to be received by his office not later than ten days after publication of this notice in the FEDERAL REGISTER. Such requests must be accompanied by a statement outlining the issues wished to be discussed. Attendance at any conference for presentation of oral views shall be limited to interested persons who have requested and received permission to attend prior to the date of each conference.

Any written views or arguments likewise should be addressed to the Assistant Secretary in time to be received in his office no later than June 16, 1976.

This notice is published pursuant to section 153.15(a), Customs Regulations (19 CFR 153.15(a)).

JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

MAY 11, 1976.

[FR Doc.76-14264 Filed 5-14-76;8:45 am]

AUTOMOBILES FROM SWEDEN

Notice of Tentative Discontinuance of Antidumping Investigation

On July 8, 1975, information was received in proper form alleging that automobiles from Sweden were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of August 11, 1975 (40 FR 33757).

The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States. However, the evidence on record, as set forth in the proceeding notice, was such that the Secretary of the Treasury concluded that substantial doubt existed as to whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. Accordingly, the United States International Trade Commission was advised of such doubt pursuant to section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)).

On September 8, 1975, the United States International Trade Commission notified the Secretary of the Treasury that, on the basis of its inquiry it did not determine that there was no reasonable indication that 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 automobiles from Sweden. Accordingly, the Customs investigation in this proceeding was not terminated.

During the course of the investigation, the Secretary determined that a tentative determination could not reasonably be made within the normal 6-month investigatory period. Accordingly, the investigatory period in this case was extended to no more than 9 months from the date of publication of the "Antidumping Proceeding Notice" and a "Notice of Extension of Investigatory Period" to that effect was published in the FEDERAL REGISTER of January 23, 1976 (41 FR 3490).

TENTATIVE DISCONTINUANCE

On the basis of the information developed in the Customs investigation and for the reasons noted below, I hereby announce a tentative discontinuance of the antidumping investigation concerning automobiles from Sweden. This tentative discontinuance is made in accordance with the provisions of section 153.15(a), Customs Regulations (19 CFR 153.15(a)), which provides that a tentative discontinuance may be published "whenever the Secretary concludes that there are other circumstances on the basis of which it may no longer be appropriate to continue an antidumping investigation." The special considerations set forth below reflect the unique circumstances found to exist in the automobile industry, during the investigative period, and are indicative of why it has been determined that the usual procedures would be modified in this investigation.

STATEMENT OF CONDITIONS ON WHICH THIS TENTATIVE DISCONTINUANCE IS BASED

The conditions and bases for the above tentative discontinuance are as follows:

a. *Scope of the investigation.* The Customs investigation indicates that virtually all imports of the subject merchandise from Sweden were manufactured and exported by Saab Scania, A.B., and A.B. Volvo. Therefore, the investigation was limited to these two manufacturers.

b. *Basis of comparison.* For purposes of this tentative discontinuance, the proper basis of comparison is between the exporter's sales price and the home market price of such or similar merchandise. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used since the information gathered indicates that all of the subject merchandise was sold or agreed to be sold in the United States before or after the time of importation, by or for the account of the exporter. Home market price, as defined in section 153.3, Customs Regulations (19 C.F.R. 153.3), was used since such or similar merchandise is sold in the home market in sufficient quantities to provide a basis of comparison for fair value purposes.

In accordance with section 153.31(b), Customs Regulations (19 C.F.R. 153.31 (b)), pricing information was obtained concerning imports of automobiles from Sweden during the period January 1, 1975, through August 31, 1975, and appropriate home market sales.

c. *Exporter's sales price.* Exporter's sales price was calculated on the basis of the resale price of the related firm to unrelated purchasers in the United States. Deductions were made for selling expenses, United States duty, ocean freight, marine insurance, handling costs and freight, as appropriate.

d. *Home market price.* Home market price was calculated on the basis of the price from a wholly owned distributor to related and unrelated dealers for Saab and on the basis of Volvo price to unrelated dealers for Volvo. Adjustments were made for credit terms, advertising, discounts, rebates, warranty, selling expenses, inland freight, differences in merchandise and differences in packing, as appropriate.

e. *Results of comparisons.* Information was collected on virtually 100 percent of the automobiles sold to the United States during the period of investigation in the Customs investigation and has indicated that during the period of investigation sales to the United States were made at prices below those of comparable models sold in the Swedish home market. However, this investigation is being tentatively discontinued on the condition that certain specialized commitments are received from the automobile exporters in Sweden who had sales to the United States at prices lower than comparable Swedish home market prices. In this case such commitments will reflect more accurately the competitive forces the antidumping law was designed to preserve and will avoid the severe adverse effects which would result from a withholding of appraisement.

The particular commitments will be devised in accordance with the data collected from the Swedish automobile manufacturers and will reflect the steps, if any, which have been taken by said manufacturers since the initiation of the investigation to reduce or eliminate the extent to which prices to the United States were lower than Swedish home market prices. If it is determined that additional price adjustments are necessary, such additional adjustments will be incorporated into the required commitments.

The described procedures are intended to make this tentative discontinuance responsive to certain unique circumstances found to exist in this investigation which must be taken into account. In the system of floating exchange rates and rapid currency fluctuations which existed during the period of investigation, it is recognized that the automobile industry could not constantly change prices to reflect short term variations in currency. For purposes of ascertaining the effects of exchange rate changes, therefore an average of the fluctuating exchange rates over a longer period of time was utilized to reflect the actual long-term effects on setting prices. This conversion method eliminates margins created artificially by factors beyond the control of the Swedish automobile manufacturers and reflects more realistically, for fair value purposes, the commercial environment in which prices are determined.

A second element concerns the costs of pollution and safety equipment required to be put on automobiles sold in the United States, but not required on automobiles sold in the home market. Since foreign manufacturers have shorter production runs over which to allocate the costs of such equipment, special consideration has been given to this situation, especially in view of the recessionary nature of the U.S. auto market during the period of the investigation as the result of general economic conditions.

Additional factors affecting the final determination, which must be made within 90 days of this tentative discontinuance, may be given consideration as the Secretary deems appropriate.

Accordingly, the antidumping investigation of automobiles from Sweden is being tentatively discontinued in accordance with section 201(b)(1)(C) of the Act (19 U.S.C. 160(b)(1)(C)), and section 153.15(a), Customs Regulations (19 CFR 153.15(a)). Should commitments in satisfactory form not be received promptly after the terms and conditions of such commitments are conveyed to each company concerned, withholding of appraisement with respect to exports from each company not supplying such commitment will be ordered and, if appropriate, a final determination of sales at less than fair value will be made.

In accordance with section 153.15(b) and 153.37, Customs Regulations (19 CFR 153.15(b), 153.37), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to Assistant Secretary of the Treasury (Enforcement, Operations and Tariff Affairs), Main Treasury, Washington, D.C. 20220, in time to be received by his office not later than ten days after publication of this notice in the FEDERAL REGISTER. Such requests must be accompanied by a statement outlining the issues wished to be discussed. Attendance at any conference for presentation of oral views shall be limited to interested persons who have requested and received permission to attend prior to the date of each conference.

Any written views or arguments likewise should be addressed to the Assistant Secretary in time to be received in his office no later than June 16, 1976.

This notice is published pursuant to section 153.15(a), Customs Regulations (19 CFR 153.15(a)).

JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

MAY 11, 1976.

[FR Doc.76-14265 Filed 5-14-76;8:45 am]

AUTOMOBILES FROM THE UNITED KINGDOM

Notice of Tentative Discontinuance of Antidumping Investigation

On July 8, 1975, information was received in proper form alleging that automobiles from the United Kingdom were being sold at less than fair value within the meaning of the Antidumpting Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). The information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of August 11, 1975 (40 FR 33757–58).

The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States. However, the evidence on record, as set forth in the proceeding notice, was such that the Secretary of the Treasury concluded that substantial doubt existed as to whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. Accordingly, the United States International Trade Commission was advised of such doubt pursuant to section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)).

On September 8, 1975, the United States International Trade Commission notified the Secretary of the Treasury that, on the basis of its inquiry it did not determine that there was no reasonable indication that 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 automobiles from the United Kingdom. Accordingly, the Customs investigation in this proceeding was not terminated.

During the course of the investigation, the Secretary determined that a tentative determination could not reasonably be made within the normal 6-month investigatory period. Accordingly, the investigatory period in this case was extended to no more than 9 months from the date of publication of the "Antidumping Proceeding Notice" and a "Notice of Extension of Investigatory Period" to that effect was published in the FEDERAL REGISTER of January 23, 1976 (41 FR 3488).

TENTATIVE DISCONTINUANCE

On the basis of the information developed in the Customs investigation and for the reasons noted below, I hereby announce a tentative discontinuance of the antidumping investigation concerning automobiles, other than those manufactured and sold by Rolls Royce, Limited, from the United Kingdom. This tentative discontinuance is made in accordance with the provisions of section 153.15(a), Customs Regulations (19 CFR 153.15 (a)), which provide that a tentative discontinuance may be published "whenever the Secretary concludes that there are other circumstances on the basis of which it may no longer be appropriate to continue an antidumping investigation." The special considerations set forth

below reflect the unique circumstances found to exist in the automobile industry, during the investigative period, and are indicative of why it has been determined that the usual procedures would be modified in this investigation.

STATEMENT OF CONDITIONS ON WHICH THIS TENTATIVE DISCONTINUANCE IS BASED

The conditions and bases for the above tentative discontinuance are as follows:

a. *Scope of the investigation.* The Customs investigation indicates that virtually all imports of the subject merchandise from the United Kingdom were manufactured and exported either by British Leyland, Limited, and its subsidiaries, or by Rolls Royce, Limited, and its subsidiaries. Therefore, the investigation was limited to these two manufacturers.

b. *Bases of comparison.* For purposes of this tentative discontinuance, the proper basis of comparison is between the exporter's sales price and the home market price of such or similar merchandise. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used since the information gathered indicates that all of the subject merchandise was sold or agreed to be sold in the United States before or after the time of importation, by or for the account of the exporter. Home market price, as defined in section 153.3, Customs Regulations (19 CFR 153.3), was used since such or similar merchandise is sold in the home market in sufficient quantities to provide a basis of comparison for fair value purposes.

In accordance with section 153.31(b), Customs Regulations (19 CFR 153.31 (b)), pricing information was obtained concerning imports of automobiles from the United Kingdom during the period January 1, 1975 through August 31, 1975, and appropriate home market sales.

c. *Exporter's sales price.* Exporter's sale price was calculated on the basis of the resale price of the related firm to unrelated purchasers in the United States. Deductions were made for selling expenses, United States duty, federal excise tax, brokerage, ocean freight, insurance, handling costs and freight, as appropriate. Addition was made for U.K. duty remission, as appropriate.

d. *Home market price.* Home market price was calculated on the basis of the price from British Leyland, Limited, to both unrelated and independent distributors and on the basis of Rolls Royce, Limited, price to unrelated dealers for Rolls Royce. Adjustments were made for credit terms, advertising, discounts, rebates, warranty, selling expenses, inland freight, differences in merchandise and differences in packing, as appropriate.

e. *Results of comparisons.* Information was collected on virtually 100 percent of the automobiles sold to the United States during the period of investigation in the Customs investigation and has indicated that during the period of investigation sales to the United States were made at prices below those of comparable models sold in the United Kingdom home market. However, this investigation is being tentatively discontinued on the condition that certain specialized commitments are received from British Leyland. In this case such a commitment will reflect more accurately the competitive forces the antidumping law was designed to preserve and will avoid the severe adverse effects which would result from a withholding of appraisement.

The particular commitment will be devised in accordance with the data collected from British Leyland, Ltd., and will reflect the steps, if any, which have been taken by said manufacturer since the initiation of the investigation to reduce or eliminate the extent to which prices to the Unied States were lower than United Kingdom home market prices. If it is determined that additional price adjustments are necessary, such additional adjustments will be incorporated into the required commitments.

The described procedures are intended to make this tentative discontinuance responsive to certain unique circumstances found to exist in this investigation which must be taken into account. In the system of floating exchange rates and rapid currency fluctuations which existed during the period of investigation, it is recognized that the automobile industry could not constantly change prices to reflect short term variations in currency. For purposes of ascertaining the effects of exchange rate changes, therefore an average of the fluctuating exchange rates over a longer period was utilized to reflect the actual long-term effects on setting prices. This conversion method eliminates margins created artificially by factors beyond the control of the United Kingdom automobile manufacturers and reflects more realistically, for fair value purposes, the commercial environment in which prices are determined.

A second element concerns the costs of pollution and safety equipment required to be put on automobiles sold in the United States, but not required on automobiles sold in the home market. Since the foreign manufacturers have shorter production runs over which to allocate the costs of such equipment, special consideration has been given to this situation, especially in view of the recessionary nature of the U.S. auto market during the period of the investigation as the result of general economic conditions.

Additional factors affecting the final determination, which must be made within 90 days of this tentative discontinuance, may be given consideration as the Secretary deems appropriate.

Accordingly, the antidumping investigation of automobiles from the United Kingdom is being tentatively discontinued in accordance with section 201(b)(1)(C) of the Act (19 U.S.C. 160(b)(1)(C)), and section 153.15(a), Customs Regulations (19 CFR 153.15(a)). Should commitments in satisfactory form not be received promptly after the terms and conditions of such commitments are conveyed to each company concerned, withholding of appraisement with respect to exports from each company not supplying such commitment will be ordered and, if appropriate, a final determination of sales at less than fair value will be made.

Automobiles manufactured and sold by Rolls Royce, Limited, are tentatively excluded from this investigation, since 100 percent of the sales to the United States during the period of investigation were examined, and the home market price was found to be not greater than the exporter's sales price of such or similar merchandise in virtually all instances. In a few instances, margins were found which were de minimis in relation to the volume of trade under consideration.

In accordance with section 153.15(b) and 153.37, Customs Regulations (19 CFR 153.15(b), 153.37), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to Assistant Secretary of the Treasury (Enforcement, Operations, and Tariff Affairs), Main Treasury, Washington, D.C. 20220, in time to be received by his office not later than ten days after publication of this notice in the FEDERAL REGISTER. Such requests must be accompanied by a statement outlining the issues wished to be discussed. Attendance at any conference for presentation of oral views shall be limited to interested persons who have requested and received permission to attend prior to the date of each conference.

Any written views or arguments likewise should be addressed to the Assistant Secretary in time to be received in his office no later than June 16, 1976.

This notice is published pursuant to section 153.15(a), Customs Regulations (19 CFR 153.15(a)).

JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

MAY 11, 1976.

[FR Doc.76-14266 Filed 5-14-76;8:45 am]

AUTOMOBILES FROM WEST GERMANY

Notice of Tentative Discontinuance of Antidumping Investigation

On July 8, 1975, information was received in proper form alleging that automobiles from West Germany were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of August 11, 1975 (40 FR 33758).

The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States. However, the evidence on record, as set forth in the proceeding notice, was such that the Secretary of the Treasury concluded that substantial doubt existed as to whether an industry in the

United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. Accordingly, the United States International Trade Commission was advised of such doubt pursuant to section 201(c) of the Act (19 U.S.C. 160(c)(2)).

On September 8, 1975, the United States International Trade Commission notified the Secretary of the Treasury that, on the basis of its inquiry it did not determine that there was no reasonable indication that 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 automobiles from West Germany. Accordingly, the Customs investigation in this proceeding was not terminated.

During the course of the investigation, the Secretary determined that a tentative determination could not reasonably be made within the normal 6-month investigatory period. Accordingly, the investigatory period in this case was extended to no more than 9 months from the date of publication of the "Antidumping Proceeding Notice" and a "Notice of Extension of Investigatory Period" to that effect was published in the FEDERAL REGISTER of January 23, 1976 (41 FR 3489).

TENTATIVE DISCONTINUANCE

On the basis of the information developed in the Customs investigation and for the reasons noted below, I hereby announce a tentative discontinuance of the antidumping investigation concerning automobiles, other than those manufactured and sold by Porsche, from West Germany. This tentative discontinuance is made in accordance with the provisions of section 153.15(a), Customs Regulations (19 CFR 153.15(a)), which provide that a tentative discontinuance may be published "whenever the Secretary concludes that there are other circumstances on the basis of which it may no longer be appropriate to continue an antidumping investigation." The special considerations set forth below reflect the unique circumstances found to exist in the automobile industry, during the investigative period, and are indicative of why it has been determined that the usual procedures would be modified in this investigation.

STATEMENT OF CONDITIONS ON WHICH THIS TENTATIVE DISCONTINUANCE IS BASED

The conditions and bases for the above tentative discontinuance are as follows:

a. *Scope of the investigation.* The Customs investigation indicates that virtually all imports of the subject merchandise from West Germany were manufactured and exported by Audi NSU Autounion A.G., Bayerische Motoren Werke, A.G., Daimler Benz, A.G., Ford-Werke, A.G., Porsche, A.G., and Volkswagen Werk, A.G. Therefore, the investigation was limited to these six manufacturers.

b. *Bases of comparison.* For purposes of this tentative discontinuance, the proper basis of comparison is between either the purchase price or exporter's sales price, as appropriate, and the home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used where export sales appeared to be made to non-related parties in the United States. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 103), was used where the information gathered indicated that all of the subject merchandise was sold or agreed to be sold in the United States before or after the time of importation, by or for the account of the exporter. Home market price, as defined in section 153.3, Customs Regulations (19 CFR 153.3), was used since such or similar merchandise is sold in the home market in sufficient quantities to provide a basis of comparison for fair value purposes.

In accordance with section 153.31(b), Customs Regulations (19 CFR 153.31 (b)), pricing information was obtained concerning imports of automobiles from West Germany during the period January 1, 1975 through August 31, 1975, and appropriate home market sales.

(c) *Purchase price.* Purchase price was calculated on the basis of the ex-factory price, or the price from the unrelated purchaser in West Germany, as appropriate, to an unrelated importer in the United States. Adjustments were made for differences in merchandise, and inland freight, as appropriate.

d. *Exporter's sales price.* Exporter's sale price was calculated on the basis of the resale price of the related firm to unrelated purchasers in the United States. Deductions were made for selling expenses, United States duty, ocean freight, marine insurance, handling costs and freight, as appropriate.

e. *Home market price.* Home market price was calculated on the basis of the adjusted home market price to related and unrelated dealers, or retail purchasers, as appropriate. Adjustments were made for credit terms, advertising, discounts, rebates, warranty, selling expenses, inland freight, differences in merchandise and differences in packing, as appropriate.

f. *Results of comparisons.* Information was collected on virtually 100 percent of the automobiles sold to the United States during the period of investigation in the Customs investigation and has indicated that during the period of investigation some sales to the United States were made at prices below those of comparable models sold in the West German home market. However, this investigation is being tentatively discontinued on the condition that certain specialized commitments are received from the automobile exporters in West Germany who had sales to the United States at prices lower than comparable West German home market prices. In this case such commitments will reflect more accurately the competitive forces the antidumping law was designed to preserve and will avoid the severe adverse effects which would result from a withholding of appraisement.

The particular commitments will be devised in accordance with the data collected from the West German automobile manufacturers and will reflect the steps, if any, which have been taken by said manufacturers since the initiation of the investigation to reduce or eliminate the extent to which prices to the United States were lower than West German home market prices. If it is determined that additional price adjustments are necessary, such additional adjustments will be incorporated into the required commitments.

The described procedures are intended to make this tentative discontinuance responsive to certain unique circumstances found to exist in this investigation which must be taken into account. In the system of floating exchange rates and rapid currency fluctuations which existed during the period of investigation, it is recognized that the automobile industry could not constantly change prices to reflect short term variations in currency. For purposes of ascertaining the effects of exchange rate changes, therefore an average of the fluctuating exchange rates over a longer period was utilized to reflect the actual long-term effects on setting prices. This conversion method eliminates margins created artificially by factors beyond the control of the West German automobile manufacturers and reflects more realistically, for fair value purposes, the commercial environment in which prices are determined.

A second element concerns the costs of pollution and safety equipment required to be put on automobiles sold in the United States, but not required on automobiles sold in the home market. Since the foreign manufacturers have shorter production runs over which to allocate the costs of such equipment, special consideration has been given to this situation, especially in view of the recessionary nature of the U.S. auto market during the period of the investigation as the result of general economic conditions.

Additional factors affecting the final determination, which must be made within 90 days of this tentative discontinuance, may be given consideratoin as the Secretary deems appropriate.

Accordingly, the antidumping investigation of automobiles from West Germany is being tentatively discontinued in accordance with section 201(b)(1)(C) of the Act (19 U.S.C. 160(b)(1)(C)), and section 153.15(a), Customs Regulations (19 CFR 153.15(a). Should commitments in satisfactory form not be received promptly after the terms and conditions of such commitments are conveyed to each company concerned, withholding of appraisement with respect to exports from each company not supplying such commitment will be ordered and, if appropriate, a final determination of sales at less than fair value will be made.

Automobiles manufactured and sold by Porsche A.G. are tentatively excluded from this investigation since virtually all Porsche's export sales to the United States were examined, and it tentatively has been determined that the home mar-

ket prices of Porsche were lower than the purchase price of such or similar merchandise.

In accordance with section 153.15(b) and 153.37, Customs Regulations (19 CFR 153.15(b), 153.37), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to Assistant Secretary of the Treasury (Enforcement, Operations, and Tariff Affairs), Main Treasury, Washington, D.C. 20220, in time to be received by his office not later than ten days after publication of this notice in the FEDERAL REGISTER. Such requests must be accompanied by a statement outlining the issues wished to be discussed. Attendance at any conference for presentation of oral views shall be limited to interested persons who have requested and received permission to attend prior to the date of each conference.

Any written views or arguments likewise should be addressed to the Assistant Secretary in time to be received in his office no later than June 16, 1976.

This notice is published pursuant to section 153.15(a), Customs Regulations (19 CFR 153.15(a)).

JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

MAY 11, 1976.

[FR Doc.76-14267 Filed 5-14-76;8:45 am]

[TREASURY DEPARTMENT ORDER NO. 242-1]

ORGANIZATIONAL STRUCTURE, OFFICE OF THE ASSISTANT SECRETARY

Capital Markets and Debt Management

By virtue of the authority vested in the Secretary of the Treasury by Reorganization Plan No. 26 of 1950, and pursuant to the authority delegated to me by Treasury Department Order No. 242 of March 27, 1976, the following organization structure is established within the Office of the Assistant Secretary (Capital Markets and Debt Management) effective immediately:

1. The following officials are under the direct supervision of the Assistant Secretary:

a. Deputy Assistant Secretary (Capital Markets Policy).

b. Deputy Assistant Secretary (Debt Financing).

c. Special Assistant to the Secretary (Debt Management).

d. Deputy to the Assistant Secretary for New York Finances.

e. Senior Advisor for Debt Research.

2. Within the Office of the Deputy Assistant Secretary (Capital Markets Policy):

a. The Office of Capital Markets Policy is renamed the Office of Securities Markets Policy.

b. The Office of Municipal Finance is hereby established to develop Treasury policy relating to the fiscal and financial affairs of state and local government, the condition of the municipal bond market, and regulation of the municipal bond market.

c. The Office of Capital Markets Legislation is hereby established to prepare reports containing policy recommendations on legislative proposals which involve the regulation of capital markets and the role of the Federal Government in providing various forms of economic assistance to state and local governments and to sectors of the private economy.

3. Within the Office of the Deputy Assistant Secretary (Debt Financing):

a. The Office of Debt Analysis is dissolved and its function of monitoring flow of funds is transferred to the Senior Advisor for Debt Research. The other functions of the Office of Debt Analysis are reassigned as described below.

b. The Office of Market Analysis and Agency Finance is hereby established and:

(1) assumes the function of implementing the Federal Financing Bank Act of 1973, which was formerly performed by the Special Assistant to the Secretary (Debt Management);

(2) assumes the following functions formerly performed by the Office of Debt Analysis;

(a) reviewing the programs and the proposed borrowing plans of Federal agencies and government-sponsored enterprises with regard to their effect on the overall fiscal and credit policies of the government;

(b) compiling and reporting current information on financial market conditions and preparing daily quote sheets and interest rate determinations for the Treasury and Federal agencies.

c. The Office of Government Financing is hereby established and assumes the following functions formerly performed by the Office of Debt Analysis:

(1) performing economic and financial research, analysis, and preparing background briefings related to government financing and public debt management;

(2) performing actuarial and mathematical analysis and computations as required for government funds and government financing operations;

(3) performing analysis of Federal credit program principles and standards and proposals related to government borrowing, lending and investment activities;

(4) obtaining computer services and designing and maintaining the data base required for government financing and market analysis.

Dated: May 11, 1976.

ROBERT A. GERARD,
Assistant Secretary, (Capital Markets and Debt Management).

[FR Doc.76-14240 Filed 5-14-76;8:45 am]

TREASURY DEPARTMENT ORDER NO. 190 (REVISION 11)

Supervision of Bureaus and Offices, Delegation of Authority, and Order of Succession in the Treasury Department

1. The following officials shall be under the direct supervision of the Secretary:

The Deputy Secretary.
Adviser to the Secretary.
The Executive Assistant to the Secretary.
Staff Assistants to the Secretary.

2. The following officials shall be under the supervision of the Secretary, and shall report to him through the Deputy Secretary:

Under Secretary for Monetary Affairs.
Under Secretary.
General Counsel.
Assistant Secretary (Tax Policy).
Commissioner, Internal Revenue Service.
Comptroller of the Currency.

3. The following officials shall be under the supervision of the Under Secretary for Monetary Affairs, and shall exercise supervision over those organizational entities indicated thereunder:

Assistant Secretary (International Affairs): Deputy Assistant Secretary for Trade and Raw Materials Policy, Deputy Assistant Secretary for Energy and Investment Policy, Deputy Assistant Secretary for International Monetary Affairs, Deputy Assistant Secretary for Developing Nations, Deputy Assistant Secretary for Research, Deputy to the Assistant Secretary for Saudi Arabian Affairs, Inspector General for International Finance.
Assistant Secretary (Capital Markets and Debt Management): Deputy Assistant Secretary for Capital Markets Policy, Deputy Assistant Secretary for Debt Financing, Special Assistant to the Secretary (Debt Management), Deputy to the Assistant Secretary for New York Finances, Assistant Secretary (Economic Policy) Office of Financial Analysis.
Fiscal Assistant Secretary; Bureau of Government Financial Operations, Bureau of the Public Debt.
Treasurer of the United States.
Special Assistant to the Secretary (National Security).
U.S. Savings Bonds Division.

4. The following officials shall be under the supervision of the Under Secretary, and shall exercise supervision over those organizational entities indicated thereunder:

Assistant Secretary (Administration): Office of Administrative Programs, Office of Audit, Office of Budget and Program Analysis, Office of Computer Science, Office of Equal Opportunity Program, Office of Management and Organization, Office of Personnel.
Assistant Secretary (Legislative Affairs).
Assistant Secretary (Enforcement, Operations, and Tariff Affairs): Office of Law Enforcement, Office of Operations, Office of Tariff Affairs, Office of Foreign Assets Control, Bureau of Alcohol, Tobacco and Firearms, U.S. Customs Service, Bureau of Engraving and Printing, Bureau of the Mint, U.S. Secret Service, Federal Law Enforcement Training Center.
Special Assistant to the Secretary (Public Affairs).
Office of Revenue Sharing.

5. The following officials shall exercise supervision over those organizational entities indicated thereunder:

General Counsel: Legal Division, Office of Director of Practice.
Assistant Secretary (Tax Policy): Office of Tax Analysis, Office of Tax Legislative Counsel (also part of Legal Division), Office of International Tax Counsel (also part of Legal Division), Office of Industrial Economics.
Commissioner, Internal Revenue Service: Assistant Commissioner (Accounts, Collection, and Taxpayer Service), Assistant Commissioner (Administration), Assistant Commissioner (Compliance), Assistant Commissioner (Employee Plans and Exempt Organizations), Assistant Commissioner (Inspection), Assistant Commissioner (Planning and Research), Assistant Commissioner (Technical).
Comptroller of the Currency: First Deputy Comptrollers, Deputy Comptrollers.

6. The Deputy Secretary, the Under Secretary for Monetary Affairs, the Under Secretary, the General Counsel, and the Assistant Secretaries are authorized to perform any functions the Secretary is authorized to perform. Each of these officials shall perform functions under this authority in his own capacity and under his own title and shall be responsible for referring to the Secretary any matter on which actions should appropriately be taken by the Secretary. Each of these officials will ordinarily perform under this authority only functions which arise out of, relate to, or concern the activities or functions of or the laws administered by or relating to the bureaus, offices, or other organizational units over which he has supervision. Any action heretofore taken by any of these officials in his own capacity and under his own title is hereby affirmed and ratified as the action of the Secretary.

7. The following officers shall, in the order of succession indicated, act as Secretary of the Treasury in case of the death, resignation, absence, or sickness of the Secretary and other officers succeeding him, until a successor is appointed, or until the absence or sickness shall cease:

A. Deputy Secretary.
B. Under Secretary for Monetary Affairs.
C. Under Secretary.
D. General Counsel.
E. Commissioner of Internal Revenue.
F. Assistant Secretaries, or Deputy Under Secretaries, appointed by the President with Senate confirmation, in the order in which they took the oath of office as Assistant Secretary, or Deputy Under Secretary.

8. Treasury Department Order No. 190 (Revision 10) is rescinded, effective this date.

Dated: May 5, 1976.

[SEAL] WILLIAM E. SIMON,
Secretary of the Treasury.

[FR Doc.76-14241 Filed 5-14-76;8:45 am]

DEPARTMENT OF DEFENSE

Corps of Engineers

SHORELINE EROSION ADVISORY PANEL

Notice of Meeting

Pursuant to Section 10 (a) of the Federal Advisory Committee Act (Public Law 92-463) notice is hereby given of a meeting of the Shoreline Erosion Advisory Panel on 9-11 June 1976.

The meeting will be held in the Gold Room of the Civic Center Holiday Inn, 50 Eighth Street, San Francisco, California, from 0830 hours to 1730 hours on 9 June, from 0800 hours to 1715 hours on 10 June and from 0830 hours to 1230 hours on 11 June 1976.

The meeting will be devoted to presentations by the public and manufacturers of shore protection devices and methods, and discussion by the Panel; the discussion of the recommended demonstration sites on the Atlantic, Gulf, Pacific, Great Lakes coasts, and Delaware Bay; the use of vegetation as a shore stabilization method; and action to be taken by the Panel on recommending demonstration sites and devices for low-cost protection.

Participation by the public is scheduled on the agenda at 1045 to 1215 hours on June 11, 1976.

The meeting will be open to the public subject to the following:

1. Since seating capacity of the conference room at the Civic Center Holiday Inn limits public participation to not more than 50 people, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

2. Oral participation by public attendees is encouraged during those times scheduled on the agenda. Written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries, notice of intent to attend the meeting, and written statements for consideration of the panel may be addressed to Colonel James L. Trayers, Executive Secretary, Shoreline Erosion Advisory Panel, Kingman Building, Fort Belvoir, Virginia 22060, Telephone (202) 325-7000.

Dated: May 11, 1976.

By authority of the Secretary of the Army.

R. W. HAMPTON,
Colonel, U.S. Army, Director of Administrative Management, TAGCEN.

[FR Doc.76-14246 Filed 5-14-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

KIOWA, COMANCHE AND APACHE TRIBES OF OKLAHOMA

Transfer of Federally Owned Lands

MAY 6, 1976.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

On March 31, 1976, pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended by Public Law 93-599 dated January 2, 1975 (88 Stat. 1954), the below-described property was transferred from the Acting Director, Real Property Division, Fort Worth Regional Office, of the General Services Administration to the Secretary of the Interior, without reimbursement, to be held in trust for the benefit and use of the Kiowa, Comanche and Apache Tribes of Oklahoma:

Tract and legal description:	*Acres*
5 Lot 2 of sec. 20, T. 2 N., R. 11 W., I.M.	62.36
6 Lot 6 of sec. 20, T. 2 N., R. 11 W., I.M.	.21
Lot 7 of sec. 20, T. 2 N., R. 11 W., I.M.	1.30
Lot 9 of sec. 29, T. 2 N., R. 11 W., I.M.	34.79
Total	98.66

These lands are to be treated as and receive the same benefits and protection as other trust lands held for the benefit and use of the Kiowa, Comanche and Apache Tribes of Oklahoma. Appropriate notation will be made in the land records of the Bureau of Indian Affairs.

MORRIS THOMPSON,
Commissioner of Indian Affairs.

[FR Doc.76-14250 Filed 5-14-76;8:45 am]

Bureau of Land Management

[Serial Number A 9553]

ARIZONA

Notice of Filing of Airport Lease Application

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211-214), the Board of Supervisors, Mohave County, Arizona, has applied for an airport lease for the following lands:

T. 41 N., R. 7 W., GSR Mer., Arizona
Sec. 14, SW¼SE¼, S½NW¼SE¼, W½SE¼SE¼, SE¼SE¼SE¼;
Sec. 23, NE¼NE¼NE¼, containing 100 acres.

The purpose of this notice is to inform the public that the filing of this application segregates the described land from all other forms of use or disposal under the public land laws.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Arizona Strip District Office, Bureau of Land Management, P.O. Box 250, St. George, Utah 84770.

Dated: May 10, 1976.

MARIO L. LOPEZ,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.76-14237 Filed 5-14-76;8:45 am]

[Colorado 23734–RW]

NORTHWEST PIPELINE CORP.

Notice of Pipeline Application

MAY 6, 1976.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Northwest Pipeline Corporation, P.O. Box 1526, Salt Lake City, Utah 84110, has applied for a right-of-way for a 6⅝-inch (six and five-eights) o.d. natural gas pipeline crossing approximately 0.207 mile of the following National Resource Land in Rio Blanco County, Colorado:

T. 1 S., R. 101 W., 6th P.M.
Sec. 18: SE¼SE¼, SW¼SE¼
Sec. 19: NE¼NE¼, NW¼NE¼

The facility will enable applicant to add to its natural gas gathering system in Rio Blanco County, Colorado.

The purposes of this notice are: to inform the public that the Bureau of Land Management will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved and, if so, under what terms and conditions; to allow interested parties to comment on the application, and to allow any persons asserting a claim to the lands or having bona fide objections to the proposed natural gas gathering pipeline right-of-way to file their objections in this office. Any person asserting a claim to the lands or having bona fide objections must include evidence that a copy thereof has been served on the applicant.

Any comment, claim, or objections must be filed with the Chief, Branch of Land Operations, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

MERRILL G. ANDERSON,
Acting Chief,
Branch of Land Operations.

[FR Doc.76–14251 Filed 5–14–76;8:45 am]

DEPARTMENT OF AGRICULTURE

Forest Service

NEBRASKA NATIONAL FOREST LIVESTOCK ADVISORY BOARD

Notice of Meeting

The Nebraska National Forest Livestock Advisory Board will meet at 8:00 P.M., CDT, June 15, 1976, at the Forest Service Office, Halsey, Nebraska.

The purpose of this meeting is to elect advisory board members and to discuss various grazing resource management practices.

The meeting will be open to the public. Persons who wish to attend should notify the District Ranger, Bessey Ranger District, Halsey, Nebraska 69142, phone (308) 533–2257.

The Committee has established the following rules for public participation:

1. Members of the public may present oral statements at any time during discussions.

2. Any member of the public who wishes to do so should file a written statement with the Committee, either before or after the meeting.

LAWRENCE C. SUTTON,
Forest Supervisor.

MAY 10, 1976.

[FR Doc.76–14243 Filed 5–14–76;8:45 am]

Soil Conservation Service

ALABAMA, ET AL.

Notice of Authorization for Watershed Planning

This provides notice of authorization dated May 6, 1976, to the concerned state conservationists of the Soil Conservation Service to provide planning assistance to specified local organizations for the indicated watersheds. The state conservationists may now proceed with investigations and surveys as necessary to develop watershed plans under authority of the Watershed Protection and Flood Prevention Act (Public Law 83–566), as amended. Environmental assessments will be made in accordance with the requirements of the National Environmental Policy Act (Public Law 91–190), concurrently with the preparation of the watershed plans.

Persons interested in these projects may contact the local organizations or the state conservationists as indicated below:

Alabama: *Spring Creek Watershed;* 62,270 acres; Colbert and Franklin Counties. Sponsors—Colbert County Soil and Water Conservation District, Colbert County Commission, City of Tuscumbia, Franklin County Soil and Water Conservation District. State Conservationist: William B. Lingle, Soil Conservation Service, P.O. Box 311, Auburn, Alabama 36830.

Idaho: *Sugar Valley Watershed;* 97,824 acres; Owyhee County, Idaho. Sponsors—Bruneau River Soil Conservation District, Owyhee County Commissioners, Little Valley Watershed Association. State Conservationist: Amos I. Garrison, Jr., Soil Conservation Service, Room 345, 304 North 8th Street, Boise, Idaho 83702.

Indiana: *Feather Creek Watershed;* 5,120 acres; Vermillion County. Sponsors—Vermillion County Soil and Water Conservation District, Clinton City Council, Vermillion County Board of Parks and Recreation, Vermillion County Drainage Board. State Conservationist: Cletus J. Gillman, Soil Conservation Service, Atkinson Square-West, Suite 2200, 5610 Crawfordsville Road, Indianapolis, Indiana 46224.

Michigan: *AuGres River Watershed;* 159,300 acres; Arenac, Iosco, and Ogemaw Counties. Sponsors—Arenac County Soil Conservation District, Iosco County Soil Conservation District, Ogemaw County Soil Conservation District, Arenac County Drain Commissioner, Ogemaw County Road Commissioners, Iosco County Drain Commissioner, AuGres River Intercounty Drainage Board. State Conservationist: Arthur H. Cratty, Soil Conservation Service, Room 101, 1405 South Harrison Road, East Lansing, Michigan 48823.

New York: *Blind Brook Watershed;* (and Connecticut); 6,980 acres; Westchester County, New York, and Fairfield County, Connecticut. Sponsors—Westchester County Board of Legislators, Westchester County Soil and Water Conservation District. State Conservationist: Robert L. Hilliard, Soil Conservation Service, Midtown Plaza, Room 400, 700 East Water Street, Syracuse, New York 13210.

Ohio: Rattlesnake Creek Watershed; 177,280 acres; Clinton, Fayette, Greene, Highland, and Madison Counties. Sponsors—Clinton County Commissioners, Clinton County Soil and Water Conservation District, Fayette County Commissioners, Fayette County Soil and Water Conservation District, Greene County Commissioners, Greene County Soil and Water Conservation District, Highland County Soil and Water Conservation District, Highland County Commissioners, Madison County Commissioners, Madison County Soil and Water Conservation District. State Conservationist—Robert E. Quilliam, Soil Conservation Service, 311 Old Federal Building, 3rd and State Streets, Columbus, Ohio 43215.

Oklahoma: *Coal Creek Watershed;* 154,000 acres; Hughes and Pittsburg Counties. Sponsors—The Coal Creek Conservancy District, Hughes County Conservation District, Pittsburg County Conservation District. State Conservationist: Ronald R. Willis, Soil Conservation Service, Agricultural Center Office Building, Farm Road and Brumley Street, Stillwater, Oklahoma 74074.

Virginia: *Catoctin Creek Watershed;* 36,567 acres; Loudoun County. Sponsors—Loudoun County Board of Supervisors, Loudoun Soil and Water Conservation District. State Conservationist—David N. Grimwood, Soil Conservation Service, Federal Building, Room 9201, P.O. 10026, Richmond, Virginia 23240.

West Virginia: *Kings Creek Watershed;* (and Pennsylvania); 31,900 acres; Hancock County, West Virginia, and Beaver and Washington Counties, Pennsylvania. Sponsors—City of Weirton, Hancock County Commission, Northern Panhandle Soil Conservation District, Beaver County Board of Commissioners, Beaver County Conservation District, Washington County Commissioners, Washington County Conservation District, Hanover Township Board of Supervisors. State Conservationist—James S. Bennett, Soil Conservation Service, U.S. Post Office & Federal Office Building, P.O. Box 865, Morgantown, West Virginia 26505.

Wyoming: *Corn Creek Watershed;* 57,920 acres; Goshen and Platte Counties, Wyoming. Sponsors—North Platte Valley Conservation District, Lingle—Fort Laramie Conservation District, Corn Creek Reservoir Association. State

Conservationist: Blaine O. Halliday, Soil Conservation Service, Federal Office Building, P.O. Box 2440, Casper, Wyoming 82601.

(Catalog of Federal Domestic Assistance Program No. 10.904, National Archives Reference Services.)

B. M. DAVIS,
Administrator,
Soil Conservation Service.

MAY 6, 1976.

[FR Doc.76-14231 Filed 5-14-76;8:45 am]

SOUTHWEST LATERALS, SUBWATERSHED OF THE MIDDLE COLORADO RIVER WATERSHED PROJECT, CONCHO AND AND McCULLOCH COUNTIES, TEXAS

Notice of Availability of Final Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; Part 1500 of the Council on Environmental Quality Guidelines (38 FR 20550, August 1, 1973); and Part 650 of the Soil Conservation Service Guidelines (39 FR 19650, June 3, 1974); the Soil Conservation Service, U.S. Department of Agriculture, has prepared a final environmental impact statement (EIS) for the Southwest Laterals, Subwatershed of the Middle Colorado River Watershed project, Concho and McCulloch Counties, Texas, USDA-SCS-EIS-FP-(ADM)-75-5(F)-TX.

The EIS concerns a plan for watershed protection and flood prevention. The planned works of improvement include conservation land treatment, supplemented by seven single purpose floodwater retarding structures.

The final EIS has been filed with the Council on Environmental Quality.

A limited supply of copies is available at the following location to fill single copy requests:

Soil Conservation Service, USDA, 16-20 South Main Street, P.O. Box 648, Temple, Texas 76501.

(Catalog of Federal Domestic Assistance Program, No. 10.904, National Archives Reference Services.)

JOSEPH W. HAAS,
Deputy Administrator for Water
Soil Conservation Service.

MAY 10, 1976.

[FR Doc.76-14232 Filed 5-14-76;8:45 am]

FURNACE BROOK WATERSHED, NEW JERSEY

Recreational Facilities

NOTICE OF AVAILABILITY OF NEGATIVE DECLARATION

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the installation of the recreational facilities in the Furnace Brook Watershed, Warren County, New Jersey.

The environmental assessment of this federal action indicates that the project will not create significant adverse local, regional, or national impacts on the environment and that no significant controversy is associated with the project. As a result of these findings, Mr. Chester F. Bellard, State Conservationist, Soil Conservation Service, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project involves the construction of recreational facilities on 84 acres of land adjacent to Oxford Furnace Lake (Site 2). The facilities will include parking areas, a boat dock and ramp, picnic areas, sanitary facilities, and a beach and swimming area with bathhouse.

The negative declaration is being filed with the Council on Environmental Quality and copies are being sent to various federal, state, and local agencies. The basic data developed during the environmental assessment is on file and may be reviewed by interested parties at the Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873. A limited number of copies of the negative declaration is available from the same address to fill single copy requests.

No administrative action on implementation of the proposal will be taken until 15 days after the date of this publication.

Dated: May 10, 1976.

(Catalog of Federal Domestic Assistance Program No. 10.904, National Archives Reference Services.)

JOSEPH W. HAAS,
Deputy Administrator for Water Resources, Soil Conservation Service.

[FR Doc.76-14233 Filed 5-14-76;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

EXPORT PRIVILEGES

Restoration

In the Matter of American Hellenic Corp., Nicholas R. Benedetti, John Bilik, Jr., Israel David (Davis), Dualca Steamship Co., Electra Commodity & Barter Corp., Robert Govaerts (alias Bernard Lieberman), and Alimable, S.A. (a relatel party) Rolf G. Grote, Oleynick & Co. L. Oleynick, Pan Pacific Trading Co., José Fernandez Perez, John Rentzeperis, Paul Rothman, Rothman & Son, Inc., Royal Industrial Co., Irving Wilson, (Irving N. Wolfson), Zetlin David, Zetland Corp.

Pursuant to the Export Control Act of February 28, 1949, as amended and supplemented by the Export Administration Act of 1969, 50 U.S.C. App. § 2021 et seq., and § 2401 et seq., certain parties were denied full export privileges; their names appear on the Table of Denial and Probation Orders, 15 CFR Part 388, Supp. I & II. The current activities of those parties have been scrutinized with view to restoring their export privileges.

The Director, Compliance Division, reported that no party listed above is suspect or is known to have failed to comply with the terms of probation.

The Hearing Commissioner, in view of the Compliance Division's report, recommends the respondents be restored to full export privileges.

I have examined the report and recommendations of the Commissioner. The record fails to disclose any adverse report relative to the respondents he has recommended for restoration and there are none presently suspect in connection with any violations of the United States export laws or U.S. Department of Commerce export regulations. It is fair, fitting and proper that respondents who have so manifested their intentions to comply and are in compliance with the export regulations, be restored to full export privileges. Restoration is in accord with the purpose and intent of the law, the regulations and the policies of this Department.

Therefore, it is ordered, The parties listed above are hereby unconditionally restored to all United States export privileges.

Dated: May 10, 1976.

RAUER H. MEYER,
Director, Office of
Export Administration.

[FR Doc.76-14244 Filed 5-14-76;8:45 am]

[Order No. 42-1 (Amendment 2)]

DIRECTORATE OF ADMINISTRATIVE MANAGEMENT

Organization and Function Order

This order effective April 15, 1976 amends the material appearing at 40 FR 12694 of March 20, 1975.

DIBA Organization and Function Order 42-1, dated February 28, 1975, as amended, is hereby further amended, as follows:

1. *SECTION 4. Office of Personnel* is amended to read, as follows:

"*SECTION 4. Office of Personnel.*

".01 The Office of Personnel shall be headed by a Director who shall plan, coordinate and conduct the Personnel Management Program for the Domestic and International Business Administration; interpret personnel policies and procedures established by higher authority; act as liaison with the Department's Office of Personnel; and head the following operating units:

".02 *The Compensation Division* shall: administer a position classification program for all organizational components of DIBA; classify positions through grade GS-15; recommend to the Department and Civil Service Commission the classification of super-grade positions; conduct classification maintenance review surveys; conduct annual review of positions required by the Whitten Amendment; provide advice to management regarding classification implications of proposed new organizations and of realignment of functions within existing organizations; in cooperation with the DIBA Office of Management

and Systems and Office of Budget, operate the position management program.

".03 *The Employee Relations Division* shall plan and coordinate DIBA-wide programs in the areas of employee performance evaluations, employee recognition and incentives, employee and supervisory counseling, equal employment opportunity counseling, employee benefits and welfare, and labor-management relations; advise management on employee relations problems and needs; advise supervisors on methods of dealing with poor work performance or behavior problems and inform them of regulatory and other requirements in effecting satisfactory resolutions either through administrative or disciplinary actions; conduct inquiries and implement actions leading to resolution of employee complaints, grievances and appeals, and process proposed adverse actions; keep employees informed of their rights, privileges, obligations and responsibilities; administer program for disclosure of outside employment and financial interests of DIBA employees in order to prevent conflicts of interests; interpret and clarify policies, administrative orders and procedures with respect to personnel management; coordinate DIBA's Alcoholism and Drug Abuse Program; and process requests for security clearances of DIBA employees.

".04 *Employment Division* shall plan, develop and execute a complete program of staffing and placement services for the Domestic and International Business Administration, which includes recruitment, merit promotion, equal employment opportunity, and affirmative action programs. The Division shall provide interpretation and advice to management, employees, and applicants on employment policies and procedures; shall establish and maintain custody of official personnel folders and records; and monitor utilization of assigned ceiling for DIBA.

".05 *The Employee Development Division* shall have responsibility for all functions related to training and career development, specifically: Development and implementation of DIBA sponsored programs for Executives, First-Level Supervisorys, Management Interns, Upward Mobility Candidates, professional and clerical employees; coordination of employee training at non-Commerce facilities, such as the Civil Service Commission and local universities; and counseling of employees on training opportunities and career planning."

2. The attached organization chart supersedes the organization chart attached to DIBA Organization and Function Order 42-1 of February 28, 1975. A copy of the chart is on file with the original of this document in the Office of the Federal Register.

DONALD E. JOHNSON,
Acting Assistant Secretary for Domestic and International Business.

[FR Doc.76-14245 Filed 5-14-76;8:45 am]

National Oceanic and Atmospheric Administration

NATIONAL VERTICAL CONTROL NET

Notice of Final Action

On May 16, 1973, there was published in the FEDERAL REGISTER (38 FR 12840) a notice of proposed action to change the name of the vertical control datum from the "Sea Level Datum of 1929" to the "National Geodetic Vertical Datum of 1929." This change in name was made final and effective July 2, 1973.

T. P. GLEITER,
Assistant Administrator for Administration.

[FR Doc.76-14245 Filed 5-14-76;8:45 am]

Office of the Secretary

COMMERCE TECHNICAL ADVISORY BOARD

Meeting

A meeting of the Department of Commerce Technical Advisory Board will be held on Wednesday, June 9, 1976, from 8:30 a.m. to 5:00 p.m. and Thursday, June 10, 1976, from 8:30 a.m. to 12:00 noon in Room 20B17, Building 18-05, Boeing Space Center, Kent, Washington.

The Board was established to study and evaluate the technical activities of the Department of Commerce and recommend measures to increase their value to the business community. The agenda for the meeting is as follows:

WEDNESDAY, JUNE 9, 1976

8:30—Opening Remarks by Assistant Secretary Betsy Ancker-Johnson.
9:00—Review of Defense Science Board Task Force Report on Export of U.S. Technology.
9:30—Progress Report on ERDA's Task Force on Demonstration Projects as Commercialization Incentives.
11:30—Organization and Structure of DoC for Technological Innovation.
12:00—Lunch.
1:00—Future of the U.S. Economy.
2:00—Technology Trade with Lesser Developed Countries.
3:00—Progress Report on CTAB Panel Update of National Energy Program.
4:00—Progress Report on Public Hearing on the Future for New, Technology-Based Ventures.
5:00—Adjournment.

THURSDAY, JUNE 10, 1976

8:30—Progress Report on Reassessment of Environmental Policy.
9:00—Progress Report on Stimulation of Industrial Innovation.
9:30—Review of Technology Policy Options.
11:30—New Business.
12:00—Adjournment.

Practical consideration may dictate alterations in the above agenda or schedule. The Chairman is empowered to conduct the meeting in a manner that in her judgment will facilitate the orderly conduct of business.

A limited number of seats will be made available to the public and the press on a first-come, first-served basis.

The public may submit written statements or inquiries on agenda items with the Chairman before or after the meeting. Comments shall be directly relevant to the above agenda items. Questions at the meeting may be propounded only by members of CTAB, DoC officials, and invited participants.

Copies of minutes and handouts will be made available for copying, following their certification by the Chairman, in accordance with the Federal Advisory Committee Act, at the U.S. Department of Commerce, Central Reference and Inspection Facility, Washington, D.C. 20230.

Persons desiring to obtain further information concerning CTAB should contact Mr. William C. Holt, Executive Director of CATB, Room 3877, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377-2394.

BETSY ANCKER-JOHNSON, Ph.D.,
Assistant Secretary for Science and Technology.

[FR Doc.76-14242 Filed 5-14-76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

HEALTH CARE AND SERVICES

Notice of Open Meeting

The Food and Drug Administration announces a forthcoming Ad Hoc Professional Meeting to be chaired by the Commissioner of Food and Drugs.

The meeting will be held on May 19, 1976 at 1:00 p.m. in Rm. 1813, 200 C St. SW., Washington, DC 20204, and will be open to all interested health professionals.

The purpose of the meeting is to exchange educational and other informational items of mutual interest, to identify common problems within the sphere of FDA's responsibility that have an effect on the health care practitioner and/or the delivery of health services, to seek solutions to those problems, and to conduct other activities of similar interest and benefit.

Further information may be obtained by contacting Alan S. Kaplan, M.D., Office of Professional Programs (HFG-15), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852 (301) 443-5470.

Dated: May 11, 1976.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.76-14239 Filed 5-14-76;8:45 am]

Health Services Administration

QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS

Health Care of Louisville, Inc., et al.

Notice is hereby given, pursuant to 42 CFR § 110.605, that in the month of April 1976 the following entities have been determined to be qualified health maintenance organizations under section 1310(d) of the Public Health Service Act (42 U.S.C. 300e–9(d)).

LIST OF QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS

NAME, ADDRESS, SERVICE AREA, AND DATE OF QUALIFICATION

(Transitionally qualified health maintenance organizations: 42 CFR § 110.603 (b))

1. HealthCare of Louisville, Inc., 1809 Standard Avenue, Louisville, Kentucky 40210. Service area: Jefferson County, Kentucky, and any portion of adjacent counties located in Kentucky and Indiana which lie within a radius of twenty-five air miles of the Family Health Center, 1809 Standard Avenue, Louisville, Kentucky. Date of qualification: April 2, 1976.

2. Health Service Plan of Pennsylvania, 917 Schaff Building, 1505 Race Street, Philadelphia, Pennsylvania 19102. Service area: Philadelphia, Delaware, Montgomery, Bucks, and Chester Counties located in the State of Pennsylvania. Date of qualification: April 26, 1976.

Files containing detailed information regarding the qualified health maintenance organizations will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, at the Office of the Administrator, Health Services Administration, Department of Health, Education, and Welfare, Room 14A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852.

Questions about the review process or requests for information about qualified health maintenance organizations should be sent to the same office.

Dated: May 7, 1976.

LOUIS M. HELLMAN,
Administrator,
Health Services Administration.

[FR Doc.76–14249 Filed 5–14–76;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

[Docket No. N–76–526]

MANZANITA HILLS, UNITS 1, 2—76–46–IS; OILSR NO. 0–2577–02–523 AND (A)

Notice of Hearing

Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(d) Notice is hereby given that:

1. Manzanita Hills, Units 1, 2, Southwest Development Company, William T. Boutell, Jr., Authorized Agent and officers, hereinafter referred to as "Respondent" being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. Law 90–448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued April 5, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706 (d), 24 CFR 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Southwest Development Company and Manzanita Hills, Units One and Two contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received April 27, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), It is hereby ordered, That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, S.W., Washington, D.C., on June 3, 1976 at 10:00 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C. 20410 on or before May 21, 1976.

6. The Respondent Is hereby notified, That failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an Order Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

By the Secretary.

Dated: May 6, 1976.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.76–14274 Filed 5–14–76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 76–065]

CHEMICAL TRANSPORTATION INDUSTRY ADVISORY COMMITTEE

Open Meeting

The Chemical Transportation Industry Advisory Committee Task Group on Liquefied Gas Facilities will conduct an open meeting on 2 and 3 June 1976 in Room 8332 of the Nassif Building, 400 7th Street S.W., Washington, D.C. The meeting is scheduled to begin at 9:30 a.m.

The purpose of the meeting is to discuss and review the Task Group's working paper on liquefied gas facilities and other appropriate matters that may be brought before the task group.

The Coast Guard Chemical Transportation Industry Advisory Committee was established to provide the Commandant of the Coast Guard advice and consultation with respect to safe water transportation of hazardous materials.

Members of this committee serve voluntarily without compensation from the Federal Government for either travel or per diem.

Interested persons may obtain additional information or the summary of the minutes of the meeting by writing to:

Mr. W. E. McConnaughey, Commandant (G–MHM), U.S. Coast Guard, Washington, D.C. 20590.

or by calling (202) 426–2306.

This notice is issued under section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463, 96 Stat. 70, 5 U.S.C. App. I).

Dated: May 11, 1976.

W. M. BENKERT,
RADM, U.S. Coast Guard Chief,
Office of Merchant Marine Safety.

[FR Doc.76–14288 Filed 5–14–76;8:45 am]

[CGD 76–084]

SHIP STRUCTURE COMMITTEE

Open Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (P.L. 92–462; 86 Stat. 770, 5 U.S.C. App 1), notice is hereby given that the Ship Structure Committee will conduct an open meeting on Tuesday, June 8, 1976 at the Nassif Building, Room 8236, 400 Seventh Street, S.W. Washington, D.C., beginning at 9:30 a.m.

This meeting is being held to discuss the research program and operations of the Ship Structure Committee..

The Coast Guard Ship Structure Committee was established to conduct an aggressive research program which will in the light of the changing technology in marine transportation, improve the design, materials, and construction of the hull structure of ships, by an extension of knowledge in these fields, for the ultimate purpose of increasing the safe operation of ships.

Interested persons may file statements and arrange for an appearance before the committee by writing to: Commandant (G–NMT/82), U.S. Coast Guard, Washington, D.C. 20590.

May 12, 1976.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Merchant Marine Safety.

[FR Doc.76–14287 Filed 5–14–76;8:45 am]

Federal Aviation Administration

U.S. ADVISORY COMMITTEE ON VISUAL AIDS TO APPROACH AND LANDING

Meeting

Pursuant to Section 10(a)(2) of Public Law 92-463, notice is hereby given that the U.S. Advisory Committee on Visual Aids to Approach and Landing will hold a meeting at 10:00 a.m., Thursday, June 10, 1976, in Room 8C, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. The agenda for the meeting is as follows:

1. Report on the Seventh Meeting of the ICAO Visual Aids Panel (VAP) held in Montreal, Canada, February 1976.
2. Discussion of the Recommendations of the Seventh VAP Meeting and followup actions required.
3. Discussion of the Revised Work Program of the ICAO Visual Aids Panel.
4. Discussion of proposed replies to the VAP Secretary on several VAP Memorandums on items of the Panel Work Program.

All those interested in attending the meeting should contact Miss Aughtie Hawkins, Airports Engineering Division, Airports Service, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, Telephone (202) 426-3055. The meeting will be open to the public.

Issued in Washington, D.C., on May 10, 1976.

ROBERT BATES,
Chairman, U.S. Advisory Committee on Visual Aids to Approach and Landing.

[FR Doc.76-14254 Filed 5-14-76;8:45 am]

National Highway Traffic Safety Administration

[Docket No. EX75-21; Notice 4]

TRAVEL BATCHER CORP.

Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard

This notice grants the application of Travel Batcher Corporation of Salt Lake City, Utah, for a renewal of its temporary exemption from Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, on the basis that compliance would cause it substantial economic hardship.

Notice of the petition was published on March 15, 1976 (41 FR 10442), and an opportunity afforded for public comment.

In the calendar year 1975 Travel Batcher manufactured five motor vehicles (ready-mix trucks). It normally produced 10 vehicles a year before the advent of Standard No. 121 on March 1, 1975. Since its previous temporary exemption expired on February 1, 1976, it has shut down production. In the fiscal year ending July 31, 1975, it had a net loss of almost $47,000 which increased its retained deficit to almost $80,000. Travel Batcher requested an exemption until February 1, 1977. Because of the specialized nature of its vehicles and small production, it was impossible for it to find a supplier to fill its needs and to meet Standard No. 121 on the effective date. While its temporary exemption was in effect it located a supplied, The American-Coleman Company, who appears confident of supplying it with conforming axles during the first quarter of 1977. The alleged effect of a denial was that it would bankrupt the company.

The American-Coleman Company was the sole commenter on the petition, supporting it. It affirmed the commercial difficulty in supplying specially-tailored axles to small volume customers, and the probability that it will meet Travel Batcher's needs by the end of the extended exemption period.

It has been determined that to require compliance with Standard No. 121 before February 1, 1977, would cause Travel Batcher Corp. substantial economic hardship. Since petitioner manufactures less than a dozen vehicles a year it is further found that renewal of the exemption is in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.

In consideration of the foregoing, Travel Batcher Corp. is hereby granted a renewal of NHTSA Exemption No. EX75-21, from 49 CFR 571.121, Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, expiring February 1, 1977.

(Sec. 3, Pub. L. 92-548, 88 Stat. 1159 (15 U.S.C. 1410); delegation of authority at 49 CFR 1.50)

Issued on May 11, 1976.

FRED W. VETTER,
Acting Administrator.

[FR Doc.76-14324 Filed 5-14-76;8:45 am]

Office of the Secretary

INTERAGENCY COMMERCIAL VEHICLE POST—1980 GOALS STUDY

Request for Information and Public Comment

The Chairman of the Energy Resources Council requested the Secretary of Transportation on March 21, 1975 "* * * to lead a joint task force to recommend long range energy goals of the motor vehicle fleet that will be compatible with environmental, safety and economic objectives." The ERC's charge further stated:

"As part of the Nation's long range effort to conserve energy, there is a need to set motor vehicle fuel economy goals beyond 1980. Such goals must meet the transportation needs for automobiles, trucks and buses, but they must also be blended with environmental, safety and the economic considerations."

Separate interagency task forces were established to approach passenger car and light truck concerns, on the one hand, and commercial vehicle (medium and heavy-duty trucks and buses) concerns on the other. Participating in the commercial vehicle task force have been representatives of the Department of Transportation, Federal Energy Administration, Environmental Protection Agency, National Science Foundation, Energy Research and Development Administration, Interstate Commerce Commission and United States Postal Service. A public hearing was held on October 8, 1975, to give interested persons an opportunity to provide input to the task forces' deliberations. The information which was presented in that hearing has been used in writing the draft task force report.

The purpose of this notice is to announce the availability of a limited number of copies of the draft report and to solicit comment from interested parties. Because our present plans call for submitting a summary of the report to the Energy Resources Council on June 1, 1976, we specifically request that comments addressed to major policy issues and/or recommendations be forwarded to the address below as soon as possible. More detailed comments on the draft study, received before June 30 will be considered by the task force in formulating the final report. It is our hope that the dialogue instituted by the publication of this study between and among various industry and Government segments will continue and will help to shape the Nation's thinking on the future of the motor carrier industry.

Copies of the draft study have been sent to organizations which participated in the October 8 hearing. Copies have also been sent directly to those motor carriers, manufacturers, suppliers, trade organizations and labor organizations which have indicated a willingness to participate in the Industry-Government Voluntary Truck and Bus Fuel Economy Program.

Copies of the draft study are available for inspection or pickup from 8:00 a.m. to 5:30 p.m. in the office of the Manager, Voluntary Truck and Bus Fuel Economy Program, Room 5222, Trans Point Building, U.S. Department of Transportation, 2100 Second Street, SW., Washington, D.C. 20490. Copies are also available upon receipt of mail requests to that address. All comments (in three copies, if possible) should reference the "Interagency Study of Post-1980 Goals for Commercial Vehicles" and be sent to the Manager, Voluntary Truck and Bus Fuel Economy Program—TST-50, U.S. Department of Transportation, Washington, D.C. 20590.

Issued in Washington, D.C., on May 11, 1976.

W. H. CLOSE,
Manager, Voluntary Truck and Bus Fuel Economy Program.

[FR Doc.76-14277 Filed 5-14-76;8:45 am]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

NOTICE OF PUBLIC MEETING

Notice is hereby given, pursuant to the Federal Advisory Commitee Act, P.L. 92-463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficien-

cy, adequacy, and fairness of the administrative procedures used by administrative agencies in carrying out their programs, will meet in Plenary Session on Thursday, June 3, 1976 at 1:45 p.m. and on Friday, June 4, 1976 at 9:30 a.m. in Hearing Rooms A and B of the Interstate Commerce Commission, 12th Street and Constitution Avenue, N.W., Washington, D.C.

The Conference will consider (not necessarily in the order stated) the following matters:

1. Exception from mandatory retirement for certain Presidential appointees.
2. Strengthening the informational and notice giving functions of the FEDERAL REGISTER.
3. Procedures in addition to notice and opportunity for comment in informal rulemaking.
4. Amendment to paragraph (b) of Recommendation No. 75–8, Tax Return Confidentiality.

Plenary Sessions of the Conference are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street, N.W., Suite 500, Washington, D.C. 20037, telephone (202) 254–7020.

Dated: May 11, 1976.

RICHARD K. BERG,
Executive Secretary.

[FR Doc.76–14256 Filed 5–14–76;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 29186]

MEMPHIS-TWIN CITIES/MILWAUKEE CASE

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in this proceeding is assigned to be held on July 13, 1976, at 9:30 a.m. (local time), in Room 1003, Hearing Room D, North Universal Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before Administrative Law Judge Janet D. Saxon.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and six copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and for evidence; (4) statements of positions; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before June 29, 1976, and the other parties on or before July 7, 1976. The submissions of the other parties shall be limited to points on which they differ with the Bureau, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., May 12, 1976.

[SEAL] ROBERT L. PARK,
Chief Administrative Law Judge.

[FR Doc.76–14301 Filed 5–14–76;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

[Petition No. CP 76–3]

POWDER-ACTUATED STUD DRIVERS

Denial of Petition

The purpose of this notice is to announce that the Consumer Product Safety Commission has denied a petition to develop a consumer product safety standard applicable to powder-actuated stud drivers.

Section 10 of the Consumer Product Safety Act (CPSA) (Pub. L. 92–573, 86 Stat. 1217; 15 U.S.C. 2059) provides that any interested person may petition the Consumer Product Safety Commission to commence a proceeding for the issuance of a consumer product safety rule. Section 10 also provides that if the Commission denies such a petition, it shall publish its reasons for denial in the FEDERAL REGISTER.

On October 3, 1975, Joel D. Bailey, an attorney in Beaufort, South Carolina, petitioned the Commission to develop mandatory safety standards for powder-actuated stud drivers (Petition No. CP 76–3). These are tools in which a fastener is driven into a work surface by an explosive charge.

The petition stated that a client of the petitioner was seriously injured when he was struck in the chest by a nail which ricocheted after being fired from a powder-actuated stud driver. The petition also stated that at least 3 serious injuries have occurred from the use of these products in South Carolina.

In addition, the petition pointed out that no mandatory state or federal standards apply to powder-actuated stud drivers used by consumers outside an employer-employee relationship. Although there is a voluntary standard published by the American National Standards Institute (ANSI) concerning this product, ANSI A10.3–1972, the ANSI standard is not a mandatory standard. The petition requested the Commission to initiate a standard development proceeding to develop a consumer product safety standard that would require a warning label to be placed on powder-actuated stud drivers. The petition also suggested that the Commission issue the ANSI voluntary standard as a mandatory consumer product safety standard.

After careful consideration of the petition and additional data and information collected by the Commission staff, the Commission is unable to find, based on the information available at the present time, that the risk of injury associated with powder-actuated stud drivers due to the hazard alleged in the petition is sufficient to warrant the development of the requested consumer product safety rule. The reasons for the Commission's decision are as follows:

(1) The information collected by the Commission under the National Electronic Injury Surveillance System (NEISS) contains very limited injury data concerning powder-actuated stud drivers. A total of 7 relatively minor injuries caused by this product have been reported from the inception of NEISS to date. There are no death certificates pertaining to this product on file with the Commission.

(2) Although powder-actuated stud drivers are available for use by consumers, the degree of use of these products by consumers would appear to be limited at the present time. Powder-actuated stud drivers appear to be used predominantly in employer-employee relationships. As a result, relatively few consumers would be exposed to the risk of injury that the petitioner alleges is associated with powder-actuated stud drivers.

(3) There is a voluntary standard that, inter alia, addresses the risk of injury alleged by the petition to be associated with this product (ANSI A10.3–1972). Paragraph 6.1.10 of the ANSI voluntary standard requires a warning notice to be attached to the inside cover of the tool containers. In addition, there appears to be a high degree of adherence to the voluntary ANSI standard for these products. There are nine manufacturers of powder-actuated stud drivers that are known to the Commission. Eight of these are members of the Powder Actuated Tool Manufacturers Institute and are reported to comply with the applicable ANSI voluntary standard.

(4) There is an Occupational Safety and Health Administration (OSHA), standard applicable to powder-actuated stud drivers (29 CFR section 1910.243 (d)). The provisions of this standard are mandatory in employer-employee relationships affecting interstate commerce. The OHSA standard, at 29 CFR section 1910.243(d)(1)(i), provides that explosive-actuated fastening tools must meet the design requirements of the 1970 version of the ANSI voluntary standard. Since powder-actuated stud drivers appear to be predominantly used in employer-employee relationships, the powder-actuated stud drivers that are sold to, rented by, or used by consumers are likely to meet the design requirements of the OSHA standard. This is because of the additional costs which might be incurred in maintaining separate product lines (one for consumers and one for employment situations). Therefore, even though the design requirements of the OSHA standard apply only to powder-actuated stud drivers used in employer-employee relationships, powder-actuated stud drivers that are used by consumers would probably also comply with the design requirements of the OHSA standard.

For the reasons outlined in this Notice, the Commission does not believe that the initiation of a standard development proceeding for powder-actuated stud drivers is necessary at this time. Accordingly, the Commission has denied petition CP 76–3 concerning powder-actuated stud drivers.

In light of increased consumer use of powder-actuated stud drivers, the Com-

mission has instructed its staff to contact ANSI to urge that the group consider amending the voluntary standard to provide additional protection to consumers, including the adoption of more comprehensive warnings.

Copies of the petition and other relevant materials may be seen in or obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, during working hours Monday through Friday, except holidays.

Therefore, pursuant to section 10(d) of the Consumer Product Safety Act (Pub. L. 92-573, 86 Stat. 1217; 15 U.S.C. 2059(d)), notice is hereby given of the Commission's denial of the above-described petition.

Dated: May 12, 1976.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.76-14278 Filed 5-14-76;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

ARGONNE NATIONAL LABORATORY

Preparation of Environmental Impact Statement

Notice is hereby given that, in accordance with the National Environmental Policy Act, the Energy Research and Development Administration (ERDA) has commenced the preparation of a draft environmental statement on its operations at the Argonne National Laboratory (ANL) site at Argonne, Du Page County, Illinois. The ANL site has been in operation for about 30 years. The current cumulative impact on the environment of the operation of the various facilities will be assessed as well as the anticipated future impact of continuing the operations at the site. When completed, the draft statement will be circulated for review to Federal, State, and local agencies and interested public organizations and individuals. The comments received on the draft statement will be considered in the preparation of the final statement which will provide environmental input into ERDA decisions affecting the future operations at the ANL site.

Copies of documents to be utilized in the preparation of this draft environmental statement will be available for inspection at the ANL Central Library Facility, Building 203, and a bibliography of the documents will be available at the ERDA public document rooms at:

ERDA Headquarters, 20 Massachusetts Avenue, Washington, D.C.
Albuquerque Operations Office, Kirtland Air Force Base East, Albuquerque, New Mexico.
Chicago Operations Office, 9500 South Cass Avenue, Argonne, Illinois.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tennessee.
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada.
Richland Operations Office, Federal Building, Richland, Washington.
San Francisco Operations Office, 1333 Broadway, Oakland, California.
Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina.

All interested agencies, organiaztions or persons desiring to submit comments or suggestions for consideration in connection with the preparation of the draft environmental statement should submit them to W. H. Pennington, Acting Director, Office of NEPA Coordination, Mail Station E-201, U.S. Energy Research and Development Administration, Washington, D.C. 20545, telephone (301) 353-4241 on or before July 15, 1976. Those desiring a copy of the draft environmental statement when it is issued, should notify Mr. Pennington.

Dated at Germantown, Maryland, this 9th day of April 1976.

For the Energy Research and Development Administration.

JAMES L. LIVERMAN,
Assistant Administrator for Environment and Safety.

[FR Doc.76-14383 Filed 5-14-76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 542-6]

AVAILABILITY OF ENVIRONMENTAL PROTECTION

Agency Comments on Environmental Impact Statements and Other Actions Impacting the Environment

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment contained in the following appendices during the period of April 1, 1976 and April 15, 1976.

Appendix I contains a listing of the draft environmental impact statements reviewed and commented upon in writing during this review period. The list includes the Federal agency responsible for the statement, the number and title of the statement, the classification of the nature of EPA's comments as defined in Appendix II, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix II contains the definitions of the classification of EPA's comments on the draft environmental impact statements as set forth in Appendix I.

Appendix III contains a listing of final environmental impact statements reviewed and commented upon in writing during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix IV contains a listing of final environmental impact statements reviewed but not commented upon by EPA during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, and the source of the EPA review as set forth in Appendix VI.

Appendix V contains a listing of proposed Federal agencies' regulations, legislation proposed by Federal agencies, and any other proposed actions reviewed and commented upon in writing pursuant to section 309(a) of the Clean Air Act, as amended, during the referenced reviewing period. The listing includes the Federal agency responsible for the proposed action, the title of the action, a summary of the nature of EPA's comments, and the source for copies of the comments as set forth in Appendix VI.

Appendix VI contains a listing of the names and addresses of the sources of EPA reviews and comments listing in Appendices I, III, IV, and V.

Copies of the EPA Manual setting forth the policies and procedures for EPA's review of agency actions and EPA comments referenced herein may be obtained by writing the Public Information Reference Unit, (PM-213), Environmental Protection Agency, Room 2922, Waterside Mall SW., Washington, D.C. 20460, telephone 202/755-2808. Copies of the draft and final environmental impact statements referenced herein are available from the originating Federal department or agency.

Dated: May 4, 1976.

REBECCA W. HANMER,
Director, Office of Federal Activities.

APPENDIX I.—*Environmental impact statements for which comments were issued between Apr. 1, and Apr. 15, 1976*

Identifying No.	Title	General nature of comments	Source for copies of comments
Corps of Engineers:			
D-COE-D35009-00	Delaware Bay-Chesapeake Bay Waterway, Delmarva Waterway, Deleware, Maryland, and Virginia.	ER-2	D
D-COE-D36017-PA	Local flood protection project, Ten Mile Creek, Washington County, Pa.	ER-2	D
DS-COE-E32006-GA	Harbor modification, Savannah Harbor, Ga.	ER-2	E
D-COE-E34004-KY	Paintsville Lake, Sandy River Basin, Ky.	ER-2	A
D-COE-E35022-NO	Navigation improvements, Lockwoods Folly Inlet, Brunswick County, N.C.	LO-2	E
D-COE-H36026-IA	Keokuk flood damage reduction, Mississippi River, Lee County, Iowa.	LO-2	H
D-COE-J36006-UT	Flood control and recreation improvements, Lower Jordan River, Salt Lake City, Salt Lake and Davis Counties, Utah.	LO-2	I
D-COE-K35006-CA	Maintenance dredging, Crescent City Outer Harbor, Del Norte County, Calif.	LO-2	J
Department of Agriculture:			
D-AFS-B61005-VT	Deerfield River Area, land use plan, Green Mountain National Forest, Windham County, Vermont (USDA-FS-R9-DES-ADM-76-02).	LO-1	B
D-AFS-B82002-ME	Cooperative Spruce Budworm Suppression Project, year 1976, Maine.	LO-1	B
D-AFS-F65008-KY	Management of the Laurel River Unit, Daniel Boone National Forest, Whitley and Laurel Counties, Kentucky, (USDA-FS-R8-DES-ADM-76-02).	LO-2	E
D-AFS-E65009-NC	Curtis Creek Unit, Pisgah National Forest, McDowell County, N.C.	LO-2	E
D-AFS-J65039-CO	Timber management plan, White River National Forest, Colo.	ER-2	I
D-AFS-L61061-OR	Land use plan, Chemult planning unit, Lake and Klamath Counties, Ore. (USDA-FS-DES(ADM) R6-20).	LO-2	K
D-AFS-L61063-WA	Travel regulations on trails and areas, Olympic National Forest, Clallam, Jefferson, and Mason Counties, Wash. (USDA-FS-R6-DES(ADM)76-4).	LO-1	K
D-AFS-L61064-WA	Quinault planning unit, land use plan, Olympic National Forest, Grays Harbor and Jefferson Counties, Wash. (USDA-FS-R6-DES(ADM)76-2).	LO-2	K
D-REA-G07006-TX	G and T cooperative project, lignite unit No. 1 and associated mine and transmission lines. Atascosa and McMullen Counties, Tex.	LO-2	G
D-SCS-D36016-MD	Big Pipe Creek Watershed, Carroll County, Md.	ER-2	D
D-SCS-F36034-OH	Watershed protection and flood prevention, Beaver Creek, Hancock, Henry, Putnam, and Wood Counties, Ohio.	LO-2	F
D-SCS-H36025-KS	Wet Walnut Creek Watershed Nos. 1, 2, 3, 5, Wet Walnut Creek Basin, Kansas (USDA-SCS-76-2-D-KS).	ER-2	H
Department of Commerce:			
D-EDA-L89001-WA	Yakima central business district improvements, city of Yakima, Wash.	LO-1	K
Department of the Interior:			
D-BLM-G07007-00	345 kv transmission lines, Greenlee County, Arizona to El Paso, Tex.	LO-1	G
D-BLM-J34003-WY	Proposed Middle Fork Reservoir, Powder River, Johnson County, Wyo. (DES 76-5).	ER-1	I
DS-BPA-L08021-ID	Haymill Service study area, facility location evaluation, Minidoka County, Idaho (DES 76-8).	LO-1	K
Department of Transportation:			
D-FAA-E51013-KY	Madisonville Municipal Airport, Madisonville, Ky.	LO-2	E
D-FAA-E51006-MI	Proposed development of Hillsdale Municipal Airport, Hillsdale, Mich. (AGL-612).	LO-2	F
D-FHW-B40016-NH	3.64 mile, U.S. 202 relocation, Rindge, Cheshire County, N.H. (FHWA-NH-EIS-76-01-D).	LO-1	B
D-FHW-D40028-MD	MD-51, South of Cumberland to North Branch, Allegheny County, Md.	ER-2	D
D-FHW-F40071-NC	Independence Boulevard portion of inner loop from I-77 to Northwest freeway, Charlotte, N.C. (FHWA-NC-EIS-76-02-D).	ER-2	E
D-FHW-F40052-WI	Daly Avenue Route, city of Wisconsin Rapids, Wood County, Wis. (FHWA-WIS-EIS-75-11-D).	ER-2	F
DS-FHW-H40027-NR	NB-28 and NB-5306, Scottsbluff South, Scotts Bluff County, Nebr. (FHWA-NEB-EIS-75-15-D).	ER-2	H
D-FHW-L40032-AK	Minnesota Drive Extension, Alaska	ER-2	K
Federal Power Commission:			
D-FPC-803000-MA	Construction and operation of a LNG import terminal, Everett, Middlesex County, Mass. (CP 73-135, 137, CP 74-227, CP 76-9).	LO-1	B
Department of Housing and Urban Development:			
D-HUD-B89007-MA	Central business district, urban renewal project, Fall River, Bristol County, Mass. (R-138).	LO-2	B
D-HUD-D85003-MD	London Woods Development, Prince Georges County, Md.	LO-2	D
D-HUD-E89003-NC	East Winston Community Development, project one, (CDBG), Winston-Salem, N.C.	LO-1	E
D-HUD-F85007-MN	Northmark, Windslope, Nelli Lake, East-West Parkway Housing projects, Eden Prairie, Minn.	LO-2	F
D-HUD-F85008-OH	Depot Street Improvement Program (CDBG), Berea, Ohio.	LO-2	F
D-HUD-K34003-CA	Brawley County Water District (CDBG), Water and Sewer Project, Brawley and Imperial Counties, Calif.	LO-2	J
D-HUD-K85002-CA	Residential Development of Neighborhood One, Hercules, Contra Costa County, Calif. (HUD-R09-EIS-D).	ER-2	J
Interstate Commerce Commission:			
D-ICC-C52002-00	Masceny Transport and Ferry Service, Inc., Iwittal operations, New London, Conn. to Greenport, Suffolk County, N.Y.	ER-2	C
Nuclear Regulatory Commission:			
DS-NRC-A06159-NY	Closed Cycle Cooling System, Indian Point Unit No. 2, Buchanan, Westchester County, N.Y. Docket No. 50-247, (NUREG-0038).	LO-2	C

APPENDIX II

DEFINITIONS OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

ENVIRONMENTAL IMPACT OF THE ACTION

LO—Lack of objection

EPA has no objections to the proposed action as described in the draft impact statement; or suggests only minor changes in the proposed action.

ER—Environmental reservations

EPA has reservations concerning the environmental effects of certain aspects of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these impacts.

EU—Environmentally unsatisfactory

EPT believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

ADEQUACY OF THE IMPACT STATEMENT

Category 1—Adequate

The draft impact statement adequately sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

Category 2—Insufficient information

EPA believes that the draft impact statement does not contain sufficient information to assess fully the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft statement.

Category 3—Inadequate

EPA believes that the draft impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonable available alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

APPENDIX III.—*Final environmental impact statements for which comments were issued between Apr. 1, and Apr. 15, 1976*

Identifying No.	Title	General nature of comments	Source for copies of comments
Corps of Engineers:			
F-COE-A32431-NC	Maintenance dredging, channel from Back Sound to Lookout Bight, Carteret County, N.C.	EPA's concerns were adequately addressed in the final EIS.	E
F-COE-E36013-MS	Flood control, Mississippi River and tributaries, Yazoo River Basin, Miss.	do	E
Department of Agriculture:			
F-REA-J08003-WY	Construction of 115 kV transmission line, Teton to Jackson, Teton County, Wyo.	EPA recommended the REA delay the proposed loan guarantee for a period of 15 Mo until the 208 plan and County comprehensive plan are completed.	I
F-SCS-F36017-IN	Jordon Creek Watershed, Warren County, Ind.	EPA's concerns were adequately addressed in the final EIS.	F
Department of the Interior:			
F-NPS-A61206-PA	Independence National Historical Park, Area F, Philadelphia, Pa. (FES 76-10).	do	D
Department of Transportation:			
F-DOT-A41585-IL	IL-161, adjacent to Centralia, Marion County, Ill. (FHWA-ILL-EIS-72-41-F).	do	F
F-FHW-A41179-SC	James Island Expressway and SC-61 connector, from SC-171 to Lockwood Blvd., Charleston County, S.C.	do	E
F-FHW-A41870-WI	Airport Spur I-94, General Mitchell Field, Milwaukee County, Wis. (FHWA-WIS-EIS-73-7-F).	do	F
F-FHW-A42076-ND	Bismarck Ave., I-194, Bismarck South Bypass, Burleigh and Morton Counties, N. Dak.	EPA continues to have environmental reservations concerning the noise impacts of the highway. In addition, EPA recommended that alternatives to the project location be considered which would substantially reduce, or completely eliminate, the encroachment of the highway through park lands in the city.	I
F-FHW-F40021-WI	North 14th St. extension, Sheboygan, Sheboygan County, Wis. (FHWA-WIS-EIS-74-17-F).	EPA's concerns were adequately addressed in the final EIS.	F
Department of Housing and Urban Development:			
F-HUD-C25001-PR	Expansion of solid waste disposal site, municipality of Coamo, P.R.	Generally, EPA's concerns were adequately addressed in the final EIS. However, additional information on the use of clay liners in the landfill, water table and groundwater supplies is still necessary before a final determination can be made.	C

APPENDIX III.—*Final environmental impact statements for which comments were issued between Apr. 1, and Apr. 15, 1976*

Identifying No.	Title	General nature of comments	Source for copies of comments
F-HUD-J85001-CO	Pier Point, a planned unit development, Aurora County, Colo.	EPA continues to have environmental reservations concerning the cumulative impacts to air quality and water quality in the Denver area. HUD is considering FHA insurance for a number of large subdivisions located on the Periphery of the Denver metropolitan area, and EPA is concerned that further urban sprawl type development will aggravate an already serious air quality problem.	I
Nuclear Regulatory Commission:			
F-AEC-A06135-MD	Douglas Point Nuclear Generating Station, units 1 and 2, Potomac Electric Power Co., Docket Nos. 50-448, 50-449, Charles County, Md.	In general, EPA found the final statement adequately responded to comments on the draft version. However, EPA stressed that compliance of the plant's discharge with Maryland's water quality standards must be achieved at all flow levels down to the 7 d, 10 yr low flow of 500 CFS. Since the final statement used a flow of 1,000 CFS, the validity of the thermal analysis done by NRC was questioned.	D

APPENDIX IV.—*Final environmental impact statements for which comments were issued between Apr. 1, 1976 and Apr. 15, 1976*

Identifying No.	Title	General nature of comments	Source for copies of comments
Corps of Engineers:			
F-COE-A32435-FL	East Pass Channel, maintenance dredging, Broctaw-batchee Bay, Okaloosa, County, Fla.		E
F-COE-A35084-AL	Perdido Pass, maintenance dredging of existing navigation channels, Bladwin County, Ala.		E
F-COE-E32008-KY	Operation and maintenance, Green and Barren Rivers, Ky.		E
F-COE-F35013-SC	Charleston Harbor maintenance dredging, Ashley River, U.S. Navy Channels, and Cooper River, Charleston and Berkeley Counties, S.C.		E
F-COE-K25002-CA	Palo Alto refuse disposal permit, section 10, Palo Alto, Santa Clara County, Calif.		J
F-COE-K35003-HI	Regulatory permit application, Oahu, Honolulu County, Hawaii.		J
F-COE-K35000-HI	Harbor maintenance dredging, Hawaii		J
Department of Agriculture:			
F-AFS-J65028MT	Petty Mountain planning unit, Lolo National Forest, Missoula County, Mont. (USDA-FS-R1(16)-FES-ADM-76-3).		I
F-AFS-J65029-AI	West slope of the Tetons, planning unit, Targhee National Forest, St. Anthony, Idaho and Wyo.		I
F-DOA-H81002-IA	Veterinary Biologics Laboratory, Ames, Story County, Iowa.		H
F-SCS-B36005-MA	Diamond Brook Watershed, Norfolk County, Mass. (USDA-SCS-EIS-WS-(ADM)-75-01-F-MA).	1	B
Department of Transportation:			
F-FAA-E51014-NC	Rowan County Airport, Salisbury, N.C.	1	E
F-FHW-A42173-TX	I-635, South Mesquite Creek, city of Mesquite, Dallas County, Tex.	1	G
F-FHW-A42260-IA	U.S. 71 Expressway, Clay and Dickerson Counties, Iowa	1	H
F-FHW-H40028-IA	IA-2, Bedford Bypass, Taylor County, Iowa	1	H
General Service Administration:			
F-GSA-G81007-TX	Proposed alteration, Fort Worth Federal Center, Tarrant County, Tex.	1	G
Department of Housing and Urban Development:			
F-HUD-K89003-CA	Culver City Community Development Plan (CDBG), Culver City, Los Angeles County, Calif.	1	J
F-HUD-K89009-CA	Center City Project, National City, San Diego County, Calif.	1	J

APPENDIX V.—*Regulations, legislation and other Federal agency actions for which comments were issued between Apr. 1, 1976 and Apr. 15, 1976*

Identifying No.	Title	General nature of Comments	Source for copies of comments
Department of Defense:			
R-DOD-A11053-00	32 CFR part 243, intergovernmental coordination of DOD land and facility plans and projects.	EPA's review of the proposed rulemaking pointed out several basic inconsistencies between it and section 102(2)(C) of NEPA. The problem areas include publication of project justification or rationale, project review time, publication of project timing information and publication of economic data. EPA also pointed out apparent conflicts between this proposed directive and the DOD environmental directive and suggested that the two be made compatible.	A
Department of Transportation:			
A-DOT-A86097-00	Fuel economy standards for electric and other nonfuel vehicles, request for information and public comment, notices.	EPA's comments addressed three items in particular: (1) The manner in which the energy requirements of electric and other nonfuel vehicles may be compared with the energy requirements of fuel-consuming vehicles; (2) how to measure the probable effectiveness of a fuel flow meter; and (3) the lack of sensitivity of the fuel flow meter to changes in throttle position.	A

APPENDIX VI.—SOURCE FOR COPIES OF EPA COMMENTS

A. Public Information Reference Unit (PM-213), Environmental Protection Agency, Room 2922, Waterside Mall, SW, Washington, D.C. 20460.

B. Director of Public Affairs, Region I, Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203.

C. Director of Public Affairs, Region II, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007.

D. Director of Public Affairs, Region III, Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.

E. Director of Public Affairs, Region IV, Environmental Protection Agency, 1421 Peachtree Street, NE, Atlanta, Georgia 30309.

F. Director of Public Affairs, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

G. Director of Public Affairs, Region VI, Environmental Protection Agency, 1600 Patterson Street, Dallas, Texas 75201.

H. Director of Public Affairs, Region VII, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Missouri 64108.

I. Director of Public Affairs, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80203.

J. Director of Public Affairs, Region IX, Environmental Protection Agency, 100 California Street, San Francisco, California 94111.

K. Director of Public Affairs, Region X, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

[FR Doc.76-14059 Filed 5-14-76;8:45 am]

[FRL 535-7; OPP-260007A]

PESTICIDE PROGRAMS

Appointment of Advisory Committee on Leptophos

Notice is hereby given of the appointment of an Advisory Committee pursuant to Sections 408 (e) and (g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e), (g)). The members of the committee are Dr. Julius M. Coon, Chairman, Dr. Seymour L. Friess, Dr. Tetsuo R. Fukuto, Dr. Bernard P. McNamara, and Dr. Gerald Rosen. As set out in the Referral and Charge which is published below, the proposed revocation of tolerances for leptophos (40 FR 22847, May 27, 1975) is being referred to this Advisory Committee. Persons desiring to contact the Committee should do so through the Secretariat, Mr. David Bowen, Environmental Protection Agency, WH-567, Room 313, East Tower, 401 "M" Street SW., Washington, D.C. 20460 (202-755-2516).

Dated: May 4, 1976.

ANDREW W. BREIDENBACH,
Assistant Administrator for Water and Hazardous Materials.

REFERRAL AND CHARGE TO ADVISORY COMMITTEE CONCERNING PROPOSED REVOCATION OF TOLERANCES FOR LEPTOPHOS

Section 408(e) of the Federal Food, Drug and Cosmetic Act (FDCA) (21 U.S.C. 346a(e)) provides for the referral by the Environmental Protection Agency (EPA) of a proposed revocation of a tolerance of a pesticide chemical to an Advisory Committee nominated by the National Academy of Sciences when so requested by any person who is a registrant or an applicant for registration of the pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 et seq.). Pursuant to Section 408(e) of the FDCA, the Velsicol Chemical Corporation, Chicago, Illinois has made a timely request for the referral to an Advisory Committee of the Agency's proposed revocation of tolerances for the insecticide leptophos on lettuce and tomatoes (40 FR 22847, May 27, 1975). The tolerances for leptophos on lettuce and tomatoes had originally been established by regulation (40 C.F.R. 180.345) published in the FEDERAL REGISTER (39 FR 19208, May 31, 1974). The tolerances were set pursuant to pesticide petition PP 2F1228 submitted by Velsicol.

Following the establishment of these tolerances, concern was expressed about studies showing delayed neurotoxicity from exposure to leptophos. EPA has proposed revocation of the existing tolerances for leptophos, as noted above, and the matter is hereby referred to the Advisory Committee.

The Advisory Committee is charged to consider and evaluate all relevant scientific evidence concerning the safety of leptophos, its metabolites and degradation products (hereinafter, leptophos). The Committee is to submit a report and recommendation on the proposed revocation of the tolerances on lettuce and tomatoes together with all underlying data and a statement of the reasons and basis for the recommendation.

Specifically the Committee should express its opinion on the following:

(1) Whether leptophos has a delayed neurotoxic effect in hens, rabbit, sheep, water buffalo or any other animal.

(2) Whether there are other toxic effects from use of leptophos.

(3) Whether there is a potential for hazard to man from ingestion of any amounts of leptophos.

(4) Whether there is a potential for hazard to man from ingestion of leptophos residues on lettuce of 10 ppm and on tomatoes of 2 ppm or from lesser residues.

(5) Whether leptophos bioaccumulates and is persistent and therefore poses a hazard to man or the environment.

(6) Whether exposure to leptophos causes adverse effects which to the extent necessary to protect the public health, make it unsafe for use.

Pursuant to Section 408(e), the Advisory Committee must submit its report to the Agency through the Secretariat within sixty days after it receives the petition from EPA unless the Chairman requests an additional thirty days to complete the report.

[FR Doc.76-13424 Filed 5-14-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 805]

COMMON CARRIER SERVICES INFORMATION

Applications Accepted for Filing

MAY 10, 1976.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's Rules and Regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (see § 309(c) of the Communications Act), applications filed under Part 68, or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning radio and Section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 of the Commission's Rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier (a) the close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. (See § 1.227(b)(3) and 21.30(b) of the Commission's Rules.)

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

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

21936-CD-P-76, Phone Depots of Connecticut, Inc. (KCI310). C.P. for additional facilities to operate on 35.58 MHz to be located at a new site described as Loc. #4: Corner Danbury and New Town Roads, Danbury, Connecticut.

21937-CD-P-76, RadioCall, Inc. (KUA482). C.P. to relocate facilities and change antenna system operating on 152.24 MHz at Loc. #8 to be located at Huling Tunnel, Diamond Head, Honlulu, Hawaii.

21938-CD-P-76, Ooltcah-Collegedale Telephone Company, Inc. (New). C.P. for a new 1-way Signaling Station to operate on 158.10 MHz to be located at Whitecak Mountain, 2 miles SW of Collegedate, Tennessee.

21939-CD-P-76, Citizens Utilities Company of California (KUD224). C.P. to change antenna system operating on 454.625 MHz located at 8220 Elk Grove-Florin Road, Elk Grove, California.

21940-CD-P-76, Comex, Inc. (KCI295). C.P. for additional facilities to operate on 43.22 MHz to be located at a new site described as Loc. #2: Hog Hill, Near Rt. #121, Atkinson, New Hampshire.

21941–CD–P–76, Jackson Mobilphone Company, Inc. (New). C.P. for a new 1-way Signaling Station to operate on 152.24 MHz to be located at Hwy. 70E—6 miles East of Jackson, Tennessee.

21943–CD–P–76, Western Radio Communications (New). C.P. for a new 2-way station to operate on 454.300 MHz (Base) and 459.050 MHz (Repeater) to be located 8.0 miles south of Casper on Casper Mountain (Loc. #1), and 454.050 MHz (Control) at 112 Big Horn Road (Loc. #2), Casper, Wyoming.

21945–CD–P–76, Ram Broadcasting of Michigan, Inc. (KQA338). C.P. to replace transmitter, change antenna system and relocate facilities operating on 454.150 and 454.200 MHz from Loc. #1, 424 Book Building, 1249 Washington Boulevard, Detroit, to a new site described as Loc. #4 to be located at 755 West Big Beaver Road, Troy, Michigan.

21946–CD–P–76, Dodge County Telephone Company (KWH346). C.P. to relocated facilities operating on 158.10 MHz at Loc. #2, to be located at 3.5 miles ESE of Jackson, Wisconsin.

21947–CD–P–76, Terre Haute Communications, Inc. (KUS291). C.P. to relocate facilities and replace transmitter operating on 158.70 MHz to be located at WVTS Tower 3 miles West on Highway 40, Terre Haute, Indiana.

21948–CD–P–76, Terre Haute Communications, Inc. (KSB655). C.P. to reloacte facilities operating on 152.03 MHz to be located at WVTS Tower 3 miles West on Highway 40, Terre Haute, Indiana.

21949–CD–P–76, Business Communications, Inc. (New). C.P. for a new 1-way Signaling Station to operate on 152.24 MHz to be located 37.9 miles SE of New Orleans, Hwy 23, Port Sulphur, Louisiana.

21950–CD–P–76, Ranch Radio, Inc. (KKX713). C.P. for additional facilities to operate on 454.025 and 454.100 MHz at Loc. #1, to be located 1,000 feet south of junction Juan Linn and Mahan Road, 1 mile south of Victoria, Texas.

21951–CD–P–(2)–76, Tel-Page Corporation (KRH643). C.P. to change in antenna system and increase effective radiated power operating on 454.200 nad 454.250 MHz located at 821 Brighton Avenue, East Jamesville, New York.

21952–CD–P–(3)–76, South Central Bell Telephone Company (KLB506). C.P. to replace transmitter operating on 152.54 and 152.69 MHz and additional facilities to operate on 152.78 MHz to be located Approx. 4 miles WSW of Monroe, Louisiana.

21953–CD–P–76, Tom Terrel d/b as Follett Mobilphone (New), Resubmitted. C.P. for a new station to operate on 152.12 MHz to be located Farmers' Grain and Supply Elevator, Follett, Texas.

21954–CD–P–76, Imperial Communications Corporation (KMA262). C.P to change antenna systems, and replace transmitter operating on 152.03, 152.12 and 454.05 located San Miguel Mountain, 13 miles east of San Diego, California.

21955–CD–P–76, RCC of Virginia, Inc. (New). C.P. for a new 1-way Signaling Station to operate on 152.24 MHz to be located at Mt. Pony, 2.8 miles SE of Culpeper, Virginia.

Renewal of Licenses expiring July 1, 1976. Term: July 1, 1976 to July 1, 1978: Ringgold Telephone Company, Georgia, KIY759; United Telephone Company of Indiana, Inc., Indiana, KSJ618.

Major Amendment

21675–CD–P–76, Rodeo Telephone, Inc., North Loup, Nebraska (New). Amend base frequency 152.82 MHz to read 152.72 MHz. All other particulars are to remain the same as reported on PN #800, dated April 15, 1976.

Correction

21868–CD–P–(3)–76, Empire Mobilcomm System, Inc. (KLF534). Correct entry previously shown on PN #804, dated May 3, 1976, to read as follows: C.P. for additional facilities to operate on 459.100 MHz., Repeater at Loc. #1: 8 mi. east of Wolf Creek, King Mountain, Oregon; change frequency 158.52 MHz., Control to 454.100 MHz., Control at Loc. #2: 521 S. Central, Medford, Oregon; relocate facilities and change antenna system operating on 454.100 MHz., Control at Loc. #3: KPIC Tower, 3 mi. N.E. of Roseburg, Oregon.

21878–CD–P–76, General Communications Service, Inc. (KIG296). Correct entry previously shown on PN #804, dated May 3, 1976, to read as follows: C.P. to relocate facilities and change antenna system operating on 152.09 MHz. at Loc. #2: Roof of Peachtree Plaza Hotel, on SW corner of Peachtree and Cain Streets, Atlanta, Georgia.

It apears that the following applications may be mutually exclusive and subject to the Commission's Rules regarding Ex Parte presentations by reason of potential electrical interference.

Pennsylvania; Frequency 158.70 MHz; Call Sign; File Number

Lehigh Valley Mobile Tel. Co. (New) 21564–CD–P–76.

Radio Broadcasting Co. (New) 21309–CD–P–76.

Radio Broadcasting Co. (New) 21308–CD–P–76.

RURAL RADIO

60333–CR–P–76, RCA Alaska Communications, Inc. (WAV625). C.P. to change antenna system operating on 155.6375 MHz located at Alyeska pipeline terminus construction site, 4 miles south of Valdez Terminal Alaska.

60334–CR–P–76, The Mountain States Telephone and Telegraphs Company (New) C.P. for a new rural subscriber-fixed station to operate on 157.86 MHz to be located 10.6 miles North of Elberta, Utah.

POINT TO POINT MICROWAVE RADIO SERVICE

3135–CF–P–76, United Telephone Company of Florida (KJG59), Port Charlotte, Florida (Lat. 26°59'00" N., Long. 82°06'07" W.). Construction permit to add 6315.9H MHz toward Fort Myers, Florida, on azimuth 167.8 degrees. (Note: STA requested.)

3136–CF–P–76, United Telephone Company of Florida (KIP60), Fort Myers, Florida (Lat. 26°38'39" N., Long. 81°52'06" W.). Construction permit to add 6063.8H MHz toward Naples, Florida, on azimuth 167.6 degrees. (Note: STA requested.)

3675–CF–P–76, Eastern Microwave, Inc. (KEA 64), 4 miles SE of Cherry Valley, New York (Lat. 42°46'31" N., Long. 74°40'56" W.). Construction permit to add 6137.9H MHz toward Gloversville, New York, on azimuth 40.6 degrees.

3695–CF–P–76, American Microwave & Communications, Inc. (KXR64), Green Bay, Wisconsin, (Lat. 44°30'12" N., Long. 88°00'18" W.). Construction permit (a) to change station name and location to read as shown in above; (b) to delete 6062.5 MHz toward Coleman, Wisconsin; (c) to add 6123.1H MHz toward Oconto Falls, Michigan.

3696–CF–P–76, American Microwave & Communications, Inc. (New), 4.0 miles SW of Oconto Falls, Michigan (Lat. 44°50'01" N., Long. 88°11'58" W.). Construction permit for new station—6004.5H MHz, 6063.8H MHz toward Coleman, Michigan, on azimuth 40.2 degrees.

3697–CF–P–76, American Microwave Communications, Inc. (KSJ60), 6.5 miles ENE of Coleman, Michigan (Lat. 45°04'43" N., Long. 87°54'25" W.), Construction permit to add 6323.3V MHz toward Talbot, Michigan, on azimuth 32.4 degrees.

3698–CF–P–76, American Microwave Communications, Inc. (KQN52), 3.5 miles ESE of Talbot, Michigan (Lat. 45°29'40" N., Long. 87°31'50" W.). Construction permit to add 6041.6H MHz toward Menominee, Michigan, on azimuth 185.2 degrees.

3699–CF–P–76, American Microwave Communications, Inc. (KQN52), 3.5 miles ESE of Talbot, Michigan (Lat. 45°29'40" N., Long. 87°31'50" W.). Construction permit to add 60.41.6H MHz toward Iron Mountain, Michigan, on azimuth 312.5 degrees.

3716–CF–P–76, Tower Communications Systems, Corp. (New), Canton, Ohio (Lat. 40°46'46" N., Long. 81°27'01" W.). Construction permit for a new station—10735.0H MHz toward Shanesville, Ohio, on azimuth 210.5 degrees.

3709–CF–MP–76, The Ohio Bell Telephone Company (KQN77), Twp. Rd. 113, 2.8 Miles SW of Carroll, Ohio. Lat. 39°46'15" N., Long. 82°44'25" W. Modification of C.P. (25–CF–P–76) to change polarization from Horizontal to Vertical for frequency 10755 MHz toward Columbus, Ohio, on azimuth 314.5°.

3726–CF–P/L–76, American Telephone and Telegraph Company (New), New York 7, 811 Tenth Avenue, New York, New York. Lat. 40°46'02" N., Long. 73°59'30" W. C.P. and License for a new developmental station on frequency 6152.8H MHz toward Green Pond 1, New Jersey, on azimuth 151.3°.

3727–CF–P/L–76, Same (New) Green Pond 1, 0.8 Mile East of Green Pond, New Jersey. Lat. 41°00'56" N., Long. 74°27'55" W. C.P. and License for a new developmental station on frequencies 6404.8H MHz toward Colesville, New Jersey, on azimuth 331.4°, and 6404.8V MHz toward New York 7, New York, on azimuth 124.5°.

3728–CF–P/L–76, Same (New) 2.5 Miles NW of Colesville, New Jersey. Lat. 41°18'15" N., Long. 74°40'27" W. C.P. and License for a new developmental station on frequencies 6152.8V MHz toward Green Pond 1, New Jersey, on azimuth 151.3°, and 6152.8V MHz toward Campbell Hall, New York, on azimuth 67.6°.

3729–CF–P/L–76, Same (New) 2.0 Miles East of Campbell Hall, New York. Lat. 41°26'30" N., Long. 74°13'43" W. C.P. and License for a new developmental station on frequencies 6404.8H MHz toward Colesville, New Jersey, on azimuth 247.9°, and 6404.8H MHz toward Putnam Valley, New York, on azimuth 92.1°.

3730–CF–P/L–76, Same (New) Putnam Valley, 3.9 Miles East of Cold Spring, New York. Lat. 41°25'54" N., Long. 73°52'52" W. C.P. and License for a new developmental station on frequencies 6152.8V MHz toward Campbell Hall, New York, on azimuth 272.3°, and 5945.2H MHz toward New Fairfield, Connecticut, on azimuth 85.9°.

3731–CF–P/L–76, Same (New) 1.9 Miles SW of New Fairfield, Connecticut. Lat. 41°27'03" N., Long. 73°30'58" W. C.P. and License for a new developmental station on frequencies 6197.2V MHz toward Putnam Valley, New York, on azimuth 266.1°, and 6197.2H MHz toward Bethany, Connecticut, on azimuth 96.6°.

3732–CF–P/L–76, Same (New) 1.2 Miles South of Bethany, Connecticut. Lat. 41°24'17" N., Long. 73°00'00" W. C.P. and License for a new developmental station on frequencies 5945.2V MHz toward New Fairfield, Connecticut, on azimuth 276.9°, and 5945.2V MHz toward Durham, Connecticut, on azimuth 72.2°.

3733-CF-P/L-76, Same (New) 3.4 Miles NE of Durham, Connecticut. Lat. 41°29'46" N., Long. 72°37'07" W. C.P. and License for a new developmental station on frequencies 6197.2H MHz toward Bethany, Connecticut, on azimuth 252.5°, and 4170.0V MHz toward Montville, Connecticut, on azimuth 94.9°.

3734-CF-P/L-76, Same (New) 4.2 Miles NW of Montville, Connecticut. Lat. 41°28'07" N., Long. 72°12'15" W. C.P. and License for a new developmental station on frequencies 4130.0V MHz toward Durham, Connecticut, on azimuth 275.2°, and 4130.0V MHz toward Killingly, Connecticut, on azimuth 35.3°.

3735-CF-P/L-76, American Telephone and Telegraph Company (New), 1.5 Miles North of Killingly, Connecticut. Lat. 41°52'18" N., Long. 71°49'18" W. C.P. and License for a new developmental station on frequencies 1470.0V MHz toward Montville, Connecticut, on azimuth 215.6°, and 4170.0V MHz toward High Rock, Massachusetts, on azimuth 64.4°.

3736-CF-P/L-76, Same (New), High Rock, 2.0 Miles West of Foxboro, Massachusetts. Lat. 42°03'40" N., Long. 71°17'18" W. C.P. and License for a new developmental station on frequencies 4130.0V MHz toward Killingly, Connecticut, on azimuth 244.7°, and 3730.0H MHz toward Boston, Massachusetts, on azimuth 30.3°.

3737-CF-P/L-76, Same (New), 185 Franklin Street, Boston, Massachusetts. Lat. 42°21' 20" N., Long. 71°03'21" W. C.P. and License for a new developmental station on frequency 3770.0H MHz toward High Rock, Massachusetts, on azimuth 210.5°.

3758-CF-P-76, Custer Telephone Cooperative, Inc. (New), Challis, Idaho. Lat. 44° 30'19" N., Long. 114°13'36" W. C.P. for a new station on frequency 2118.4V MHz toward a new station at Willow Creek, Idaho, on azimuth 145.3°.

3759-CF-P-76, Same (New), Willow Creek, 8.3 Miles NNW of Dickey, Idaho. Lat. 44° 14'41" N., Long. 113°58'34" W. C.P. for a new station on frequencies 2168.4V MHz toward a new station at Challis, Idaho, on azimuth 325.5°, and 2178.0H MHz toward a new Mountain Bell station at Barton Flats, Idaho, on azimuth 152.8°.

3763-CF-P/ML-76, General Telephone Company of the Northwest, Inc. (WAT941). Location: Within the territory of the Grantee. C.P. and Mod. of License to add the 10,700-11,700 MHz; 2110-2130 MHz; and 2160-2180 MHz frequency bands to its developmental license.

3766-CF-R-76, Same (WAT941). Location: Within the territory of the Grantee. Application for Renewal of Radio Station License (Developmental) expiring May 28, 1976. Term: May 28, 1976 to May 28, 1977.

3692-CF-ML-76, South Central Bell Telephone Company (KIB85), Trickem, 6.5 Miles WNW of Ranburne, Alabama. Mod. of License to correct coordinates to read Lat. 33°33'18" N., Long. 85°27'25" W; correct path distance toward Coldwater on azimuth 285.34°; correct distance toward Omaha on azimuth 153.33°.

3416-CF-P-76, United Video, Inc. (WOE70), 1 Mile NE of Holdenville, Oklahoma. Lat. 53°60'27" N., Long. 96°23'54" W. C.P. to add 6226.9H and 6286.2H towards Seminole, Oklahoma, on azimuth 296.2 degrees.

3720-CF-MP-76, MCI Telecommunications Corp. (WLJ36), 3.1 Miles NNW of Spinnerstown, Pennsylvania. Lat. 40°29'38" N., Long. 75°27'01" W. Mod. C.P. to change polarization on frequency 6226.9 from V to H towards Kingwood, Pennsylvania, on azimuth 99.0 degrees.

3722-CF-MP-76, Same (WLJ38), 1.3 Miles NNW of Middle Valley, New Jersey. Lat. 40°46'49" N., Long. 74°09'04" W. Mod. C.P. to replace transmitter, change polarization to 6226.9V towards West Orange, New Jersey, on azimuth 88.7 degrees.

3723-CF-MP-76, Same (WLJ39), 10 Marcella Avenue, West Orange, New Jersey. Lat. 40°47'18" N., Long. 74°15'18" W. Mod. C.P. to replace transmitter, change polarization to 11625H towards Newark, New Jersey, on azimuth 128.7 degrees and decrease output power to 1.0.

3724-CF-MP-76, Same (WLJ 40), 1180 Raymond Blvd., Newark, New Jersey. Lat. 40°-44'13" N., Long. 74°10'15" W. Mod. C.P. to replace transmitter, change polarization to 11135H towards West Orange, New Jersey, on azimuth 308.8 degrees and to decrease power to 1.0.

Corrections

3539-CF-P-76, General Communications, Inc. (New), 1.1 miles North of Iola, Kansas, (Lat. 37°56'47" N., Long. 95°23'43" W.). This entry, appearing on Public Notice of May 3, 1976, corrected to show longitude as herein specified. Other particulars unchanged.

Bell Telephone Company of Pennsylvania (New), Ridgway, Pennsylvania. Correct file number to read 3549-CF-P-76. All other particulars remain as reported on Public Notice #803, dated April 26, 1976.

RCA Global Communications, Inc., as Trustee. Correct file number to read 2522-CF-AL-(16)-76. All other particulars remain as reported on Public Notice #803, dated April 26, 1976.

Major Amendment

3486-CF-P-75 General Telephone Company of Florida (KYJ44), 201 South Gall Blvd., Zephyrhills, Florida. Delete all frequencies and point of communication San Antonio, Florida, and add: 6093.5H and 5974.9H MHz towards a new point of communications at Spring Lake, Florida, on azimuth 334.8 degrees. All other particulars are the same as reported in Public Notice, dated May 12, 1975, Report No. 753.

[FR Doc.76-14300 Filed 5-14-76;8:45 am]

[FCC 76-391; Docket Nos. 20791, 20792; File No. BR-892, BR-3295]

FEDERAL BROADCASTING SYSTEM, INC.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Federal Broadcasting System, Inc., for renewal of license of Station WSAY, Rochester, New York; Niagara Broadcasting System, for renewal of license of Station WNIA, Cheektowaga, New York.

1. The Commission has before it for consideration the above-captioned applications for renewal of licenses for Stations WSAY, Rochester, New York and WNIA, Cheektowaga, New York along with petitions to deny those applications and various related pleadings. While the two stations are licensed to separate corporate entities and authorized to serve distinct communities, both licensees are owned by the same individual, Gordon Brown. Further, some of the allegations in the petitions against the two stations are interrelated. Thus, both applications will be treated in this decision.

2. By way of background, Action for a Better Community, Inc. (Action) timely filed a petition to deny Federal's 1972 application for renewal of WSAY's license. Complaints concerning that application were also filed by Metro-Act of Rochester, Inc. and the Genesse Valley Chapter of the National Organization for Women. On February 6, 1975, Federal filed a supplement to its 1972 renewal application, and the Rochester Black Media Coalition (RBMC), the successor in interest to Action, timely filed a petition to deny that application. Although the 1972 WNIA renewal application was not the subject of a petition to deny, it was carried on deferred status due to the licensee's failure to provide satisfactory responses to Sections IV-A (Programming) and VI (equal employment opportunity) of the applications. Niagara supplemented its 1972 renewal application on February 6, 1975, and BUILD, Inc. (Build), a Buffalo area citizens group, timely filed a petition to deny that application.[1]

3. Action bases its request to deny the 1972 WSAY renewal application upon: the licensee's alleged failure to adequately ascertain the needs of the community; the station's program service during the 1969-1972 term and its proposed service for the 1972-1975 period; the applicant's alleged failure to hire minorities or establish an affirmative action program; WSAY's asserted lack of technical qualifications; the licensee's alleged failure to maintain and make available a complete public inspection file; and "hypoing" activities and billing practices.[2] The Metro-Act complaint deals with ascertainment, programming, employment and maintenance of a local public file. The NOW complaint avers that the licensee has failed to establish an equal employment opportunity program for women. RBMC's 1975 petition asserts that: the licensee's 1975 ascertainment perpetuates the allegedly fraudulent 1972 ascertainment; community needs were not met by the 1972-1975 program service and will not be met by that proposed for the 1975-1978 term; the licensee has not complied with equal employment opportunity requirements; and the station's public file was found to be incomplete.

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[1] Other pleadings filed in conjunction with this matter and considered herein with regard to WSAY include: (a) Federal's opposition to the 1972 petition to deny filed May 15, 1972; (b) petitioners' reply entered June 26, 1972; (c) Action's January 15, 1973 correspondence to the Complaints and Compliance Division; (d) an amendment to the petition to deny, filed February 13, 1973; (e) Action's March 13, 1973 supplement to the petition; (f) Federal's March 15, 1973 response to Action's letter; (g) an opposition to the amendment and the supplement filed by Federal April 3, 1973; (h) Action's reply to the opposition filed April 30, 1973 and May 1, 1973; (i) Federal's opposition to the introduction of new issues filed May 7, 1973; (j) Action's amendment to the petition entered August 8, 1973; (k) Federal's opposition to the amendment filed August 23, 1973; (l) Federal's opposition to the 1975 petition filed May 27, 1975; and (m) RBMC's reply filed June 12, 1975. The pleadings with regard to WNIA include: Niagara's opposition to Build's petition filed May 27, 1975; and Build's reply entered June 12, 1975. Additionally, Federal and Niagara jointly filed an "Answer to Reply of RBMC & Build, Inc." While this last pleading is not permitted under Section 1.45 of our rules unless requested and authorized, we will consider any pertinent information therein as an update of the original oppositions.

[2] The Commission has viewed petitioner's conclusionary allegations regarding hypoing and billing irregularities and finds no basis upon which to question the licensee's activities nor any reason to discuss these matters further.

4. Build urges the denial of WNIA's application for renewal of license because it alleges that Niagara has failed to adequately ascertain the community, the station's 1972–1975 program service and its proposed 1975–1978 service fail to serve the public interest, the licensee discriminates in its employment practices, and the WNIA public inspection file is incomplete. We note that the Build petition failed to provide affidavits in support of its party status as required by Section 309(d)(1) of the Communications Act, 47 U.S.C. 309(d)(1). Petitioner corrected this defect with affidavits submitted on May 16, 1975. While we do not condone such delays in supplying requisite affidavits, it appears that no substantive harm has resulted, and we will consider Build's filing as a petition to deny pursuant to Section 309 of the Communications Act and Section 1.580 of our rules. Voice of Dixie, Inc., 53 FCC 2d 679 (1975).

THE WSAY APPLICATION

A. ASCERTAINMENT

5. The Metro-Act complaint alleges that Federal does not understand the Rochester community and has failed to supply the required compositional data in the 1972 renewal application. Action contends that the licensee did not seek out opinions from leaders of all significant segments of the community in conducting its 1972 ascertainment. The petitioners assert that the business community was overlooked, the Puerto Rican population was totally ignored, and religious and military groups were significantly over-represented because the licensee merely relied on its contacts with persons who are regularly in touch with the station.[3] Also, Action faults the general public survey because the licensee utilized telephone samples, where the young, poor, and minority residents, as a rule, do not have personal phone service and therefore would not be represented in a telephone survey. Finally, the petitioners allege that the list of ascertained needs is nothing more than the licensee's personal opinion and does not reflect the community's real on-going problems. In this regard, Action claims that WSAY's ascertained problems are totally different from any other Rochester licensee and do not include the more obvious subjects of housing, education and race relations.

6. In opposition, the applicant contends that it followed the Commission's guidelines in ascertaining the community. Federal alleges that it did seek out leaders with whom it was unfamiliar, and, while the licensee did not specifically interview business leaders for the survey it asserts that it has daily contact with many area businessmen. WSAY urges that its general public survey was an accurate cross-section of the entire community because telephone interviews were made equally from all exchanges. Further, it contends that anyone in the area had an opportunity to take part in the survey process through on-the-air announcements aired between January 19, 1972 and February 14, 1972 requesting that listeners send in their responses to these questions:

"(1) Do we need better communication with our youth; (2) Do we need more or less public housing; (3) Do we need more or less pollution control; (4) Do we need more or less drug control; (5) Do we need more and better trade schools; (6) Do we need more or less school busing; (7) Do we need more crime control; (8) Should the Hot-Dog Tax be retained or should the Hot-Dog Tax be abolished; and (9) We need your views on taxes."

7. In reply, Action asserts that the licensee gave no indication which of the local businessmen it contacts on a day-to-day basis, and 16 of the 29 community leaders surveyed have continuous, direct involvement in programs and public service announcements at WSAY—allegedly evidencing the licensee's failure to seek out community leaders unknown to the station. Action contends that Federal formulated its list of ascertained needs before ever conducing the surveys where the write-in "survey" announcements were broadcast prior to the general public telephone survey but contained eight of the ten problems claimed to have been discerned by the ascertainment.[4]

8. In its supplement to the petition, Action alleges that the needs ascertained for WSAY were identical to those submitted in WNIA's 1972 renewal application. The petitioners argue that the licensee "has simply presented boilerplate listing of needs which it made up itself and is claiming them to be separately ascertained in two distinct areas—Rochester and Cheektowaga—when they were never ascertained at all." In response, the applicant urges that the problems facing Cheektowaga are quite similar to those affecting Rochester. The licensee states that it reached its conclusions on the two communities' problems based on surveys and personal "common knowledge." Action replies that different problems would logically exist in an all-white suburban community—Cheektowaga—and a metropolitan region with significant minority population—Rochester.

9. From our review of the 1972 WSAY renewal application and the pleadings before us it appears that the licensee failed in certain respects to ascertain the community as required by the Primer on Ascertainment of Community Problems by Broadcast Applicants (Primer), 27 FCC 2d 650 (1971). The ascertainment process ordinarily begins with a determination of the community. Here, the licensee has not submitted any statement of racial or ethnic composition of Rochester, the economic, governmental or public service organizations in the community or any other factors that serve to distinguish Rochester and the surrounding area. It is apparent that Federal did not rely on any compositional study whatsoever in selecting its leaders or in checking for leaders that might have been overlooked. Although WSAY lists 29 community leaders interviewed, in the absence of a compositional study we can not determine for certain that the licensee has ascertained the various segments of the community. Rust Communications, 53 FCC 2d 355 (1975).

10. With respect to ascertainment results, it appears that most of the problems suggested by the licensee in its pre-survey announcements are nearly identical to the submitted list of ascertained needs. See paragraph 6, supra. Moreover, the list of needs for WSAY is the same submitted for WNIA:

> The Government is spending us into bankruptcy. Stop all unnecessary spending. Stop taxing the homeowners for costly school busing. Let children go to their community schools of their choice. Stop unemployment by taxing the area's industries, forcing them to move out of the State to Southern States, or forcing them to close their factories. More law enforcement to protect our streets. Less coddling of law violators by the courts and judges. Less pollution by enforcing the laws against it that already exist. Better communications with our youth. Better support for the area's police and law enforcing agencies. Do not penalize Social Security retirees by limiting their earning power, to supplement the low Social Security payments. Repeal the "Hot Dog Tax" which is a state tax on meals costing less than a dollar.

The licensee provided no other list of ascertained needs. While the similarity of WSAY's ascertained needs with those uncovered by WNIA, or the similarity between the problems mentioned in the pre-survey announcements and those actually ascertained would not necessarily invalidate WSAY's survey efforts, the presence of these factors raises at least an inference that the licensee might not have followed the Primer in deriving problems to be treated from the ascertainment interviews performed. Because ascertainment is a prospective obligation which relates to a licensee's proposed programming, we must look to WSAY's programming during the 1972–1975 period to determine whether the programming was responsive to the problems, needs and interests of Rochester. (See, paragraph 22, infra.) Voegel-Hendricks Corp., FCC 76–172, adopted February 19, 1976.

11. WSAY's 1975 supplemental renewal application relies upon an ascertainment of community problems conducted jointly by Rochester area broadcasters. The Rochester Black Media Coalition's 1975 petition to deny that supplemental application does not challenge the adequacy of the joint ascertainment as such. Rather, petitioner asserts that Federal did not gain any insight by participating in the joint ascertainment. RBMC alleges that the licensee's 1975 list of ascertained needs are the same as those submitted in 1972, and once again, the licensee utilized the same list of ascertained needs for WSAY and WNIA despite the fact that both stations took part in separate joint ascertainments conducted by broadcasters in their respective areas. In opposition, Federal argues that problems do not vary "between communities over a period of time or between the communities themselves."

12. Our review of the joint ascertainment fails to reveal that WSAY man-

[3] Action contends that the 29 leaders include: eight religious; seven military and veterans; one professional; five government; six health and social services; and two labor.

[4] According to the reply, the licensee acknowledges that these announcements were aired prior to the general public survey. The licensee did not indicate specifically when the leader survey took place nor who conducted the interviews.

agement level employees took part and which of the listed leaders were interviewed during sessions attended by someone representing the licensee. More importantly, we cannot determine that Federal made use of the voluminous joint ascertainment of community problems conducted by the Rochester area broadcasters in 1975. While the licensee claims to have participated in that effort, it has submitted a list of community problems which are almost identical to those submitted by WSAY in 1972 and by WNIA in both 1972 and 1975. In this regard, we are cognizant of the fact that Federal's statement of the community's significant needs could be related to the more general list of community problems contained in the joint ascertainment. However, as previously noted, the confluence of circumstances where the licensee's 1972 list of ascertained problems is markedly similar to its presurvey annoucements and the ascertained needs at a commonly-owned station in a disparate community at least raises an inference as to whether the licensee adhered to the Primer in selecting its problems from its interviews. Here again in 1975, the licensee submits essentially the same list of needs for both Rochester and Cheektowaga. See, Suburban Broadcasters, 30 FCC 2d 1021 (1961). An inference is therefore raised—albeit circumstantially—as to whether WSAY made any use at all of the joint ascertainment of the problems of Rochester conducted by the broadcasters in the area, or otherwise ascertained the problems of the community in accordance with the Primer.[5] Therefore, an appropriate issue will be specified.

B. WSAY'S PROGRAM SERVICE

13. Action and Metro-Act allege that the applicant has failed to offer programming responsive to the community's needs during the 1969–1972 license term and has not proposed any change for the 1972–1975 period. Petitioners argue that the licensee can not possibly address the problems of the community with recorded programs supplied by the military or other government agencies and with syndicated public affairs programs. Also Action urges that WSAY's three hours of black produced programming does not respond to the needs of the black community since it is primarily gospel music. Further, the petitioners contend that WSAY incorrectly logs a black program hosted by Howard Coles as public affairs when it is actually religious in nature.

14. In opposition, the licensee contends that its 1972 renewal application refutes all of the allegations. Additionally, WSAY claims that its programming is correctly logged and does respond to the needs of the community. Finally, the licensee asserts that its performance during the 1972 composite week exceeded its 1969 promise for non-entertainment programming and public service announcements.

15. In its reply, Action for the first time asserts that Federal failed to link any of its proposed programming to its list of ascertained needs.[6] Petitioners argue that the applicant cannot make the link because the programs do not meet any need ascertained either by the licensee or any other Rochester broadcaster. Thereafter, Action filed a supplementary pleading alleging that in addition to the Howard Coles program, WSAY incorrectly logs other programs as public affairs when they are not. Also, the petitioners contend that the renewal application identifies entertainment programs as being responsive to community needs. In response to the supplemental pleading, Federal alleges that all of its programs and announcements are logged to reflect their actual content, and the military and government supplied programs respond to the recruiting and veterans' needs of Rochester.

16. Our review of WSAY's 1972 renewal application indicates that the station claims to have performed three hours and 56 minutes of public affairs programming during the composite week and therefore would have exceeded its 1969 proposal of two hours and 29 minutes. However, our own analysis of the applicant's composite week logs reveals that the station broadcast approximately 55 minutes of what could be classified as public affairs during the period. Apparently, this variance stems from the applicant's inclusion of virtually all noncommercial spot announcements as public affairs programming, and from the logging of various military recruiting and government programs as public affairs.[7] We find that the substantial entertainment content of Lawrence Welk (U.S. Navy), Sounds like The Navy (U.S. Navy), Serenade in Blue (U.S. Air Force), Navy Hoedown (U.S. Navy), Take A Giant Step (U.S. Air Force), Here's to Vets (Veterans Administration), Guest Star (U.S. Treasury Department) and For Those Who Served (Veterans Administration) is not commensurate with our definition of public affairs programs. Thus, WSAY's public affairs programming during the composite week apparently consist of: Vistas of Israel; Social Security Speaks; Veterans of Foreign Wars; Army Home Town Service; Air Force Home Town News Service; Understanding The Environment; and Cornell University.[8]

17. WSAY's list of typical and illustrative programs responsive to community problems and broadcast during the 12 month period preceding the filing of the 1972 renewal application includes all of the programs mentioned in paragraph 16, plus: Rochester Police Department Safety Education Broadcast; Georgetown University Forum; Jack Anderson; Speak Up For Democracy; Social Calendar; Bonds For Israel; Radio Record Hop; Jewish Hour; Italian Hour; Black People's Program (Howard Coles); Bible Way Temple; Living Witnesses; Rock of Ages; and Rhythm & Blues. However, from the descriptions of the various programs in the application and the licensee's logging of those shows, it appears that Social Calendar is a compilation of public service announcements and the Jewish Hour, the Italian Hour, Radio Record Hop, Black Peoples Program and Rhythm & Blues are primarily entertainment programs. It therefore appears that WSAY's non-entertainment programming of a local nature[9] consists of: The Cornell University program which is undescribed; the Rochester Police Department Safety Education Broadcast, approximately 15 minutes per day, logged education; Speak Up for Democracy broadcast 15 minutes per month; and three religious programs, Bible Way, Living Witness, and Rock of Ages.

18. In the area of programming, the Commission has traditionally avoided a narrow, restrictive application of what constitutes good or bad. Rather, the Commission has tried to balance a licensee's journalistic freedom with the public interest and, thus, a station is normally afforded a wide discretion in selecting broadcast matter to respond to community needs. See *RadiOhio, Inc.*, 38 FCC 2d 721, affirmed sub nom., *Columbus Broadcasting Coalition* v. *F.C.C.* 505 F. 2d 320 (1974). The 1969 renewal application talked of programs that would meet the needs of youth, shut-ins and promote positive morale, but we cannot reasonably conclude that the varied array of WSAY's composite week or typical and illustrative programs did much in the way of serving local needs, particularly where the only locally produced public affairs program presented during the 1969–1972 license term was Speak Up For Democracy, broadcast only 15 minutes per month.

19. The licensee's heavy reliance on institutional and nationally distributed non-entertainment and entertainment programs does not believe it of the burden of establishing that its overall programming service is responsive to the needs of the community. This is not to

[5] We realize that in other situations involving questions based on circumstantial facts or inferences, the Commission has afforded renewal applicants the opportunity to supply additional information which might serve to clarify the facts and obviate an evidentiary hearing. However, in this instance, it appears that a hearing is necessitated on other issues—specifically, other ascertainment defects—and we believe that the public interest would be better served by a resolution at hearing rather than by further delays for the submission of additional information.

[6] While the allegation is raised, specifically, for the first time in the reply, we find that it is so interrelated to Action's assertions on the licensee's ascertainment and program service that it serves as an amplification of those contentions. Therefore, the allegation and the licensee's comments thereon will be considered herein.

[7] The Commission finds that this blanket labelling of noncommercial announcements as "PA" extends to such items as the station's Emergency Broadcast System Test announcement.

[8] The licensee does not describe the eight-minute program supplied by Cornell University except that it deals with Cornell's School of Industrial Relations.

[9] Such national programs as Jack Anderson and G. U. Forum can speak to the needs and interests of Rochester listeners, but cannot be relied on exclusively in that regard, since they are not created by the local licensee.

say that such mass distributed programs might not satisfy some local interest; however, a question is raised here as to whether such programs were responsive to local needs or problems.

20. Moreover, with regard to WSAY's programming performance during the 1972–1975 period and the station's 1975 proposals, RBMC contends that the licensee offered no opportunity for local expression and aired no local public affairs programs, and the petitioner asserts that the applicant does not propose to improve the situation during the 1975–1978 term. RBMC also alleges that the applicant's proposed programs are not related to specific ascertained needs. In opposition, the licensee urges that the renewal application sets out the adequacy of the WSAY program service—past and future—and that all of its programs are properly classified on the logs.

21. The licensee's 1975 supplemental application lumps all purported public affairs programs—past and proposed—in the same list. Scanning the composite week logs, we find that the licensee offered almost identical "public affairs" programming during 1972–1975 as it did during the previous licensing period. WSAY aired and logged as public affairs: Here's to Vets (Veterans Administration); For Those Who Served (Veterans Administration); Sounds of Solid Soul (U.S. Marine Corps); Mostly Music (U.S. Army); Army Home Town News Service (U.S. Army); Air Force Home Town News Service (U.S. Air Force); Lawrence Welk (U.S. Navy); Wolfman Jack (U.S. Air Force); Senator Buckley (U.S. Senator Buckley); Soul in Motion (U.S. Air Force); Vistas of Israel (Voice of Israel); Serenade in Blue (U.S. Air Force); Veterans of Foreign Wars (Veterans Administration); America's Best (U.S. Army); and Johnny Cash (Social Security Administration).

22. The station had proposed to broadcast three hours and 56 minutes of public affairs programming during the 1972–1975 period and claims to have aired six hours and 25 minutes. Once again, the licensee's figure includes non-commercial spot announcements and programs which do not appear to be within the Comission's definition of public affairs. Our own review of the station's programming indicates that only Senator Buckley's five minute report to his constituents could be considered at all local in nature. The remainder of WSAY's programs are the same type of institutionally supplied, predominantly entertainment offerings listed in the station's 1972 application. Again, we are unable to determine whether that programming was responsive to the problems, needs and interests of the Rochester community. Accordingly, we have been unable to determine whether WSAY's programming during the 1969–1972 and 1972–1975 periods actually has responded to the local problems, needs and interests of the city of license. Moreover, in view of the questions noted in paragraph 12, supra, concerning the applicant's 1975 supplemental ascertainment, we are unable to determine whether WSAY's proposed programming will be responsive to the ascertained problems of the Rochester community. Appropriate issues will therefore be specified.

C. EMPLOYMENT

23. Action asserts that Federal discriminates in its hiring practices and has failed to establish an affirmative action program in keeping with the Commission's definitions. The petitioners claim that the licensee has never had a minority employee and has evidenced its discriminatory attitude toward minorities by refusing to accept an application from a local black, Greg Piotter, who went to the station to seek a job, but was told that no positions were available and was refused the opportunity to fill out an application. On the following day, Action reports that the licensee told one of its representatives that a sales position was open at the station. Metro-Act alleges that the applicant maintains a discriminatory hiring policy and utilizes separate application forms for males and females. NOW's complaint contends that WSAY has made no effort to develop an affirmative action program for women.

24. The licensee denies that it has engaged in any discriminatory practices and contends the Piotter matter resulted from his failure to talk to the right person at the station. Federal also asserts that "many years ago" it employed a black engineer and two of the station's female employees perform duties involving professional and decision making responsibilities.

25. In its reply, Action asserts that the handling of Mr. Piotter proves WSAY's discriminatory practices, because the job applicant spoke to the switchboard operator—who is in charge of handing out applications—and it was that employee who should have referred him to the right person so that he might complete the application process. Additionally, the petitioners note that the 1972 renewal application includes, as exhibits, two separate application forms for male and female applicants. While the male application includes data pertinent to on-air capabilities, Action argues that the application for females refers strictly to secretarial ability and Federal has consistently kept females at the lower status of clerical employees.

26. The 1975 petition reasserts that Federal discriminates in its employment practices and includes an affidavit from Ms. Sally Brown of Rochester stating that while she was trying to apply for a position at WSAY she noticed that the licensee had a file drawer marked "Applications-Male." The licensee responds that it currently employs a "Mexican-Spanish former orphan" as an engineer. While that person claims to have been employed at WSAY since September 1974, he is not reflected on the 1975 employment report. Furthermore, Federal denies that any file was marked "Applications-Male."

27. Section 73.125 of our Rules establishes that equal opportunity in employment will be afforded by all standard broadcast licensees to all qualified persons. In cases where the minority employment profile falls outside a "zone of reasonableness," the licensee must modify or supplement its recruitment practices and policies by vigorous and systematic efforts to locate and encourage the candidacy of qualified minorities. See, *Inquiry Into the Employment Policies and Practices of Certain Broadcast Stations Located in Florida*, 44 FCC 2d 735 (1974); see also *Bilingual Bicultural Coalition on Mass Media, Inc.* v. *F.C.C.*, 429 F. 2d 656 (D.C. Cir. 1974); *Chuck Stone* v. *F.C.C.*, 466 F. 2d 316 (D.C. Cir. 1972). Our rules do not require fully proportional employment of minority group members, and we do not believe that fair employment practices will necessarily result in the employment of any minority group in direct proportion to its percentage of the community population. However, highly disproportionate representation of minorities employed by a licensee in relation to their presence in the workforce could constitute *prima facie* evidence of discriminatory practice. *Report and Order Doket Number 18244*, 23 FCC 2d 430, 431 (1971); *Stone* v. *F.C.C.*, *supra*. In this respect, it is the consequences of the licensee's employment practices, not the intent, which determines whether discrimination requiring remedial action exists. See *Diaz* v. *Pan American Airways*, 422 F. 2d 385 (D.C. Cir. 1971); *Rosenfeld* v. *Southern Pacific Company*, 444 F. 2d 1219 (D.C. Cir. 1971). Accordingly, if it is found that no additional efforts were undertaken to recruit, employ, and promote minority employees, or that efforts undertaken are clearly insufficient, then administrative action to secure compliance with the Commission's rules would be appropriate.

28. According to the 1970 U.S. Census of Population, minorities constitute 6.7% of the total work force of the Rochester Standard Metropolitan Statistical Area (SMSA), and females comprise 38.8% of the SMSA's labor force. To determine whether Federal's employment is within the zone of reasonableness, the figures for the SMSA more accurately reflect the protected group population within the station's service area. See, *United Church of Christ*, 44 FCC 2d 647, 652 (1974). We will compare these population figures with WSAY's employment profile which, according to the Annual Employment Reports (FCC Form 395) filed by the licensee for the years 1971 through 1975, reflect the following: [10]

[Figures in parenthesis are percentages]

	1971	1972	1973	1974	1975
Total full-time employees	13	13	12	9	11
Minorities	0	0	0	0	0
Females	6(46)	5(38)	4(33)	3(33)	3(27)
Total upper-4 jobs	9	5	9	7	9
Minorities	0	0	0	0	0
Females	2(22)	1(20)	1(11)	1(14)	1(11)

29. Although the relatively low proportion of minorities in the Rochester

[10] 1971 was the first year for which such reports were required.

SMSA, coupled with the relatively small size of WSAY, makes statistical evaluation here less than meaningful—since, for example, the hiring of a single minority individual would put the station beyond "parity" with the Rochester minority population—we are concerned with the absence of any history of minority employment (at least since annual reporting began in 1971), except for the engineer of Spanish heritage who does not show up on any pertinent report. No such concern arises over female employment which, while in decline, falls within a zone of reasonableness. The use and separate filing of "male" and "female" application forms, if true, raises no question if unaccompanied by any showing of actual discriminatory effects from this practice.

30. Our concern with the licensee's employment of minorities is heightened significantly by the station's apparent failure to formulate an affirmative action program in either the 1972 or 1975 renewal applications. Federal does state that it "has never in the past, nor will it in the future, ever discriminate against any qualified person because of race, color, religion, national origin or sex," but more is required. See Florida Inquiry, supra.

31. An affirmative action concept is meaningless unless positive steps are taken to overcome the effects of past discrimination—however inadvertent. Our rules require positive efforts to locate and encourage the candidacy of qualified minorities and women. See Florida Inquiry, supra. Other than a belated report that the licensee had a minority employee from September 1974 to present—although the 1975 FCC Form 395 does not reflect it—Federal has had no minority employment. A showing of affirmative, but fruitless, efforts might suffice to explain this. See Bilingual Bicultural, supra. But, we have no formal EEO program—not even on paper. This total disregard for the Commission's requirements leaves us no other course but to consider the question of Federal's employment practices at an evidentiary hearing. Accordingly, appropriate issues will be designated.

D. PUBLIC FILE

32. In its 1972 complaint, Metro-Act asserts that Federal has failed to properly maintain its public inspection file, and both the complainant and the petitioners allege that the licensee requires an appointment to gain access to the file even during normal business hours. In a supplement to the petition, Action contends that on February 13, 1973, the WSAY public file did not contain employment reports, financial balance sheets, lists of political canditates seeking or purchasing time, or complaints filed by citizens. Additionally, petitioners allege that neither the 1969 nor 1972 renewal application was available for inspection on June 1, 1972, three months after the 1972 application was filed with the Commission. The 1975 RBMC petition alleges that on February 12, 1975, when its representatives attempted to inspect WSAY's file, it did not contain: employment and ownership reports, engineering data and FCC correspondence pertaining to WSAY's engineering problems (see paragraph 36, infra); names and addresses of petitioners; political broadcast material; the 1972 renewal application; or the FCC Procedural Manual. Further, RBMC asserts that at a March 28, 1975 follow-up inspection, only the employment and ownership reports, citizens' letter and the 1972 renewal had been added to the file.

33. In response, the licensee argues that it violated no regulation by requiring an appointment for someone to be able to see the public file, and it has properly maintained its files. Additionally, the licensee asserts that such material as the financial balance sheet filed with the renewal application is "confidential" and thus is not required to be made available to the public.

34. The Commission's regulatory procedure by which the public participates in the renewal process is premised on the availability of certain information in the renewal applicant's local public file. See, The Public and Broadcasting (Revised Edition), 49 FCC 2d 1 (1974). Here, it appears that WSAY's public file did not contain the information required to be maintained therein by Section 1.526 of our rules. That rule requires the retention of such information as the renewal application and all of its exhibits, a statement that a petition to deny has been filed along with the name and address of the party who filed it, a listing of political broadcasts and requests for political broadcasts, ownership reports, and a copy of The Public and Broadcasting—A Procedure Manual. Since the licensee's balance sheet is an exhibit to the renewal application it must be available in the station's public inspection file. Moreover, our rules do not contemplate that any appointment should be a prerequisite for the inspection of a station's file. Rather, the file should be readily available to the public during regular business hours. Here, an appointment was a prerequisite, and the licensee's public notice of having filed the renewal application so stated.

35. Under these circumstances, we find that a question is raised as to Federal's compliance with our rules regarding its public inspection file. Moreover, we note that the same allegation was made against Mr. Brown's other broadcast facility. (see paragraph 54, infra). Although this issue would not ordinarily be so substantial as to warrant designation, its existence at both stations, and the existence of other substantial questions which must be heard, lead us to include a further exploration of the public file allegations.

E. TECHNICAL PROBLEMS

36. In a January, 1973 letter to the Commission's Broadcast Bureau, Complaints and Compliance Division, Action asserts that: since January, 1971 WSAY had been operating at only 1,000 watts, 20% of its authorized power of 5,000 watts; the licensee has been unable to maintain its 1370 khz frequency; and the station was broadcasting a signal with inferior audio quality. The petitioners state that, as of the date of the letter, Federal had requested and received some 23 extensions of time in which to repair the main transmitter and resume normal power, but WSAY continues to advertise that it operates with 5,000 watts. Action also alleges that the licensee's 1969 renewal application was challenged because of WSAY's alleged distorted and inferior audio output, and that in February, 1971 the Commission issued a Notice of Violation citing Federal for 12 technical violations. Finally, the petitioners argue that the licensee's inability to repair its transmitter may stem from its sizeable financial deficit.[11]

37. In response, Federal submits technical data in suport of its contention that it is operating on its assigned frequency. The licensee alleges that the power reduction was necessitated by a recurring "flash-over" in the main transmitter which was being worked on by a consulting engineer. WSAY claims that its promotional material no longer makes any reference to operating with 5,000 watts. Subsequently, the licensee notified the Commission that on January 13, 1975 the station resumed its authorized power of 5,000 watts.

38. Our analysis of the licensee's technical record indicates that it has had a recent history of technical problems. Renewal of license for WSAY was deferred in 1966 and 1969 because of engineering problems. Federal received a notice of violation in 1971 and a letter of reprimand in February, 1972 alerting the licensee that it had "fallen below the standards expected of a broadcast licensee." WSAY operated without its main transmitter—at 20% of its authorized power—for a period of approximately four years pursuant to Commission authority granted by numerous extensions during the period.

39. Albeit WSAY maintained a lengthy period of reduced power operation, it had Commission authority to do so. Accordingly, we do not find, based on the facts before us, any technical questions warranting resolution at a hearing. However, the licensee's 1975 supplemental application contains engineering data relative only to the operation of WSAY at 1,000 watts. Federal has not amended its application so as to give the Commission any indication of the station's technical operation since the main transmitter was returned to service.

40. In order to justify the renewal of a broadcast license we must determine that the applicant is technically qualified. In the event the licensee would be found otherwise qualified to be granted a renewal of license, we would be unable to find WSAY technically qualified without more engineering data. Thus, Federal will

[11] Action apparently was referring to Federal's financial balance sheet which shows, as of December 31, 1971, an accumulated deficit of $180,000. The licensee counters that Mr. Brown is personally in a position to cover any losses the station may encounter.

be directed to amend its renewal application so as to supply the Commission with all requisite technical data including transmitter logs for the following dates: Sunday, September 7, 1975; Monday, March 10, 1975; Tuesday, July 29, 1975; Wednesday, October 29, 1975; Thursday, January 30, 1975; Friday, April 4, 1975; and Saturday, June 21, 1975.[12]

THE WNIA APPLICATION

41. The 1972 WNIA renewal application was not challenged; however, the license was deferred because of the licensee's failure to provide satisfactory responses to Section IV–A (programming) and Section VI (equal employment opportunity). Also, the 1972 application was indirectly questioned by Action regarding alleged common irregularities in the WSAY and WNIA ascertainments. Build formally challenged the 1975 supplemental application in the areas of ascertainment, programming, employment, and the public inspection file.

A. ASCERTAINMENT

42. Build alleges that Niagara has yet to conduct a community ascertainment that comports with the *Primer*. The licensee, according to the petitioner, has failed to supply any demographic data on the Cheektowaga-Buffalo area either in 1972 or 1975. Moreover, Build contends that Action has already shown that WSAY and WNIA submitted fraudulent lists of identical ascertained needs in 1972 and then utilized the same questionable list of needs in the 1975 supplemental filings. The petitioner points out that WNIA took part in the 1975 joint community survey conducted by the Buffalo area broadcasters. However, Build avers that two of the station's interviewers in the leadership survey—Gordon Brown and Sybilla Reber—reside in Rochester and do not have day-to-day involvement with WNIA. Further, Build questions the licensee's assertions that it maintains a continuous ascertainment of community leaders since the list of organizations with which Niagara purportedly keeps in constant touch does not include any black groups.

43. In opposition, WNIA asserts that Mr. Brown is the owner and general manager of the facility, and that, while Brown may live in Rochester and devotes most of his time at WSAY, he is in telephone contact with the station's resident manager and personally visits the station on a regular basis. Also, the licensee claims that Ms. Reber is an assistant to Mr. Brown and is therefore qualified to participate in the ascertainment.

44. We find that neither the 1972 nor the 1975 WNIA ascertainment complies with the Primer. Both times Niagara has failed to offer a satisfactory description of the community of license—Cheektowaga.[13] Such data is vital to an accurate determination of the effectiveness of an ascertainment. Moreover, we are troubled by the licensee's apparent reluctance to make it clear which community is its primary concern—Cheektowaga or Buffalo. Despite the fact that Cheektowaga is the city of license, the 1972 survey involved only nine leaders of that community out of a total survey of 20 leaders. Then, in 1975, just 10 leaders were contacted in Cheektowaga while 137 were drawn from Buffalo. Also it is unclear how many Cheektowaga residents, if any, were among the 1,000-person sample utilized in the 1975 joint public survey. In response to an April, 1975 staff inquiry, the licensee supplied a list of 24 community problems which were ascertained in its interviews with the ten Cheektowaga leaders. However, questions remain regarding the station's 1975 community leader contacts where those interviews were conducted by Mr. Brown and Ms. Sybilla Reber. According to the licensee, Ms. Reber assists in the operation of WSAY and WNIA and is a part-time employee of WNIA, but we have no information to indicate that Ms. Reber is either a principal or management level employee as required by the Primer. It is therefore impossible to determine which of the leader contacts could be validly considered under the Primer. We further cannot determine whether any Cheektowaga residents were contacted in the joint survey of the general public or any other general public survey that might have been conducted by this licensee.

45. Moreover, as previously noted, this licensee has submitted essentially the same list of community problems to be dealt with in its programming for both WSAY and WNIA in both 1972 and 1975. (See Para. 12, supra). We have found that these circumstances raise doubts as to whether WSAY made use of the Rochester joint ascertainment, and similar doubts are raised as to WNIA's use of the survey conducted by the Buffalo area broadcasters.

46. On the facts before us, the Commission is unable to determine that WNIA's 1972 ascertainment efforts were conducted in compliance with the Primer. As previously noted, ascertainment is a prospective obligation, but the prospective period to which the 1972 ascertainment applied has passed, and we are therefore faced with a question of whether WNIA's programming during the 1972–1975 period was responsive to the problems of Cheektowaga (see para. 50, infra). Additionally, we cannot conclude that WNIA's 1975 survey was adequate. Accordingly, appropriate issues will be specified.

B. WNIA'S PROGRAM SERVICE

47. Build alleges that WNIA's past programming has failed to meet the community's needs. As with the allegations lodged against sister station WSAY, the petitioner herein asserts that many WNIA programs are incorrectly classified as public affairs even though they are primarily promotional, music-information programs supplied by the various military and governmental agencies. According to the petitioner, WNIA proposes to continue during the 1975–1978 license term the same ineffective program service which fails to allow for local expression. The licensee, in opposition, argues that its 1972 and 1975 renewal applications speak for themselves and that none of WNIA's programming has been falsely classified.

48. After our review of the WNIA renewal applications, we conclude that Niagara's non-entertainment program service is nearly identical to WSAY's. Thus, the factual situation surrounding the WNIA renewals is similar to our discussion above pertaining to WSAY. For instance, Niagara's 1972 renewal application cites as typical public affairs programming broadcast to meet the needs of Cheektowaga: Navy Hoedown (U.S. Navy); Lawrence Welk (U.S. Navy); Sounds Like the Navy (U.S. Navy); Red, White & Blue (U.S. Navy); Serenade in Blue (U.S. Air Force); All Kinds of Music (U.S. Marine Corps); Country Music Time (U.S. Air Force); and Voices of Vista (Office of Economic Opportunity). In reviewing the 1972 composite week logs we are unable to discern any program that might reasonably be considered public affairs even though the licensee contends that it offered six hours and 17 minutes of public affairs programming.[14] Similarly, the 1975 renewal application lists: All Kinds of Music; Country Music Time; Serenade in Blue; Navy Hoedown; Lawrence Welk; Sounds Like the Navy; Here's to Veterans (Veterans Administration); Sounds of Solid Gold (U.S. Marine Corps); and NASA Special Report (National Aeronautics and Space Administration). The 1975 composite week logs indicate that WNIA offered no programming which might be considered public affairs—with the possible exception of a one minute 42 second Air Force Home Town News Report—even though it claims to have broadcast five hours and 48 minutes of public affairs.

49. Niagara made no attempt in 1972, nor initially in 1975, to link its proposed broadcast matter to the ascertained needs. In the April 1975 staff inquiry, the licensee was asked to show what programs respond to local ascertained needs. Further, WNIA was advised that many of the programs listed as public affairs—e.g. Navy Hoedown—might well be in the public interest, but they did not correspond to the Commission's definitions of public affairs programming. The licensee responded that it meets the needs of the community with its public service an-

[12] With the exception of the January date, these dates are the same as those utilized by the Commission for the composite week of the 1976 Annual Programming Report (FCC Form 303–A).

[13] The licensee did submit along with its 1975 application a Chamber of Commerce brochure which highlights some aspects of the city of license.

[14] Niagara's logs classify public service announcements as PS; however, the renewal application lists all such announcements as public affairs. Apparently, the licensee utilized these announcements in arriving at its total public affairs time.

nouncements as well as public affairs programs. Niagara urges that "public" is all encompassing, and, therefore, all of its public affairs programs are properly classified. Moreover, it points out that the Primer allows the utilization of public service announcements as broadcast matter in response to ascertained needs. In its May, 1975 amendment to the supplemental application, WNIA did itemize its public affairs programs as to the need or needs that each program would address. For example, the licensee states that Country Music Time will meet these needs: "need for finding jobs for the jobless; blue collar workers affected most due to lack of education; need for more respect for law enforcement officers; and need for respect toward elderly."

50. It therefore appears that WNIA has relied on the same type of national or institutionally supplied programs to meet the problems of Cheektowaga as WSAY used to respond to the problems of Rochester. However, unlike WSAY, the Cheektowaga station has presented no local public affairs programs, but has relied on public service announcements to respond to local problems. While the Primer allows for announcements to be used in meeting the ascertained needs, sole reliance on announcements raises a question as to the adequacy of the programming response to community problems. Although the licensee did not propose to rely solely on announcements, we cannot determine that its other program service has been responsive to local community needs. Therefore, WNIA's announcements would have to carry the burden of all of the responsive broadcast matter. Under the circumstances presented, we are unable to determine that WNIA's programming has been responsive to the problems, needs and interests of Cheektowaga. Additionally, in spite of the licensee's attempt to link 1975 ascertained problems with proposed programs, the questions raised concerning the adequacy of the supplemental ascertainment make it impossible to determine that WNIA's proposed programming will be responsive to the needs of Cheektowaga. Accordingly, appropriate issues will be specified.

C. EMPLOYMENT

51. The petitioner asserts that WNIA does not presently employ—and has never employed—any racial minority persons, and does not have an affirmative action program. Niagara, in opposition, contends that discrimination has never been a part of the station's hiring policy.[15] Further, in its "answer" to the reply, the licensee alleges that it did employ a black engineer during the period May 7, 1973 to October 7, 1973.

censee's Annual Employment Reports (FCC Form 395) reveals:

the licensee's record of female employment and the utilization of females in the higher pay positions has been consistently within a zone of reasonableness considering the SMSA's 37% proportion of females in the workforce. The li-

52. Our analysis of the licensee's employment reports for the past five years reveals that total absence of any racial or ethnic minority employees. However,

[Figures in parenthesis are percentages]

	1971	1972	1973	1974	1975
Total full-time employees	7	7	7	8	9
Minorities	0	0	0	0	0
Females	4(57)	4(57)	4(57)	4(50)	4(44)
Total upper-4 jobs	4	1	1	5	6
Minorities	0	0	0	0	0
Females	1(25)	1(100)	1(100)	1(20)	1(16.7)

53. The Commission is concerned that Niagara's employment profile fails to reflect any minority employees over a five-year-span and the licensee's continued failure, until May, 1975, to even place a formal affirmative action program on paper. However, there are no unresolved questions of individual discrimination against minority persons. Moreover, the station's staff has been small, and the city of license, according to the petitioner, is predominantly white. In fact, the 1970 Census for Cheektowaga reveals that out of a total population of 113,844 only 492 are classified as nonwhite. But even if we would apply the SMSA's 9% minority proportion to WNIA's staff size over the past five years, we would find that, statistically, both the zone of reasonableness and parity would be less than one employee. Under these circumstances, we do not believe that an employment issue as to WNIA is warranted. Rather, in the event a renewal of license is granted Niagara, it could be conditioned in such a way that the Commission would have an opportunity to monitor the implementation and effectiveness of the licensee's program.[16]

D. PUBLIC FILE

54. Build alleges that on April 3, 1975 the WNIA public inspection file was incomplete in that the 1972 Form 395, engineering data filed as part of the renewal application, and the FCC Procedure Manual were not available. Also, the petitioner points out that Niagara requires an appointment to gain access to the file. WNIA did not respond specifically to these allegations. Additionally, we note that as a result of a FCC station inspection, Niagara was cited in May, 1971 for failure to comply with Section 1.526 in maintaining a complete public inspection file. We can not determine that the licensee has complied with our rules regarding the public inspection file. Significantly, WSAY also apparently has failed to maintain a complete file, and, thus, the commonly-owned licensees evidence a pattern of possible non-compliance. Accordingly, we believe it appropriate to designate this matter for hearing. (See para. 35, supra)

ADDITIONAL FILINGS

55. By letters of March 5, 1976 and March 10, 1976 Federal and Niagara, respectively, requested that they be given until April 6, 1976 to file supplemental pleadings. The Chief, Renewal and Transfer Division in denying the requests on March 18, 1976, stated that good cause had not been shown by the licensees; however, the licensees were advised that, in the event that additional pleadings were received prior to Commission action, arguments would be considered in support of Commission acceptance of such additional pleadings. Subsequently, on March 26, 1976, licensees filed a formal motion seeking to stay any Commission action on the applications until April 15, 1976. In support of its request, the licensees urged that previously they had not been represented by counsel but had appeared pro se. Federal and Niagara asserted that the delay would permit their newly acquired counsel to review the four year record of these renewal matters. It was also noted that Federal had entered into a contract to sell WSAY. On April 2, 1976 the Chief, Broadcast Bureau denied the motion. In so doing, it was stated that the licensees had failed to show any compelling reason to delay the proceedings. Further, it was noted that the filing of additional pleadings by Federal and Niagara would generate additional filings by the other parties resulting in protracted proceedings to the detriment of the public interest. Additionally, the Bureau related that its preparation of these matters had been completed and was awaiting Commission action. Moreover, the denial observed that Commission records reflected Federal's utilization of counsel in September, 1975, but that no request was made at that time for authority to file supplementary responses.

56. On April 5, 1976 Federal and Niagara filed amendments to their 1975 renewal applications, 14 months after the initial submission of those applications. Such amendments might well generate additional pleadings by the parties over several months. Under Section 1.522 of our rules the licensees have a right to amend their applications. See *Chuck Stone* v. *FCC*, supra. However, this case is four years old and we believe that the public interest would best be served by as expeditious a determination as possible. Accordingly, insofar as all parties will have an opportunity under Section 1.229 of our rules to file motions to enlarge, change or delete the issues herein, we feel that we should proceed with these matters without further delay.

57. Additionally, the licensees filed on April 6, 1976 a Motion to File Out of Time, a Supplemental Opposition to Pe-

[15] Build points out that the 1975 renewal application indicates that a discrimination complaint, Case No. VII–CS–1692–74, was filed by Mrs. Cynthia Roeder against WNIA with the New York State Division of Human Rights. The opposition contends that the matter was resolved in the licensee's favor, but petitioner's reply does not accept the licensee's word without some documentation. Our inquiry to the New York State Division of Human Rights indicates that on February 21, 1975 it was determined that no probable cause was shown by Mrs. Roeder.

[16] We emphasize here that the difference in result reached on EEO performance as between WNIA and WSAY (Paras. 29, 30, supra.) rests largely on the failure of the Rochester station to file and maintain an EEO program under Section 73.125

tition to Deny and a Supplemental Request to File Pleadings Out of Time. We have determined that in light of the pleading history of these matters and the failure of the licensees to show any compelling reason for the acceptance of the supplemental opposition, the motion and supplemental request should be denied.

58. Accordingly, it is ordered, That the application of Federal Broadcasting System, Inc., for renewal of license of Station WSAY, Rochester, New York, and the application of Niagara Broadcasting Systems for renewal of license of Station WNIA, Cheektowaga, New York, are designated for hearing, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) With respect to the application of Federal Broadcasting System, Inc., for renewal of license for Station WSAY, Rochester, New York:

(a) To determine the efforts made by Federal Broadcasting System, Inc., to ascertain the community problems of the area to be served in its 1975 supplemental renewal application, and the manner in which the applicant proposes to meet those problems;

(b) To determine whether Federal Broadcasting System, Inc.'s non-entertainment programming of Station WSAY was reasonably responsive to the community's problems, needs and interests during the 1969 to 1975 periods;

(c) To determine whether Federal Broadcasting System, Inc., has met the requirements of the Commission's equal employment opportunity rules and policies, in the formulation and implementation of its non-discrimination and affirmative action programs as reflected in both the 1972 renewal application and the 1975 supplement thereto;

(d) To determine whether Federal Broadcasting System, Inc., has met the requirements of Section 1.526 of the Commission's rule pertaining to the retention of certain documents for public inspection;

(e) To determine in light of the evidence adduced under the above issues, whether the applicant has the requisite qualifications to be or remain a Commission licensee, and whether a grant of the application would serve the public interest, convenience and necessity.

(2) With respect to the application of Niagara Broadcasting System for renewal of license for Station WNIA, Cheektowaga, New York:

(a) To determine the efforts made by Niagara Broadcasting System to ascertain the community problems of the area to be served in its 1975 supplemental renewal application, and the manner in which the applicant proposes to meet these problems;

(b) To determine whether Niagara Broadcasting System's non-entertainment programming of Station WNIA was reasonably responsive to the community's problems, needs and interests during the 1969 to 1975 periods;

(c) To determine whether Niagara Broadcasting System has met the requirements of Section 1.526 of the Commission's rules pertaining to the retention of certain documents for public inspection;

(d) To determine in light of the evidence adduced under the above issues, whether the applicant has the requisite qualifications to be or remain a Commission licensee, and whether a grant of the application would serve the public interest, convenience and necessity.

59. It is further ordered, That Action for a Better Community, Inc., et al., Metro-Act of Rochester, Inc., Genesse Valley Chapter of the National Organization for Women, Rochester Black Media Coalition and BUILD, Inc., ARE MADE PARTIES RESPONDENT to this proceeding.

60. It is also ordered, That with regard to Federal Broadcasting System, Inc. in accordance with Section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence shall be on Action for a Better Community, Inc., *et al.*, Metro-Act of Rochester, Inc., and Rochester Black Media Coalition as to Issues (1)(a) through (1)(d), also on Genesse Valley Chapter of the National Organization for women as to Issue (1)(c).[11] The burden of proof with respect to all parts of Issue (1) herein shall be upon Federal Broadcasting System, Inc.

61. It is further ordered, That in accordance with Section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence shall be on Build, Inc., as to Issues (2)(a) through (2)(c). The burden of proof with respect to all parts of Issue (2) herein shall be upon Niagara Broadcasting System.

62. It is also ordered, That, to avail themselves of the opportunity to be heard, Federal Broadcasting System, Inc., Niagara Broadcasting System, the petitioners and the complainants, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, shall within twenty (20) days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

63. It is further ordered, That Federal Broadcasting System, Inc. shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 1.594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such rules, and shall advise the Commission of the publication of such notice as required by Section 1.594(g) of the Rules.

64. It is also ordered, That Niagara Broadcasting System shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 1.594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such rules, and shall advise the Commission of the publication of such notice as required by Section 1.594(g) of the Rules.

65. It is also ordered, That Federal Broadcasting System shall, within thirty (30) days of the release of this Order submit:

Any and all exhibits and data required to update and complete Section II (Engineering) of the renewal application including transmitter logs for the following dates: Sunday, September 7, 1975; Monday, March 10, 1975; Tuesday, July 29, 1975; Wednesday, October 29, 1975; Thursday, January 30, 1975; Friday, April 4, 1975; and Saturday, June 21, 1975.

Adopted: April 28, 1976.

Released: May 10, 1976.

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

[FR Doc.76-14298 Filed 5-14-76;8:45 am]

[11] The issues designated are derived from petitioners' allegations as well as our own scrutiny of the pertinent renewal applications. Under these mixed circumstances, we believe it appropriate that petitioners and complainants go forward with their evidence.

[Docket Nos. 20771, 20772, 20773; File Nos. 20259-CD-P-75, 20603-CD-P-75, 20616-CD-P-75]

RADIO DISPATCH INC., ET AL.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of: Radio Dispatch, Inc., Houston, Texas; Joseph H. Wofford d/b/a Radiophone of Houston, Houston, Texas; and Mobile Telecommunications Corp., Houston, Texas.

1. The Commission, by the Chief, Common Carrier Bureau acting pursuant to delegated authority, has before it for consideration applications filed by Radio Dispatch, Inc. (formerly Mobilephone of Texas, Inc. herein referred to as Dispatch) on August 16, 1974, by Joseph H. Wofford d/b/a Radiophone of Houston (Radiophone) on October 25, 1974. Dispatch and Radiophone seek authority in the Domestic Public Land Mobile Radio Service to add frequency 454.150 to existing facilities used for the provision of two-way mobile service. Mobile seeks authority for construction of a new two-way radio common carrier station on the same frequency. Also before the Commission are (a) an amendment filed by Dispatch on August 25, 1975, changing the name of the applicant from Mobilphone of Texas, Inc. to Radio Dispatch, Inc., (b) an informal objection thereto filed on September 22, 1975 by Radiophone, and (c) the response of Dispatch filed October 21, 1975.

2. The applicants propose the use of the same frequency in the same general area, and are thus electrically mutually exclusive. The applicants are financially and technically qualified to operate the proposed facilities, and possess the requisite legal qualifications except to the extent discussed in paragraph 3, infra. A hearing accordingly must be held to comparatively determine which applicant is best qualified to operate the proposed facilities in the public interest.

Ashbacker Radio Corp. v. *F.C.C.*, 326 U.S. 327 (1945).

3. Section 21.13(f) of the Commission's Rules requires that an applicant for authority in the DPLMRS provide evidence that it has received the appropriate certification by a state regulatory agency if there exists such agency with jurisdiction over the proposed operation. At the time these applications were filed, the state of Texas required no certification of the service. Effective September 1, 1975, the Public Utilities Commission of Texas was created with jurisdiction over mobile radio operations. Dispatch and Radiophone, as existing carriers, state that under Section 53 of the Public Utilities Regulatory Act, they will be certified under a "grandfathering" provision (although it appears that they must have perfected their right to such certification by March 1, 1976). Neither carrier has filed evidence that its right to certification has been perfected, and that the certification has been issued. As a new carrier, Mobile is precluded from operating after September 1, 1976, unless it is certified by the regulatory agency as a new carrier. Mobile has not offered evidence that it has been so certified, or that it has filed for authority to provide the service. Normally, we would not accept the applications without the required evidence of certification. In this case, however, where the applications were received before the agency was created, and are ready for designation before the agency assumes its jurisdiction, it appears more orderly to initiate the hearing and to require that the successful applicant produce evidence of certification (by "grandfather" right or by initial certification) prior to the commencement of operation. Accordingly, the grant will be subject to such condition.

4. We have also considered the circumstances surrounding the amendment of the original Dispatch application to change the name of the applicant to that of an existing carrier, and we conclude that no question is raised which warrants further inquiry in the hearing in this regard. We reject the argument that the amendment to the Dispatch application is a major amendment under Section 21.23(c) of our Rules. Both Dispatch and the original applicant are wholly owned by one person. The amendment does not result in any significant change in ownership or control, nor does it materially alter an existing or proposed station. See Associated Telephone Answering Services Systems, Inc., 57 F.C.C. 2d 1170 (1976). Moreover, we are unable to agree with the argument that the change in the applicant's name is cause to explore whether the original application was bona fide. Dispatch's stated basis for the amendment—that the change would entitle it to "grandfather" rights under state law—is rational, and outweights any inference that the amendment was designed to abuse the Commission's processes. We recognize that the change of applicant's name to that of an existing carrier resulted in a difference in the evidence to be submitted in support of the application.[1] There is no evidence that the applicant has attempted to deceive the Commission, however, and it concededly has made the requisite showing under the rule applicable to a request for an additional frequency. Thus, we conclude that the change of applicant's name to that of an existing carrier does not raise a character qualification question to be resolved in an evidentiary hearing. See Houston Mobilfone, Inc. et al., 52 F.C.C. 2d 473 (1975), aff'd FCC 75–1052, released Sept. 24, 1975.

5. The issues designated in paragraph 6, infra, include only comparative considerations, because the applications raise no basic issues with respect to any applicant. All applicants have satisfied the threshold showing required under Issue 1 (need); thus, the issue is comparative only. For the scope of Issue 2, see Vegas Instant Page, 50 F.C.C. 2d 1161 (1975) and RAM Broadcasting of Florida, 50 F.C.C. 2d 1136 (1975).

6. In view of the foregoing, It is ordered, That pursuant to Sections 309 (d) and (e) of the Communications Act of 1934, as amended, the captioned applications of Radio Dispatch, Inc., Joseph H. Wofford d/b/a Radiophone of Houston and Mobile Telecommunications Corp. are designated for hearing in a consolidated proceeding upon the following issues:

(1) To determine the total area and population to be served by the applicants within the 37 dbu contour of their proposed facilities based upon the standards set forth in Section 21.504 of the Rules, and to determine the need for the proposed service in those areas;

(2) To determine on a comparative basis the nature and extent of the services proposed by each applicant; and

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the above-captioned applications would best serve the public interest, convenience and necessity.

(7) It is further ordered, That the grant of authority to the successful applicant in this proceeding shall be subject to the condition that it obtain from the Public Utilities Commission of Texas prior to commencement of operation, a certificate evidencing its authority to provide radio common carrier services in that state.

(8) It is further ordered, That the hearing shall be held at a place, time and before an Administrative Law Judge to be designated in a subsequent order.

(9) It is further ordered, That the Chief, Common Carrier Bureau is made a party to this proceeding.

Adopted: May 3, 1976.

Released: May 13, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] JOSEPH A. MARINO,
Acting Chief,
Common Carrier Bureau.

[FR Doc.76-14299 Filed 5-14-76;8:45 am]

[1] Pursuant to Section 21.516 of the Rules, an existing carrier requesting an additional frequency must submit load studies of its existing channels. A new applicant must submit a survey of prospective customers for its service.

VOLUNTARY AGREEMENT AND PLAN OF ACTION TO IMPLEMENT THE INTERNATIONAL ENERGY PROGRAM

Meetings

In accordance with Section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (P.L. 94–163), announcement is made of the following meetings:

1. A meeting of Subcommittee A of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on May 25 and 26, 1976, at the offices of British Petroleum, Moor Lane, London, England, beginning at 9:00 a.m. on May 25. The agenda for the meeting is as follows:

1. Review and revision of allocation systems test guide.
2. Further design phase tasks.
3. Next meeting and location.

2. A meeting of the Industry Working Party (IWP) to the International Energy Agency (IEA) will be held on May 25 and 26, 1976, at the offices of Exxon Corporation, 1251 Avenue of the Americas, New York, New York, beginning at 9:00 a.m. on May 25. The agenda for the meeting is as follows:

1. Oral summary and discussion of IWP meeting (including review of materials prepared during this meeting) held in Paris during the week of May 10.
2. Further development of IWP position on a suggested approach for the development of IEA financial information systems including a suggested approach for securing information on future international oil investment requirements and financial capability.
3. Pricing in an emergency.
4. Clarification of previous IWP recommendations — consideration of questions which may be raised by IEA prior to May 25 on implementation of price and cost reporting systems previously recommended by the IWP.
5. Identification of work plan for future IWP efforts on current topics—schedule for future meetings.

In accordance with Section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act; these meetings will not be open to the public.

Issued in Washington, D.C., May 12, 1976.

MICHAEL F. BUTLER,
General Counsel,
Federal Energy Administration.

[FR Doc.76-14302 Filed 5-12-76;3:31 pm]

VOLUNTARY AGREEMENT AND PLAN OF ACTION TO IMPLEMENT THE INTERNATIONAL ENERGY PROGRAM

Meeting Cancellation

Notice is hereby given that the meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) scheduled for May 17, 1976, at 2 Rue Andre Pascal, Paris 16, France, beginning at 9:30 a.m. has been cancelled.

Issued in Washington, D.C., May 12, 1976.

MICHAEL F. BUTLER,
General Counsel,
Federal Energy Administration.

[FR Doc.76-14303 Filed 5-12-76;3:31 pm]

FEDERAL MARITIME COMMISSION

AMERICAN EXPORT LINES, INC. AND AMERICAN PRESIDENT LINES

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, 1110 L Street, N.W., Room 10126; or may inspect the agreement at the Field Office located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. 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 of 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.

John A. Smith, Director of Conferences, American Export Lines, Inc., 17 Battery Place, New York, New York 10004.

Agreement No. 10241, between the above named carriers, provides that the parties may discuss and agree on rates, charges, classifications, practices and related tariff matters affecting the trade from ports and points in Italy and Jugoslavia to ports on the U.S. North Atlantic and interior U.S. points, subject to the right of each party to take independent action on 72 hours notice to the other parties. Each party is to file its own tariff.

By Order of the Federal Maritime Commission.

Dated: May 12, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-14306 Filed 5-14-76;8:45 am]

[Independent Ocean Freight Forwarder License No. 1273]

E. & T. FORWARDING COMPANY

Order of Revocation

On May 6, 1976, E. & T. Forwarding Company, 123 Rodrigo De Triana St., Hato Rey, P.R. 00918, voluntarily surrendered its Independent Ocean Freight Forwarder License No. 1273 for revocation.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), Section 5.01(b), dated June 30, 1975;

It is ordered, That Independent Ocean Freight Forwarder License No. 1273 issued to E. & T. Forwarding Company, be and is hereby revoked effective May 6, 1976, without prejudice to reapply for a license in the future.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon E. & T. Forwarding Company.

LEROY F. FULLER,
Director, Bureau of Certification and Licensing.

[FR Doc.76-14311 Filed 5-14-76;8:45 am]

[Docket No. 73-7; Agreement No. T-2719]

ENVIRONMENTAL NEGATIVE DECLARATION

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Environmental Analysis has determined that the environmental issues relative to the referenced docket do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321, et seq. and that preparation of a detailed environmental impact statement will not be required under Section 4332(2)(C) of NEPA.

It was concluded that the operation of the elevator under the proposed action should, inter alia: cause no adverse increase in the emission of particulates from the elevator; cause no discharge of sewage into the Houston Ship Channel; and have no significant adverse impact on land and water traffic. Under the Agreement, conditions of safety at the elevator should be improved.

The proceeding is an investigation to determine whether a lease agreement between the Port of Houston Authority, as lessor, and Louis Dreyfus Corporation, as lessee, is subject to the requirements of Section 15 of the Shipping Act, 1916 and whether implementation of the lease would violate Sections 16 and 17 of the Act. Included in this investigation as an issue for resolution is the question whether Dreyfus is an "other person subject to the Act" within the meaning of Section I of the Act.

This determination was based on the OEA's preparation and consideration of a Threshold Assessment Survey which is available for inspection on request from the Public Information Office, Room 11413, Federal Maritime Commission, Washington, D.C. 20573, telephone 202-523-5764.

Any person disagreeing with the Negative Declaration shall have ten (10) days within which to note exceptions to the Commission by filing exceptions to the Negative Declaration with the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573. No final Commission action shall be taken within thirty (30) days following the publication of the Negative Declaration in the FEDERAL REGISTER. If the Commission fails to otherwise act within twenty (20) days following the time provided for the filing of exceptions to the Negative Declaration, the determination of the Office of Environmental Analysis will be adopted by the Commission as its final determination of environmental issues.

Copies of exceptions, if any, to the Negative Declaration and copies of all future correspondence, discovery materials, pleadings and exhibits filed in this proceeding shall be served on Chief, Office of Environmental Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-14312 Filed 5-14-76;8:45 am]

INDEPENDENT OCEAN FREIGHT FORWARDER LICENSE

Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to Section 44(a) of the Shipping Act, 1916 (Stat. 522 and 46 U.S.C. 841(b)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Roberts, Reilly & Sons, Inc., 239-02 Linden Blvd., Elmont, New York 11003. Officers: George E. Roberts, President, Chester G. Roberts, Vice President, H. F. Liebl, Vice President, R. H. C. Freund, Vice President, Mitchell E. Roberts, Secretary, Dorothea M. Roberts, Treasurer.

Rocky Ford Moving Vans Inc., P.O. Box 11, Midland, Texas 79701. Officers: Howard Kerth, President, Lucille Kerth, Vice President.

Cardinal Forwarding, Incorporated, 821 South Pickett Street, Alexandria, Virginia 22304. Officers: William D. Tribble, President, Edgardo E. Umpierrez, Vice President, Peter J. Williams, Secretary, Warren A. Broertjes, Treasurer, Frederick W. Lyles, Director, H. Randolph Barbee, Director, Wayne R. Beck, Director.

Columbus Moving & Shipping Co., Inc., 1029 East 167th Street, Bronx, New York 10459. Officers: Luis Ortiz, President, Elizabeth Santos, Secretary.

United Transportation Systems, Inc., 2727 Boston Street, Baltimore, Maryland 21224. Officers: Bruce Burchett, President, Antonio I. Pelina, Vice President, Lenzie Burchett, Vice President, Joyce Witherington, Sec./Treasurer.

By the Federal Maritime Commission.

Dated: May 12, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-14310 Filed 5-14-76;8:45 am]

LEEWARD AND WINDWARD ISLANDS AND GUIANAS CONFERENCE ET AL.

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, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. 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.

Wade S. Hooker, Jr., Esq.,
Casey, Lane & Mittendorf,
26 Broadway,
New York, New York 10004.

Agreement No. 10236, entitled the Latin American Discussion Agreement, would permit the above-named conferences and independent steamship lines to meet together to discuss and to exchange information and cooperate in developing information concerning rates and other transportation conditions relevant to the trades encompassed by the named conferences which they operate in accordance with the terms and conditions set forth in the agreement.

By Order of the Federal Maritime Commission.

Dated: May 12, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-14307 Filed 5-14-76;8:45 am]

NORTH ATLANTIC ISRAEL EASTBOUND FREIGHT CONFERENCE

Petition Filed

Notice is hereby given that the following petition has been filed with the Commission for approval pursuant to Section 14b of the Shipping Act, 1916, as amended (75 Stat. 762, 46 U.S.C. 813a).

Interested parties may inspect a copy of the current contract form and of the petition, reflecting the changes proposed to be made in the language of said contract, at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126 or at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and Old San Juan, Puerto Rico. Comments with reference to the proposed changes and the petition, including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, within 10 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed modification of the contract form and/or the approved contract system 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 petition, (as indicated hereinafter), and the statement should indicate that this has been done.

Jacob P. Billig, Esquire, Billig, Sher & Jones, P.C., Suite 300, 1126 Sixteenth Street, N.W., Washington, D.C. 20036.

Agreement No. 8220 D.R. is an application by the above named conference for permission to institute an exclusive patronage (dual rate) contract system pursuant to Section 14b of the Shipping Act, 1916.

By Order of the Federal Maritime Commission.

Dated May 12, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-14309 Filed 5-14-76; 8:45 am]

PUERTO RICO MARINE MANAGEMENT AND SEA-LAND SERVICE, 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, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. 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.

Dennis N. Barnes, Esquire, Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, D.C. 20036.

By a series of orders, the Commission has approved Agreement No. DC–75 for limited periods of time. The most recent of these orders was dated December 29, 1975, approving the agreement for a term not to exceed one hundred and eighty (180) days.

The agreement, which is between Sea-Land Service, Inc., (Sea-Land) and Puerto Rico Marine Management, Inc. (PRMM), as approved by the Puerto Rico Maritime Shipping Authority (Authority) is an interim services and facilities subcontract wherein Sea-Land will provide PRMM with virtually any services it would require for the performance of its contract to manage the Authority's common carrier service between U.S. Atlantic and Gulf Coast ports and Puerto Rico. Included within the scope of Agreement No. DC–75 are facilities for providing berthing and terminal services, repair and maintenance services and A & G functions.

Current Commission approval of Agreement No. DC–75 will expire June 25, 1976. The parties to the agreement have filed several long-range terminal agreements with this Commission which, when approved, would negate any further need for Agreement No. DC–75. Accordingly, the parties have requested that we extend our approval of the agreement only for the period of time required for final Commission action on the new agreements that will supersede Agreement No. DC–75.

By Order of the Federal Maritime Commission,

Dated: May 11, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76–14308, Filed 5–14–76;8:45 am]

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

NOTICE OF COMMITTEE MEETINGS

Pursuant to the provisions of section 10 of Public Law 92–463, effective January 5, 1973, notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on: Thursday, June 3, 1976; Thursday, June 10, 1976; Thursday, June 17, 1976; Thursday, June 24, 1976.

The meetings will convene at 10 a.m. and will be held in Room 5A06A, Civil Service Commission Building, 1900 E Street, NW., Washington, D.C.

The committee's primary responsibility is to study the prevailing rate system and from time to time advise the Civil Service Commission thereon.

At these scheduled meetings, the committee will consider proposed plans for implementation of Public Law 92–392, which law establishes pay systems for Federal prevailing rate employees.

The meetings will be closed to the public on the basis of a determination under section 10(d) of the Federal Advisory Committe Act (Public Law 92–463) and 5 U.S.C., section 552(b)(2), that the closing is necessary in order to provide the members with the opportunity to advance proposals and counter-proposals in meaningful debate on issues related solely to the Federal Wage System with the view toward ultimately formulating advisory policy recommendations for the consideration of the Civil Service Commission.

However, members of the public who wish to do so, are invited to submit material in writing to the Chairman concerning matters felt to be deserving of the committee's attention. Additional information concerning these meetings may be obtained by contacting the Chairman, Federal Prevailing Rate Advisory Committee, Room 5451, 1900 E Street, NW., Washington, D.C. 20415.

DAVID T. ROADLEY,
Chairman, Federal Prevailing Rate Advisory Committee.

MAY 12, 1976.

[FR Doc.76–14271 Filed 5–14–76;8:45 am]

GENERAL SERVICES ADMINISTRATION

Federal Preparedness Agency

PROGRAM ADVISORY COMMITTEE

Meeting

Notice is hereby given that the meeting of the Program Advisory Committee of the Federal Preparedness Agency scheduled for May 20 and 21, 1976, announced in the FEDERAL REGISTER on April 28, 1976 (41 F.R. 17822), has been canceled.

The meeting will be held on July 22 and 23, 1976, in Room 5208, General Services Administration Building, 18th and F Streets NW., Washington, D.C.

Dated: May 10, 1976.

LESLIE W. BRAY, Jr.,
Director, Federal Preparedness Agency, General Services Administration.

[FR Doc.76-14356 Filed 5-14-76;8:45 am]

INTERNATIONAL TRADE COMMISSION

DETERMINATIONS, FINDINGS, AND RECOMMENDATIONS OF THE COMMISSION

DETERMINATIONS

After considering all of the information received in the course of the investigation, the Commissioners make the following determinations:

Commissioners Moore and Parker determine that shrimp, as described in item 114.45 of the TSUS, is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry devoted to the catching and landing of shrimp.

Commissioners Leonard and Ablondi determine that an article is not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Commissioner Minchew determines, with respect to the shrimp-fishing industry, that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing an article like or directly competitive with the imported article; and determines, with respect to the shrimp-processing industry, that an article is not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Commissioner Bedell did not participate.

Thus, the Commission determines that shrimp, fresh, chilled, frozen, prepared, or preserved (including pastes and sauces), provided for in item 114.45 of the Tariff Schedules of the United States, is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry catching and landing shrimp.

FINDINGS AND RECOMMENDATIONS

The Commission (Commissioners Minchew, Moore, and Parker) determines that adjustment assistance under chapters 2, 3, and 4 of title II of the Trade Act can effectively remedy such serious injury to the domestic industry catching and landing shrimp and recommends the provision of such assistance.

By order of the Commission.

Issued: May 12, 1976.

KENNETH R. MASON,
Secretary.

[FR Doc.76-14275 Filed 5-14-76;8:45 am]

LEGAL SERVICES CORPORATION

COMMITTEE ON REGULATIONS

Meeting

The next meeting of the Committee on Regulations of the Legal Services Corporation Board of Directors will be held on Friday, May 28, 1976, in the O'Hare Hilton, Chicago. The meeting will convene at 9:00 a.m. and will be for the purpose of considering draft regulations.

The meeting is open to the public.

Dated: May 12, 1976.

THOMAS EHRLICH,
President.

[FR Doc.76-14314 Filed 5-14-76;8:45 am]

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

AVAILABILITY OF MINUTES

Closed Meeting

APRIL 19, 1976.

Reference is made to the notice in the February 11, 1976, FEDERAL REGISTER, concerning a meeting of the National Advisory Committee on Oceans and Atmosphere on March 15 and 16, 1976. That notice contained the information that the afternoon session of Monday, March 15, would be closed to the public under authorization of the Acting Assistant Secretary of Commerce for Administration in a determination dated February 6, 1976, and cosigned by the Assistant General Counsel for Administration. Closure was necessitated by the classified information included in the briefings and discussions regarding the ship *Glomar Explorer*, its capabilities and potential alternative uses. A review of the contents of those briefings and discussions has revealed that they contain much unclassified information which together with the gist of the remainder of the proceedings, might be useful to parties not present at the closed session. Accordingly, detailed unclassified minutes of that session have been prepared and will be made available upon request.

The Committee, consisting of 25 non-Federal members appointed by the President from State and local governments, industry, science, and other appropriate areas, was established by Congress by Public Law 92-125, on August 16, 1971. Its duties are to (1) undertake a continuing review of national ocean policy, coastal zone management and the progress of the marine and atmospheric science and service programs of the United States, (2) submit a comprehensive annual report to the President and to the Congress setting forth an overall assessment of the status of the Nation's marine and atmospheric activities on or before 30 June of each year, and (3) advise the Secretary of Commerce with respect to the carrying out of the purposes of the National Oceanic and Atmospheric Administration.

Copies of the above mentioned minutes may be obtained through the Committee's Executive Director, Dr. Douglas L. Brooks, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, U.S. Department of Commerce, 14th and Constitution Ave. N.W., Washington, D.C. The telephone number is (202) 377-3343.

DOUGLAS L. BROOKS,
Executive Director.

[FR Doc.76-13726 Filed 5-14-76;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR SOCIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Sociology.
Date and Time: June 3 and 4, 1976—9:00 a.m. each day.
Place: Rm. 511, National Science Foundation, 1800 G Street NW., Washington, D.C.
Type of Meeting: Closed
Contact Person: Mr. Garry Wallace, Assistant Program Director for Sociology, Rm. 206, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-4204.
Purpose of Panel: To provide advice and recommendations concerning support for research in sociology.
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 and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 522(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.
Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee Management Officer.

MAY 11, 1976.

[FR Doc.76-13840 Filed 5-14-76;8:45 am]

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50-298]

NEBRASKA PUBLIC POWER DISTRICT

Issuance of Amendment to Facility License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 23 to Facility Operating License No. DPR-46, issued to the Nebraska Public Power District (the licensee), which revised Technical Specifications for operation of the Cooper Nuclear Station (the facility) located in Nemaha County, Nebraska. The amendment is effective as of its date of issuance.

This amendment revises the Technical Specifications for the facility to permit the calibration of intermediate range neutron monitors on any intermediate range monitor indicator range scale in lieu of indicator range scale 10 only.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commision has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental statement, negative declaration or environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 10, 1976, (2) Amendment No. 23 to License No. DPR—46, and (3) the Commission's concurrently issued Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305. A copy of items (2) and (3) may be obtained upon request addressed to the United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 7th day of May 1976.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc.76-14281 Filed 5-14-76;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. 17 to Facility Operating License No. DPR-59 issued to the Power Authority of the State of New York and the Niagara Mohawk Power Corporation which revised the Technical Specifications for operation of the James A. FitzPatrick Nuclear Power Plant, located in Oswego County, New York. The amendment is effective within 30 days of its date of issuance.

The amendment changes the Technical Specifications to specify lower limits for the reactor coolant water conductivity and chloride ion concentration.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental statement, negative declaration or environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) application for amendment submitted by letter dated January 27, 1976, (2) Amendment No. 17 to License No. DPR-59, 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, N.W., 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 Operating Reactors.

Dated at Bethesda, Maryland, this 30th day of April 1976.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc.76-14282 Filed 5-14-76;8:45 am]

[Docket No. P-564-A]

PACIFIC GAS AND ELECTRIC CO.

Receipt of Attorney General's Advice and Time for Filing of Petitions To Intervene on Antitrust Matters

The Commission has received, pursuant to section 105c of the Atomic Energy Act of 1954, as amended, a letter of advice from the Attorney General of the United States, dated May 5, 1976, a copy of which is attached as Appendix "A".

Any person whose interest may be affected by this proceeding may, pursuant to section 2.714 of the Commission's "Rules of Practice," 10 CFR Part 2, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. Petitions for leave to intervene and requests for hearing shall be filed by June 16, 1976, either (1) by delivery to the NRC Docketing and Service Section at 1717 H Street, N.W., Washington, D.C., or (2) by mail or telegram addressed to the Secretary, Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Section.

For The Nuclear Regulatory Commission.

JEROME SALTZMAN,
Chief, Antitrust and Indemnity Group, Nuclear Reactor Regulation.

APPENDIX A

STANISLAUS NUCLEAR PROJECT, UNIT NO. 1

PACIFIC GAS AND ELECTRIC CO.

[Docket No. P-564-A]

You have requested our advice pursuant to the provisions of Section 105c of the Atomic Energy Act of 1954, as amended, in connection with the application of Pacific Gas and Electric Company to construct the Stanislaus Nuclear Project, Unit No. 1.

The Department has previously rendered advice on license applications for several nuclear facilities with respect to which PG&E has been an applicant. The first of these was PG&E's 1971 application for a license to construct the then proposed Mendocino Power Plant, Units 1 and 2. On August 2, 1972, the Department informed your predecessor Commission that certain described conduct by PG&E to foreclose the development of alternative bulk power supply sources in Northern and Central California had created a situation inconsistent with the antitrust laws and that construction and operation of the Mendocino Plant by PG&E appeared likely to maintain such anticompetitive situation. Accordingly, we recommend that an antitrust hearing be held with respect to the Mendocino application. Subsequent to the rendering of that advice, PG&E withdrew the Mendocino application because of environmental and safety problems. Thereafter, the Department commenced a comprehesive investigation under the antitrust laws with a view to possible antitrust action in the district court.

That investigation was nearing completion when you requested our advice on PG&E's application to participate in the San Joaquin Nuclear Project (SJNP). On November 24, 1975, we advised the Commission in connection with SJNP that, in the period since our

1972 advice letter, it appeared that PG&E may have modified certain of its anticompetitive practices which were the basis for our earlier recommendation that a hearing be held. As we stated in that letter, 'Whether these actions by PG&E have been such that a situation inconsistent with the antitrust laws no longer exists and/or whether an antitrust proceeding on United States District Court should be instituted are matters which are currently being considered and which will shortly be resolved." We indicated that because the Department would shortly render definitive antitrust advic on PG&E in connection with the also pending PG&E application for a license to construct the Stanislaus Nuclear Project and in view of PG&E's agreement to certain limited license conditions pertaining to SJNP, no hearing would be necessary in connection with the licensing of SJNP.

Following the issuance of the SJNP advice letter, the Department and PG&E entered into discussions regarding antitrust concerns which we believed were posed by PG&E's activities affecting alternative bulk power supply sources in Northern and Central California. On February 19, 1976, March 22, 1976, and April 30, 1976, PG&E, with our concurrence, requested the Commission to afford additional time for the Attorney General to render advice on the Stanislaus License Application in order that discussions between PG&E and the Department might continue.

We are now able to inform the Commission that PG&E and the Department have reached agreement on a Statement of Commitments which the Department believes will obviate the anti-trust problems posed by PG&E's activities and which will remedy the situation inconsistent with the antitrust laws which we believe has existed in Northern and Central California. The Statement of Commitments is contained in the attached letter to the Department from PG&E President John F. Bonner. For its part, PG&E denies that any of its policies or practices have been or will be inconsistent with the antitrust laws. However, it is willing to have these Commitments included as conditions to its license to construct the Stanislaus Nuclear Project. In the event that PG&E chooses not to construct the Stanislaus Nuclear Project, it has consented to have its operating license for Diablo Canyon Nuclear Power Plant, Units 1 and 2, amended to incorporate the Commitments as conditions to that license.

In our opinion, the effectuation of the Commitments will moot the questions of anticompetitive conduct by PG&E which have come to our attention. The implementation of these policies should provide competitors of Applicant with reasonable opportunities to develop competitive bulk power supply sources. Since PG&E is agreeable to having the Commission include the Company's Statement of Commitments as conditions to the Stanislaus Nuclear Project license, we conclude that an antitrust hearing will not be necessary with respect to the instant application if the Commission issues a license so conditioned.

ENCLOSURE 1

Pacific Gas and Electric Company is herewith submitting to the U.S. Department of Justice the attached statement of commitments. PGandE is willing to have the commitments included as conditions in the construction permit and operating license issued by the Nuclear Regulatory Commission for construction and operation of the proposed Stanislaus Nuclear Project, Unit 1, if the Attorney General will advise the Nuclear Regulatory Commission that no antitrust hearing is necessary in connection with the licensing of the unit. In the event that PG&E's application for a construction permit for the Stanislaus Nuclear Project Unit 1 is withdrawn, or that a construction permit for such unit is not issued by the Nuclear Regulatory Commission prior to July 1, 1978, PG&E is willing to have its license(s) for Diablo Canyon Nuclear Power Plant, Units 1 and 2, amended to incorporate the commitments.

As a result of its review of PG&E's activities, the Department has indicated that inclusion of commitments in the Stanislaus license is necessary to remedy an anti-competitive situation which it believes to exist. We believe that none of PG&E's activities has been or will be inconsistent with the antitrust laws and for that reason, it is our view that no conditions to the Stanislaus license are necessary. However, in order to avoid protracted litigation we are agreeable to the inclusion of the attached conditions in the license. We understand that the Department will advise the Nuclear Regulatory Commission that these conditions, which have been negotiated between the Department and PG&E, will remedy the situation inconsistent with the antitrust laws which the Department perceives to exist.

We recognize that if the Attorney General advises the Nuclear Regulatory Commission that the commitments are appropriate license conditions for the Stanislaus Nuclear Project, such advice would mean only that broader license conditions are not deemed necessary in the context of this licensing proceeding. Accordingly, the inclusion in the commitments of limited exceptions to PG&E's general commitment to transmit power in no way exempts PG&E from any legal requirement it may have under statutes other than Section 105c to transmit power in circumstances where such transmission would not be required under the commitments.

We understand that should PG&E refuse in the future to transmit power in circumstances where the commitments do not require it to transmit power, the Department reserves the right to bring legal action in an appropriate forum other than the Nuclear Regulatory Commission against PG&E if the Depatrment concludes that such a refusal to transmit power is, under the circumstances then existing, in violation of the antitrust laws or any other Federal statutes. We also understand that the Department reserves its right to contest PG&E's interpretation of any part of the statement of commitments in the Nuclear Regulatory Commission. In setting forth this understanding, we do not mean to suggest that if PG&E were in fact to refuse to transmit power in circumstances covered by the exceptions, such refusals would violate the antitrust laws or any other Federal statutes.

PACIFIC GAS AND ELECTRIC COMPANY
STATEMENT OF COMMITMENTS

I. DEFINITIONS

A. "Applicant" means Pacific Gas and Electric Company, any successor corporation, or any assignee of this license.

B. "Service Area" means that area within the exterior geographic boundaries of the several areas electrically served at retail, now or in the future, by Applicant, and those areas in Northern and Central California adjacent thereto.

C. "Neighboring Entity" means a financially responsible private or public entity or lawful association thereof owning, contractually controlling or operating, or in good faith proposing to own, to contractually control or to operate facilities for the generation, or transmission at 60 kilovolts or above, of electric power which meets each of the following criteria: (1) its existing or proposed facilities are or will be technically feasible of direct interconnection with those of Applicant; (2) all or part of its existing or proposed facilities are or will be located within the Service Area; (3) its primary purpose for owning, contractually controlling, or operating generation facilities is to sell in the Service Area the power generated; and (4) it is, or upon commencement of operations will be, a public utility regulated under applicable state law or the Federal Power Act, or exempted from regulation by virtue of the fact that it is a federal, state, municipal or other public entity.

D. "Neighboring Distribution System" means a financially responsible private or public entity which engages, or in good faith proposes to engage, in the distribution of electric power at retail and which meets each of the criteria numbered (1), (2), and (4) in subparagraph C above.

E. "Costs" means all capital expenditures, administrative, general, operation and maintenance expenses, taxes, depreciation and costs of capital including a fair and reasonable return on Applicant's investment, which are properly allocable to the particular service or transaction as determined by the regulatory authority having jurisdiction over the particular service or transaction.

F. "Good Utility Practice" means those practices, methods and equipment, including levels of reserves and provisions for contingencies, as modified from time to time, that are commonly used in the Service Area to operate, reliably and safely, electric power facilities to serve a utility's own customers dependably and economically, with due regard for the conservation of natural resources and the protection of the environment of the Service Area, provided such practices, methods and equipment are not unreasonably restrictive.

G. "Firm Power" means that power which is intended to be available to the customer at all times and for which, in order to achieve that degree of availability, adequate installed and spinning reserves and sufficient transmission to move such power and reserves to load center are provided.

INTERCONNECTION

Interconnection agreements negotiated pursuant to these license conditions shall be subject to the following paragraphs A through G:

A. Applicant shall not unreasonably refuse to interconnect and operate normally in parallel with any Neighboring Entity, or to interconnect with any Neighboring Distribution System. Such interconnections shall be consistent with Good Utility Practice.

B. Interconnection shall be at one point unless otherwise agreed by the parties to an interconnection agreement. Interconnection shall not be limited to lower voltages when higher voltages are preferable from the standpoint of Good Utility Practice and are available from Applicant. Applicant may include in any interconnection agreement provisions that a Neighboring Entity or Neighboring Distribution System maintain the power factor associated with its load at a comparable level to that maintained by Applicant in the same geographic area and use comparable control methods to achieve this objective.

C. Interconnection agreements shall not provide for more extensive facilities or control equipment at the point of interconnection than are required by Good Utility Practice unless the parties mutually agree that particular circumstances warrant special facilities or equipment.

D. The Costs of additional facilities required to provide service at the point of interconnection shall be allocated on the basis of the projected economic benefits for each

party from the interconnection after consideration of the various transactions for which the interconnection facilities are to be used, unless otherwise agreed by the parties.

E. An interconnection agreement shall not impose limitations upon the use or resale of capacity and energy sold or exchanged under the agreement except as may be required by Good Utility Practice.

F. An interconnection agreement shall not prohibit any party from entering into other interconnection agreements, but may provide that (1) Applicant receive adequate notice of any additional interconnection arrangement with others, (2) the parties jointly consider and agree upon additional contractual provisions, measures, or equipment, which may be required by Good Utility Practice as a result of the new arrangement, and (3) Applicant may terminate the interconnection agreement if the reliability of its system or service to its customers would be adversely affected by such additional interconnection arrangement.

G. Applicant may include provisions in an interconnection agreement requiring a Neighboring Entity or Neighboring Distribution System to develop with Applicant a coordinated program for underfrequency load shedding and tie separation. Under such programs the parties shall equitably share the interruption or curtailment of customer load.

III. RESERVE COORDINATION

Interconnection agreements negotiated pursuant to these license conditions shall be subject to the following paragraphs A through E regarding reserve coordination:

A. Applicant and any Neighboring Entity with which it interconnects shall jointly establish and separately maintain the minimum reserves to be installed or otherwise provided under an interconnection agreement. Unless otherwise mutually agreed upon, reserves shall be expressed as a percentage of estimated firm peak load and the minimum reserve percentage shall be at least equal to Applicant's planned reserve percentage without the interconnection. A Neighboring Entity shall not be required to provide reserves for that portion of its load which it meets through purchases of Firm Power. While different reserve percentages may be specified in various interconnection agreements, no party to an interconnection agreement shall be required to provide a greater reserve percentage than Applicant's planned reserve percentage, except that if the total reserves Applicant must provide to maintain system reliability equal to that existing without a given interconnection arrangement are increased by reason of the new arrangement, then the other party or parties may be required to install or provide additional reserves in the full amount of such increase.

B. Applicant and Neighboring Entities with which it interconnects shall jointly establish and separately maintain the minimum spinning reserves to be provided under an interconnection agreement. Unless otherwise mutually agreed upon, spinning reserves shall be expressed as a percentage of peak load and the minimum spinning reserve percentage shall be at least equal to Applicant's spinning reserve percentage without the interconnection. A Neighboring Entity shall not be required to provide spinning reserves for that portion of its load which it meets through purchases of Firm Power. While different spinning reserve percentages may be specified in various interconnection agreements, no party to an interconnection agreement shall be required to provide a greater spinning reserve percentage than that which Applicant provides, except that if the total spinning reserves Applicant must provide to maintain system reliability equal to that existing without a given interconnection arrangement are increased by reason of the new arrangement, then the other party or parties may be required to provide additional spinning reserves in the full amount of such increase.

C. Applicant shall offer to sell, on reasonable terms and conditions, including a specified period, capacity to a Neighboring Entity for use as reserves if such capacity is neither needed for Applicant's own system nor contractually committed to others and if the Neighboring Entity will offer to sell, on reasonable terms and conditions, its own such capacity to Applicant.

D. Applicant may include in any interconnection agreement provisions requiring a Neighboring Entity to compensate Applicant for any reserves Applicant makes available as the result of the failure of such Neighboring Entity to maintain all or any part of the reserves it has agreed to provide in said interconnection agreement.

E. Applicant shall offer to coordinate maintenance schedules with Neighboring Entities interconnected with Applicant and to exchange or sell maintenance capacity and energy when such capacity and energy are available and it is reasonable to do so in accordance with Good Utility Practice.

IV. EMERGENCY POWER

Applicant shall sell emergency power to any interconnected Neighboring Entity which maintains the level of minimum reserve agreed upon with Applicant, agrees to use due diligence to correct the emergency, and agrees to sell emergency power to Applicant. Applicant shall engage in such transactions if and when capacity and energy for such transactions are available from its own generating resources, or may be obtained by Applicant from other sources, but only to the extent that it can do so without impairing service to Applicant's retail or wholesale power customers or impairing its ability to discharge prior commitments.

V. OTHER POWER EXCHANGES

Should Applicant have on file, or hereafter file, with the Federal Power Commission, agreements or rate schedules providing for the sale and purchase of short-term capacity and energy, limited-term capacity and energy, long-term capacity and energy or economy energy, Applicant shall, on a fair and equitable basis, enter into like or similar agreements with any Neighboring Entity, when such forms of capacity and energy are available, recognizing that past experience, different economic conditions and Good Utility Practice may justify different rates, terms and conditions. Applicant shall respond promptly to inquiries of Neighboring Entities concerning the availability of such forms of capacity and energy from its system.

VI. WHOLESALE POWER SALES

Upon request, Applicant shall offer to sell firm, full or partial requirements power for a specified period to an interconnected Neighboring Entity or Neighboring Distribution System under a contract with reasonable terms and conditions including provisions which permit Applicant to recover its Costs. Such wholesale power sales must be consistent with Good Utility Practice. Applicant shall not be required to sell Firm Power at wholesale if it does not have available sufficient generation or transmission to supply the requested service or if the sale would impair service to its retail customers or its ability to discharge prior commitments.

VII. TRANSMISSION SERVICES

A. Applicant shall transmit power pursuant to interconnection agreements, with provisions which are appropriate to the requested transaction and which are consistent with these license conditions. Except as listed below, such service shall be provided (1) between two or among more than two Neighboring Entities or sections of a Neighboring Entity's system which are geographically separated, with which, now or in the future, Applicant is interconnected, (2) between a Neighboring Entity with which, now or in the future, it is interconected and one or more Neighboring Distribution Systems with which, now or in the future, it is connected and (3) between any Neighboring Entity or Neighboring Distribution System(s) and the Applicant's point of direct interconnection with any other electric system engaging in bulk power supply outside the area then electrically served at retail by Applicant. Applicant shall not be required by this Section to transmit power (1) from a hydroelectric facility the ownership of which has been involuntarily transferred from Applicant or (2) from a Neighboring Entity for sale to any electric system located outside the exterior geographic boundaries of the several areas then electrically served at retail by Applicant if any other Neighboring Entity, Neighboring Distribution System, or Applicant wishes to purchase such power at an equivalent price for use within said areas. Any Neighboring Entity or Neighboring Distribution System(s) requesting transmission service shall give reasonable advance notice to Applicant of its schedule and requirements. Applicant shall not be required by this Section to provide transmission service if the proposed transaction would be inconsistent with Good Utility Practice or if the necessary transmission facilities are committed at the time of the request to be fully loaded during the period for which service is requested, or have been previously reserved by Applicant for emergency purposes, loop flow, or other uses consistent with Good Utility Practice; provided, that with respect to the Pacific Northwest-Southwest Intertie, Applicant shall not be required by this Section to provide the requested transmission service if it would impair Applicant's own use of this facility consistent with the Bonneville Project Act, (50 Stat. 731, August 20, 1937), Pacific Northwest Power Marketing Act (78 Stat. 756, August 31, 1964) and the Public Works Appropriations Act, 1965 (78 Stat. 682, August 30, 1964).

B. Applicant shall include in its planning and construction programs such increases in its transmission capacity or such additional transmission facilities as may be required for the transactions referred to in paragraph A of this Section, provided any Neighboring Entity or Neighboring Distribution System gives Applicant sufficient advance notice as may be necessary to accommodate its requirements from a regulatory and technical standpoint and provided further that the entity requesting transmission services compensates Applicant for the Costs incurred as a result of the request. Where transmission capacity will be increased or additional transmission facilities will be installed to provide or maintain the requested service to a Neighboring Entity or Neighboring Distribution System, Applicant may require, in addition to a rate for use of other facilities, that payment of Costs associated with the increased capacity or additional facilities shall be made by the parties in accordance with and in advance of their respective use of the new capacity or facilities.

C. Nothing herein shall require Applicant (1) to construct additional transmission facilities if the construction of such facilities is inconsistent with Good Utility Practice or if such facilities could be constructed without duplicating any portion of Applicant's transmission system, (2) to provide transmission service to a retail customer or (3) to construct transmission outside the area then electrically served at retail by Applicant.

D. Rate schedules and agreements for transmission services provided under this Section shall be filed by Applicant with the regulatory agency having jurisdiction over such rates and agreements.

VIII. ACCESS TO NUCLEAR GENERATION

A. If a Neighboring Entity or Neighboring Distribution System makes a timely request to Applicant for an ownership participation in the Stanislaus Nuclear Project, Unit No. 1 or any future nuclear generating unit for which Applicant applies for a construction permit during the 20-year period immediately following the date of the construction permit for Stanislaus Unit No. 1, Applicant shall offer the requesting party an opportunity to participate in such units, up to an amount reasonable in light of the relative loads of the participants. With respect to Stanislaus Unit No. 1 or any future nuclear generating unit, a request for participation shall be deemed timely if received within 90 days after the mailing by Applicant to Neighboring Entities and Neighboring Distribution Systems of an announcement of its intent to construct the unit and a request for an expression of interest in participation. Participation shall be on a basis which compensates Applicant for a reasonable share of all its Costs, incurred and to be incurred, in planning, selecting a site for, constructing and operating the facility.

B. Any Neighboring Entity or any Neighboring Distribution System making a timely request for participation in a nuclear unit must enter into a legally binding and enforceable agreement to assume financial responsibility for its share of the Costs associated with participation in the unit and associated transmission facilities. Unless otherwise agreed by Applicant, a Neighboring Entity or Neighboring Distribution System desiring participation must have signed such an agreement within one year after Applicant has provided to that Neighboring Entity or Neighboring Distribution System pertinent financial and technical data bearing on the feasibility of the project which are then available to Applicant. Applicant shall provide additional pertinent data as they become available during the year. The requesting party shall pay to Applicant forthwith the additional expenses incurred by Applicant in making such financial and technical data available. In any participation agreement subject to this Section, Applicant may require provisions requiring payment by each participant of its share of all costs incurred up to the date of the agreement, requiring each participant thereafter to pay its pro rata share of funds as they are expended for the planning and construction of units and related facilities, and requiring each participant to make such financial arrangements as may be necessary to ensure the ability of the participant to continue to make such payments.

IX. IMPLEMENTATION

A. All rates, charges, terms and practices are and shall be subject to the acceptance and approval of any regulatory agencies or courts having jurisdiction over them.

B. Nothing contained herein shall enlarge any rights of a Neighboring Entity or Neighboring Distribution System to provide services to retail customers of Applicant beyond the rights they have under state or federal law.

C. Nothing in these license conditions shall be construed as a waiver by Applicant of its rights to contest the application of any commitment herein to a particular factual situation.

D. These license conditions do not preclude Applicant from applying to any appropriate forum to seek such changes in these in accordance with the then-existing law conditions as may at the time be appropriate and Good Utility Practice.

E. These license conditions do not require Applicant to become a common carrier.

[FR Doc.76-14280 Filed 5-14-76;8:45 am]

[Docket No. 50-271]

VERMONT YANKEE NUCLEAR 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. 22 to Facility Operating License No. DPR-28 issued to Vermont Yankee Nuclear Power Corporation which revised Technical Specifications for operation of the Vermont Yankee Nuclear Power Station, located near Vernon, Vermont. This amendment is effective as of its date of issuance.

The amendment modifies Technical Specification Table 3.1.1 to clarify and refine the requirement governing operator response to a failed instrument channel. This amendment also makes minor editorial changes to the Technical Specifications, and corrects the frequency of environmental reporting from monthly to annually consistent with the changes of Amendment No. 17 issued November 5, 1975. These changes to the environmental reporting frequency were inadvertently omitted from Amendment No. 17.

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 in 10 CFR mission has made appropriate findings as required by the Act and the Commission's rules and regulation in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental statement, negative declaration or environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 8, 1975, (2) Amendment No. 22 to Licensee No. DPR-28, (3) the Commission's related Safety Evaluation and (4) Amendment No. 17 to License No. DPR-28 isued November 5, 1975, and related documents. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 29th day of April, 1976.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc.76-14283 Filed 5-14-76;8:45 am]

PRIVACY ACT OF 1974

Notices of Systems of Records: Amendments of Routine Uses

On October 1, 1975, the Nuclear Regulatory Commission published in the FEDERAL REGISTER (40 FR 45332) notices of those systems of records maintained by the NRC which contain personal information about individuals and from which such information can be retrieved by an individual identified. The notices were published as a document subject to publication in the annual compilation of Privacy Act documents.

Proposed amendments of the NRC Systems of Records were published in the FEDERAL REGISTER on February 5, 1976 (41 FR 5356) proposing that the following be established as a routine use for all of the NRC systems:

Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

The amendment is intended to assure that implementation of the Privacy Act does not have the unintended effect of denying individuals the benefit of Congressional assistance which they request. This amendment would obviate the written consent of the individual in those cases where the individual requests assistance of a Member of Congress which would entail a disclosure of information pertaining to the individual within a system of records.

Interested persons were invited to submit written comments on the proposed rule by March 10, 1976. No comments have been received on the proposed amendments. Accordingly, the Nuclear Regulatory Commission has adopted the amendments as proposed.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 552a of Title 5 of the United States Code, the following amendments to the Commission's Notices of Systems of Records are published as a document subject to publication in the annual compilation of Privacy Act documents.

1. The NRC Systems of Records are amended by adding the following General Routine Use to the Prefatory Statement of General Routine Uses:

PREFATORY STATEMENT OF GENERAL ROUTINE USES

The following routine uses apply to each system of records notice set forth

below which specifically references this Prefatory Statement.

* * * * *

5. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

2. The Routine Use section of NRC–2 is amended as follows: the word "and" is deleted at the end of paragraph a.; the period is changed to a semicolon and the word "and" is added at the end of paragraph b.; and a new paragraph c. is added to read as follows:

c. For the routine use specified in paragraph number 5. of the Prefatory Statement.

3. The Routine Use section of NRC–4 is amended as follows: the word "and" is deleted at the end of paragraph b.; the period is changed to a semicolon and the word "and" is added at the end of paragraph c.; and a new paragraph d. is added to read as follows:

d. For the routine use specified in paragraph number 5. of the Prefatory Statement.

4. The Routine Use section of NRC–15 is revised to read as follows:

Routine Uses of records maintained in the system, including categories of users and the purposes of such uses: These records may be used:

a. To provide information to persons or agencies requesting this information; and

b. For the routine use specified in paragraph number 5. of the Prefatory Statement.

5. The Routine Use section of NRC–18 is amended by adding a new paragraph m. to read as follows:

m. A record in the systems of records may be disclosed for the routine use specified in paragraph number 5. of the Prefatory Statement.

6. The Routine Use section of NRC–19 is amended by designating the routine use described therein as paragraph a. and by adding the following routine use as paragraph b.:

b. A record in the system of records may be disclosed for the routine use specified in paragraph number 5. of the Prefatory Statement.

7. The Routine Use sections of NRC–30 and NRC–33 are amended by deleting the word "None." and by adding the following routine use:

A record in the system of records may be disclosed for the routine use specified in paragraph number 5. of the Prefactory Statement.

Effective date. These amendments become effective on May 17, 1976. (5 U.S.C. 552a(e)(4).

Dated at Bethesda, Maryland this 3rd day of May 1976.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

[FR Doc.76–14284 Filed 5–14–76;8:45 am]

REACTOR SAFEGUARDS ADVISORY COMMITTEE; SUBCOMMITTEE ON THE SAN JOAQUIN NUCLEAR PROJECT

Meeting Postponed

The meeting of the ACRS Subcommittee on the San Joaquin Nuclear Project scheduled to be held on May 27, 1976 in Bakersfield, CA has been postponed indefinitely. Announcement of this meeting was made in FEDERAL REGISTER, Vol. 41, page 19164, May 10, 1976.

Dated: May 11, 1976.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.76–14279 Filed 5–14–76;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS; SUBCOMMITTEE ON REGULATORY GUIDES

Notice of Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the Advisory Committee on Reactor Safeguards Subcommittee on Regulatory Guides will hold a meeting on June 2, 1976 in Room 1046, 1717 H Street, N.W., Washington, DC 20555. This meeting will have both open and closed sessions.

The following constitutes that portion of the Subcommittee's agenda for the above meeting which will be open to the public:

Wednesday, June 2, 1976, 9:00 a.m. until about 11:00 a.m.—The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to the following items:

(1) Regulatory Guide 1.103, "Post Tensioned Prestressing Systems for Concrete Reactor Vessels and Containments."

(2) Regulatory Guide 1.102 "Flood Protection for Nuclear Power Plants."

(3) Regulatory Guide 1.105, "Instrument Set Points."

In connection with the above agenda items, the Subcommittee may hold one or more Executive Sessions, not open to the public, at approximately 8:30 a.m. and 11:00 a.m. to consider matters related to the above reviews. These sessions will involve an exchange of opinion and discussions of preliminary views and recommendations of Subcommittee members and internal deliberations for the purpose of formulating recommendations to the ACRS.

After the above portion of the meeting is concluded, the Subcommittee will meet in closed sessions with the NRC Staff and any consultants at about 11:00 a.m. until the close of business to discuss the following working papers:

(1) Regulatory Guide 1.XXX, "Guidelines for Fire Protection for Nuclear Power Plants."

(2) Regulatory Guide 1.XXX, "Quality Assurance Requirements for Procurement of Equipment, Materials, and Services."

This portion of the meeting may include Executive Sessions both before and after the closed sessions with the NRC Staff.

I have determined, in accordance with Subsection 10(a) of Public Law 92–463, that it is necessary to conduct the above closed sessions to protect the free interchange of internal views in the final stages of the Subcommittee's deliberative process and that other closed sessions will be held to discuss and exchange views on working papers (5 U.S.C. 552(b)(5)). Separation of factual material from individuals' advice, opinions, and recommendations while close Executive Sessions are in progress is considere impractical.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding Regulatory Guides 1.102, 1.103 and 1.105 may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. Such comments shall be based upon documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than May 26, 1976 to Mr. G. R. Quittschreiber, ACRS, NRC, Washington, DC 20555 will normally be received in time to be considered at this meeting.

(b) Those persons wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chairman of the Subcommittee.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on June 1, 1976 to the Office of the Executive Director of the Committee (telephone 202/634–1374, Attn: Mr. G. R. Quittschreiber) between 8:15 a.m. and 5:00 p.m., EDT.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and

after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) A copy of the transcript of the open portion of the meeting will be available for inspection on or after June 9, 1976 at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555. Copies of the minutes of the meeting will be made available for inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555 after September 2, 1976. Copies may be obtained upon payment of appropriate charges.

Dated: May 13, 1976.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.76-14437 Filed 5-14-76;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS; SUBCOMMITTEE ON THE ZION GENERATING STATION, UNITS 1 AND 2

Notice of Change

The meeting of the ACRS Subcommittee on the Zion Generating Station, Units 1 and 2, scheduled to be held on May 27, 1976 in Washington, DC has been rescheduled to be held on the same date (May 27, 1976) in the Holiday Inn, 5125 Sixth Avenue, Kenosha, WI 53140. Notice of this meeting was published in FEDERAL REGISTER, Vol. 41, Page 19166, May 10, 1976.

Persons wishing to submit written statements regarding the agenda may do so by providing 15 readily reproducible copies to the Subcommittee at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview.

All other matters pertaining to the meeting remain unchanged.

Dated: May 13, 1976.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.76-14438 Filed 5-14-76;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Notice of Proposed Meetings

In order to provide advance information regarding proposed meeting of ACRS Working Groups, Subcommittees, and the full Committee, the following preliminary schedule is being published. This preliminary schedule reflects the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed Subcommittee and full Committee meetings published in FR Vol. 41, No. 74, page 15921, April 15, 1976. Those meetings that are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. Those Working Group and Subcommittee meetings for which it is anticipated that there will be a portion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the June 3–5, 1976 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634–1406, Attn: Mary E. Vanderholt) between 8:15 a.m. and 5:00 p.m. EDT.

SUBCOMMITTEE AND WORKING GROUP MEETINGS

Naval Reactors/Naval Operations, May 20, 1976, West Milton, NY to discuss proposed operation of the MARF (Modifications and Addition to Reactor Facility). Notice has been published in FR Vol. 41, page 18359, May 3, 1976.

**Diablo Canyon Nuclear Power Station, Units 1 and 2,* May 21, 1976, San Luis Obispo, CA to continue the review of the application of the Pacific Gas and Electric Company for an operating license. Notice has been published in FR Vol. 41, page 18732, May 6, 1976.

**Emergency Core Cooling Systems (ECCS),* May 21, 1976, Washington, DC. Rescheduled for June 15, 1976, Washington, DC.

**San Joaquin Nuclear Project,* May 27, 1976, Bakersfield, CA. Postponed indefinitely.

**Zion Generating Station, Units 1 and 2,* May 27, 1976, Kenosha, WI (location changed from Washington, DC.) to review the application of the Commonwealth Edison Company to operate Units 1 and 2 at 100 per cent rated power (from 85 per cent rated power). Notice was published in FR Vol. 41, page 19166, May 10, 1976. Notice announcing the change of location appears elsewhere in this issue.

Plutonium Shipping Packages, June 1, 1976, Washington, DC. Postponed indefinitely.

**Regulatory Guides,* June 2, 1976, Washington, DC to review working papers regarding future Regulatory Guides and proposed changes to existing Guides. Notice appears elsewhere in this issue.

**Emergency Core Cooling Systems (ECCS),* June 15, 1976, Washington, D.C. to discuss current items relating to ECCS such as the effects of upper head injection (UHI) on the Westinghouse Electric Corporation's analytical models formulated to meet current ECCS criteria, effects of plugging of steam generator tubes, FLECHT Test modifiers and best estimate calculations.

**Westinghouse Water Reactors (RESAR–3S),* June 16, 1976, Washington, D.C. to discuss the Reference Safety Analysis Report–3S (RESAR–35) pertaining to the Westinghouse Nuclear Steam Supply System.

Security of Nuclear Facilities, June 17, 1976, Chicago, IL to discuss design provisions that could reduce the possibility and consequences of sabotage.

**Clinch River Breeder Reactor (CRBR),* June 23, 1976, Washington, D.C. to discuss current status of review and NRC Staff positions.

**Peaking Factors,* June 24, 1976, Washington, D.C. to continue discussion of methods of measuring power distribution within reactors.

**Diablo Canyon Nuclear Power Station, Units 1 and 2,* June 25–26, 1976, San Luis Obispo, CA to continue the review of the application of the Pacific Gas and Electric Company for an operating license.

**Light Water Breeder Reactor,* July 6, 1976, Washington, D.C. to discuss matters related to the development of the light water breeder reactor to be installed in the Shippingport Nuclear Plant.

**North Anna Power Station, Units 1 and 2,* July 7, 1976 (tentative), Washington, D.C. to review the application of the Virginia Electric and Power Company for an operating license for Units 1 and 2.

**Regulatory Guides,* July 7, 1976, Washington, D.C. to review working papers regarding future Regulatory Guides and proposed changes to existing Guides.

FULL COMMITTEE MEETINGS

June 3–5, 1976

A. *SWESSAR–P1/CESSAR–80—Preliminary Design Approval.

B. *Zion Station, Units 1 and 2—Full Power Operation.

C. MARF—Operation.

D. *Diablo Canyon Nuclear Power Station, Units 1 and 2—Operation.

E. *Criteria for Packages for Air Shipment of Plutonium.

July 8–10, 1976

Agenda to be announced.

Dated: May 13, 1976.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.76-14439 Filed 5-14-76;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Notice of Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on June 3–5, 1976, in Room 1046, 1717 H Street, NW, Washington, D.C.

The agenda for the subject meeting will be as follows:

THURSDAY, JUNE 3, 1976

8:30 A.M.–10:30 A.M.: Executive Session (Closed).—The Committee will meet in closed executive session to exchange and discuss the personal opinions of individual members leading to the formulation of advice and recommendations regarding candidates for ACRS membership, procedures for improved communications regarding ACRS reports and early ACRS participation in the predecisional process, procedures for resolution of generic matters related to

standardized nuclear plants, and proposed procedures for ACRS discussions with representatives of foreign governments. The Committee will also discuss the individual opinions and recommendations of ACRS Subcommittee members and consultants who may be present regarding the Preliminary Design Approval for the SWESSAR–P1/CESSAR–80 application.

10:30 A.M.–12:00 Noon: SWESSAR–P1/CESSAR–80 (Open).—The Committee will meet with representatives of the applicants and the NRC Staff to hear presentations and hold discussions regarding the request for Preliminary Design Approval for this application. Portions of this session will be closed if required to discuss proprietary information related to the design, construction or operation of these standard units. Closed portions will also be held if necessary to discuss security provisions for this type facility and for Committee deliberative sessions.

1:00 P.M.–1:30 P.M.: Executive Session (Closed).—The Committee will meet in closed session to exchange personal opinions and recommendations of ACRS members and consultants who may be present related to the Subcommittee evaluation for a full power Operating License for the Zion Station Units 1 and 2.

1:30 P.M.–4:30 P.M.: Zion Station Units 1 & 2 (Open).—The Committee will meet with representatives of the Applicant and the NRC Staff to hear presentations and hold discussions regarding the request for a full power Operating License for the Zion Station Units 1 and 2. Portions of this session will be closed if necessary to discuss proprietary information related to the design, construction or operation of this facility. Portions will also be closed if required to discuss security provisions for this plant and for Committee deliberative sessions.

4:30 P.M.–6:30 P.M.: Executive Session (Closed).—The Committee members will exchange and discuss personal opinions and recommendations of individual members leading to the formulation of advice regarding proposed Regulatory Guides and proposed modifications to the Ft. St. Vrain Reactor.

FRIDAY, JUNE 4, 1976

8:30 A.M.–9:15 A.M.: Executive Session (Closed).—The Committee will meet with the Executive Director for Operations to discuss proposed procedures for improved communication between the ACRS and NRC Staff and early ACRS participation in NRC Staff activities.

9:15 A.M.–10:45 A.M.: Joint Meeting of ACRS and the Nuclear Regulatory Commission.—This meeting will include discussion of the following items:

(1) ACRS Report on the review of statements by Messrs. R. L. Pollard, D. G. Bridenbaugh, G. C. Minor, and R. B. Hubbard and the status of ACRS review of generic items requested by NRC. This portion of the meeting will be open to members of the public.

(2) Proposed procedures for improved communications regarding ACRS reports and ACRS participation in the predecisional process, proposed procedures for ACRS discussions with representatives of foreign governments, procedures for resolution of generic issues related to standardized nulclear plants, and proposed bases for selection of ACRS members, This portion of the meeting will deal solely with the internal practices of the Commission and the Committee and will therefore be closed to members of the public.

10:45 A.M.–12:45 P.M.: Meeting with NRC Staff (Open).—The Committee will meet with members of the NRC Staff to hear presentations and to discuss recent reactor operating experience and licensing actions, resolution of generic items related to Light-Water Reactors and the future schedule for ACRS activities.

1:45 P.M.–2:15 P.M.: Executive Session (Closed).—The Committee will exchange and discuss the personal opinions and recommendations of members and consultants who may be present related to the request for comments regarding Modifications and Addition to Reactor Facility (MARF).

2:15 P.M.–4:45 P.M.: Modifications and Addition to Reactor Facility (MARF) (Closed).—The Committee will hear presentations and hold discussions with representatives of the NRC Staff, and the Division of Naval Reactors, ERDA, related to proposed operation of the MARF. This session will consider information classified as Confidential Restricted Data and will therefore be closed to the public.

4:45 P.M.–6:30 P.M.: Executive Session (Closed).—The Committee will meet in closed executive session to exchange and discuss the personal opinions and recommendations of individual members regarding proposed ACRS reports on emergency core cooling systems, the Floating Nuclear Plant, safeguards for special nuclear material, generic matters related to light water reactors, and the hypothetical core disruptive accident for LMFBRs.

SATURDAY, JUNE 5, 1976

8:30 A.M.–4:00 P.M.: Executive Session (Closed).—The Committee will meet in closed executive session to exchange and discuss personal opinions and recommendations leading to the formulation of advice with respect to the items considered at this meeting. The Committee will also exchange and discuss personal opinions and recommendations of individual members regarding ACRS procedures and conduct of ACRS activities.

I have determined in accordance with Subsection 10(d) of Public Law 92–463 that it is necessary to close portions of the meeting as noted above to protect classified restricted data (5 U.S.C. 552(b)(3)), proprietary data (5 U.S.C. 552(b)(4)), to protect the free exchange of opinion during the Committee's deliberative process (5 U.S.C. 552(b)(5)), and to preclude unwarranted invasion of privacy (5 U.S.C. 552(b)(6)). These closed sessions will consist primarily of deliberative discussion among the Committee members leading to the formulation of advice and recommendations to the Nuclear Regulatory Commission. Separation of factual information from the individual advice, opinion or recommendations of ACRS members and consultants during this discussion is not considered practical.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Committee is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy to the Committee at the beginning of the meeting.

Comments should be limited to safety related areas within the Committee's purview. Persons desiring to mail written comments may do so by mailing a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than May 26, 1976, to the Executive Director, Advisory Committee on Reactor Safeguards, Nuclear Regulatory Commission, Washington, D.C. 20555 will normally be received in time to be considered at this meeting. Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555 and at the following Public Document Rooms:

Zion Station Units 1 and 2: Waukegan Public Library, 128 N. County Street, Waukegan, IL 60085.

Diablo Canyon Units 1 and 2: San Luis Obispo County Free Library, San Luis Obispo, CA 93406.

(b) Those persons wishing to make oral statements regarding agenda items at the meeting should make a request to do so prior to the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements in safety related areas within the Committee's purview at an appropriate time chosen by the Chairman of the Committee.

(c) Further information regarding topics to be discussed, whether the meeting or portions of the meeting have been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor, can be obtained by a prepaid telephone call on June 2, 1976, to the Office of the Executive Director of the Committee (Telephone: 202–634–1371) between 8:15 A.M. and 5:00 P.M., Eastern Time. It should be noted that the schedule noted above is tentative, based on the

anticipated availability of related information, etc. It may be necessary to reschedule items to accommodate required changes. The ACRS Executive Director will be prepared to describe these changes on June 2, 1976.

(d) Questions may be propounded only by members of the Committee and its consultants.

(e) The use of still, movie, and television cameras, the physical installation and presence of which will not interfere with the course of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) Persons with agreements or orders permitting access to proprietary information other than safeguards information may attend portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least 3 days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of this agreement to the material that will be discussed during the meeting. Minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Executive Director at the beginning of the meeting.

(g) A copy of the transcript of the open portions of the meeting will be available for inspection during the following workday at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. Copies of the minutes of the meeting will be made available for inspection at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, D.C., on or after September 3, 1976. Copies may be obtained upon payment of appropriate charges.

JOHN C. HOYLE,
Advisory Committee Management Officer.

MAY 14, 1976.

[FR Doc.76-14472 Filed 5-14-76;9:59 am]

[License Nos. XSNM-805 (Dkt. 70-2071); XSNM-845 Dkt. 70-2131)]

EDLOW INTERNATIONAL COMPANY AS AGENT FOR THE GOVERNMENT OF INDIA, TO EXPORT SPECIAL NUCLEAR MATERIAL

Notice of Hearing

On March 2, 1976, joint petitions were filed with the Nuclear Regulatory Commission ("Commission") on behalf of three organizations (Natural Resources Defense Council, Inc.; the Sierra Club; and the Union of Concerned Scientists) for leave to intervene and for a hearing in the captioned matter involving license applications filed by the Edlow International Company, as agent for the Government of India, for the export of special nuclear material to India for the Tarapur Atomic Power Station. As explained more fully below, the Commission has concluded that even though the joint petitioners have not established a right to a formal public hearing, a legislative-type hearing should be held on issues raised in connection with the applications as a matter of Commission discretion.

The Tarapur Atomic Power Station ("TAPS") is located about 100 kilometers (60 miles) north of Bombay. TAPS is owned by the Government of India and managed by the Atomic Power Authority. TAPS was built by the International General Electric Company pursuant to an Agreement for Cooperation for Civil Uses of Atomic Energy Between the United States and India, which was signed at Washington, D.C. on August 8, 1968 (T.I.A.S. 5446). Pursuant to Article II(A) of the Agreement, the United States agreed to supply the special nuclear material fuel requirements for TAPS reactors, and the Indian Government has agreed that TAPS reactors "shall be operated on no other special nuclear material than that made available by the United States * * *" TAPS was financed by a loan from the United States Agency for International Development. TAPS has furnished electric power to the two western Indian states of Maharashtra and Gujarat since February, 1969, when the TAPS reactors attained criticality. Since its construction, the supply of special nuclear material in the form of enriched uranium to fuel TAPS has required the issuance of twenty-four export licenses by either the NRC or its predecessor, the United States Atomic Energy Committee.

Pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, the Commission is responsible for licensing exports of special nuclear material; the United States Department of State and the United States Energy Research and Development Administration are responsible for negotiating and implementing Agreements for Cooperation in the civil uses of nuclear energy; and the United States Energy Research and Development Administration is responsible for contract supply of enriched uranium.

On March 17, 1976, the Commission entertained oral argument by the joint petitioners, the Department of State and the NRC Staff on the joint petition and preliminary issues.

After careful consideration of the written and oral presentations of the above participants, the Commission, on May 7, 1976, issued an Opinion in which it concluded that the joint petitioners had no standing to intervene in the subject licensing matter as a matter of right, and, in addition, that the joint petition in Docket No. 70-2071 was not filed in a timely fashion by petitioners Sierra Club and NRDC. However, the Commission also concluded that even though joint petitioners had not established a right to a public hearing, a public hearing on issues raised in connection with the applications would be held as a matter of Commission discretion. The Commission also prescribed procedures for the hearing intended to afford the joint petitioners and others an opportunity to make their views known in a manner and under a procedural format which would be compatible with the orderly conduct of the export licensing process and with the conduct of United States foreign policy. The Commission indicated that, since the request for a hearing presents a matter of first impression, and because the general question of public participation in the licensing process is being explored by the staff, an exploratory approach to the matter is appropriate at this time to help provide a base of experience to assist in formulating future policy regarding public participation in export licensing matters.

The Commission specified that the format of such a hearing would be that typically used by legislative bodies in consideration of similar matters. The Commission also specified the scope of this legislative-type hearing and directed the preparation of the instant notice of hearing.

SCOPE AND PURPOSE OF HEARING

The hearing will be conducted for the purpose of considering issues that have been raised in connection with Export License Nos. XSNM-805 and XSNM-845.

In making its determination as to whether the granting of the export license applications would be inimical to the common defense and security of the United States, the Commission must base its decision on whether the safeguards that would be imposed and the assurances given by the Government of India are sufficient to assure that United States supplied fuel is not diverted from the use for which it was authorized. Therefore, the hearing will focus primarily on those issues which pertain to the adequacy of the safeguards and related assurances applicable to fuel to be exported to the Tarapur Station and any special nuclear material produced therefrom. Accordingly, and in conformity with the Commission's May 7, 1976 Opinion, the Commission will receive at the hearing information and analysis bearing on the following statements or allegations raised by petitioners as they pertain to the issue of whether there is sufficient assurance that special nuclear material to be exported is not diverted from the use that would be authorized in the license, namely as fuel for use in the TAPS reactors:

1. India is not a party to the Treaty on the Nonproliferation of Nuclear Weapons (NPT);

2. Past and present friction between India and neighboring countries raises the specter of international conflict which might disrupt implementation of safeguards and physical security measures at TAPS;

3. The United States has not required India to refrain from developing additional nuclear explosive devices;

4. The United States has not required India to place international safeguards on all its nuclear facilities;

5. The United States has not required India to refrain from developing enrichment and reprocessing facilities (but only to the extent that the existence of such facilities should be considered with respect to the ability to safeguard adequately to the special nuclear material sought to be exported and any special nuclear material produced therefrom);

6. The United States has not required India to agree, prior to the shipment of nuclear fuel to TAPS, to safeguards and physical security requirements for any future reprocessing of such fuel should reprocessing be permitted;

7. The United States has not required India to establish any physical security requirements applicable to operations at TAPS;

8. The United States has not required India to accept bilateral safeguards, supplementing the international safeguards applied by the IAEA at TAPS;

9. The United States has not required India to agree to U.S. control over the disposition of plutonium produced at TAPS.

Other considerations relevant to issuance of the subject licenses, such as the consequences for United States foreign policy of granting, denying, or delaying these export licenses, may also be addressed. In addition, information bearing on the following matters which may be relevant to the required common defense and security determination may also be received at the hearing:

1. The possibility cited by joint petitioners that, through exchanges of irradiated fuel under Article VI(c) of the Agreement for Cooperation, India may be able to circumvent safeguards;

2. The risks associated with possible Executive Branch findings under the Agreement for Cooperation that India may undertake fuel reprocessing, or other actions;

3. the adequacy and effectiveness of existing IAEA safeguards at Tarapur;

4. the issue raised by joint petitioners whether the United States could effectively retrieve the special nuclear material now at Tarapur, should India breach its undertakings to the United States;

5. relevant safeguards information regarding Indian nuclear facilities other than those at Tarapur;

6. adequacy of physical security at Tarapur against sabotage, terrorism or theft;

7. Indian plans for reprocessing and waste treatment of spent fuels at Tarapur, including the possibility that India could reprocess other (non-safeguarded) fuels at the same facility;

8. Information regarding Indian weapons development capacity and plans and other similar matters bearing on the risk that diversion from Tarapur might be attempted.

The Commission held in its May 7, 1976 Opinion that (1) foreign health, safety and environmental matters are beyond its jurisdictional authority under the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and the National Environmental Policy Act of 1969, as amended; and (2) exports to non-parties to the NPT do not violate NPT if international safeguards are applied to individual exports pursuant to Article III of NPT. Accordingly, the Commission will not receive submissions on the joint petitioners' allegations that the United States has failed to adequately consider the health and safety of persons who reside in or travel to India and that the exports would be inconsistent with and would violate United States obligations under the NPT.

DATE AND LOCATION OF AND PROCEDURES TO BE FOLLOWED AT HEARING

1. The members of the Commission will preside at the hearing.

2. The hearing which will be open to the public, will be held at 10:00 a.m., on June 2, and if necessary, on June 3, 1976 in Room 1115 at the Commission's offices at 1717 H Street, N.W., Washington, D.C.

3. The Commission requests that all present participants in the captioned proceeding—joint petitioners, National Resources Defense Council, Sierra Club and Union of Concerned Scientists, the Department of State and the NRC Staff—present witnesses and oral argument. The Commission believes it would be appropriate for the Department of State to inform the Government of India of the Commission's course of action for determining the issues raised by the petitions, and its willingness to entertain any views that government may wish to express, either for submission through the Department or independently. The license applicant, Edlow International Company, may also present witnesses and oral argument.

4. Written comments may be submitted by the participants and any interested members of the public. Comments from persons other than the participants shall be submitted in time to be received by (15 days after publication of notice) and may include questions to be asked of the participants for possible use by the Commission after consideration of their relevance, materiality and the likelihood that a full response would require reference to classified information.

5. Any comments by participants shall be provided to the Commission and to the other participants on or before May 24, 1976, and shall include the text of any factual or other statements intended to be presented at the oral hearing. On or before May 28, 1976, the participants may respond with (a) suggested questions to be addressed to proposed witnesses by the Commission at its discretion after consideration of their relevance, materially and the likelihood that a full response would require reference to classified information and/or (b) rebuttal materials. The Commission may specify in advance of the hearing date the time available to the participants for their respective oral presentations, and may indicate areas which it would particularly wish to have addressed in oral testimony.

6. Filing of documents in this proceeding by the participants shall be as provided in 10 CFR 2.701. A docket for the proceeding shall be maintained as provided in 10 CFR 2.702, and the provisions of 10 CFR 2.750 and 2.751 regarding official reporter, transcript, and public nature of the hearing shall apply. No other provisions of 10 CFR Part 2, Subpart G, shall apply.

7. Except as permitted by the Freedom of Information Act and the Commission's rules in 10 CFR Part 9, there shall be no discovery by document production or otherwise.

8. The record for decision shall include the transcript of written testimony and exhibits, the transcript of oral statements by participants, written statements by interested members of the public and the participants, all papers and requests filed in the proceeding, and such materials other than the foregoing as the Commission deems appropriate.

The hearing will be conducted as expeditiously as is consistent with meaningful public participation, to permit the Commission to act on license applications XSNM-805 and XSNM-845 no later than June 1976. Because of the generic character of the issues raised, the Commission may act on one or both of the applications prior to the conclusion of the hearing if it finds that a need for greater expedition in acting on the license application has been shown. The hearing would then be continued for the purpose of assisting the Commission in its determination of subsequent licenses for export of special nuclear material for use in the TAPS reactors.

Dated at Washington, D.C., this 14th day of May 1976.

For the U.S. Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.76-14473 Filed 5-14-76;9:59 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

EMERSONS, LTD.

Suspension of Trading

MAY 6, 1976.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of Emersons, Ltd. being traded on a national securities exchange or otherwise 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 on a national securities exchange of otherwise is suspended, for the period from May 7, 1976 through May 16, 1976.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-14315 Filed 5-14-76;8:45 am]

[Release No. 12415; (SR-PBWSE-76-4)]

PBW STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

MAY 6, 1976.

On February 24, 1976, the PBW Stock Exchange, Inc., 17th Street and Stock Exchange Place, Philadelphia, Pennsylvania 19103, filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b-4 thereunder, copies of a proposed rule change. The proposed rule change readopts the name Philadelphia Stock Exchange, Inc. by amending Article First of its Certificate of Incorporation.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 12139, (February 25, 1976)) and by publication in the FEDERAL REGISTER (41 Fed. Reg. 9433 (March 4, 1976)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change filed with the Commission on February 24, 1976, be, and it hereby is, approved, effective May 10, 1976.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-14316 Filed 5-14-76;8:45 am]

[Release No. 34-12422; File No. SR-MCC-76-2]

MIDWEST CLEARING CORP.

Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on April 19, 1976, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statements of the Terms of Substance of the Proposed Rule Change (Brackets indicate deletions; italics, new material.)

Midwest Clearing Corporation Rules, Rule 14, Section 6 Contributions of Participants to Participants Fund.

Sec. 6. The contribution of each Participant to the Participants Fund shall be fixed by the Corporation at the time such Participant's application for membership is approved and may thereafter from time-to-time be increased or reduced by the Corporation. The minimum contribution shall be one thousand dollars. [The Corporation may permit a portion of a participant's contribution to the Participants Fund to take the form of an open account indebtedness secured by unmatured bearer bonds which are direct obligations of, or obligations guaranteed as to principal and interest by, the United States or unmatured bearer bonds which are general obligation of, or obligations guaranteed as to principal and interest by, a State or political subdivision thereof which are in the first or second rating of any nationally known statistical service ("qualifying bonds"), having and maintaining a market value not less than the amount of such open account indebtedness. Such qualifying bonds shall be pledged to the Corporation on such terms and conditions as it shall require. The Board of Directors may from time to time increase or decrease the minimum amount of cash contribution; provided that any new minimum requirement shall apply to all Participants. The qualifying bonds pledged by a Participant to secure its open account indebtedness shall be held by the Corporation or for its account and subject to its instructions by a bank or trust company (other than the Participant) designated by the Participant; and the Participant shall be entitled to any interest earned thereon]. *Contributions to the Participants Fund may be made either in cash or in unmatured negotiable debt securties which are direct obligations of, or obligations guaranteed as to principal and interest by, the United States government, and which mature one year or less from the date of issue; provided, however, that not less than 10% of each Participant's contribution shall be made in cash; Securities contributed to the Participants Fund shall be valued at the lesser of the par value thereof or 100% of the current market value thereof. Cash contributions to the Participants Fund shall be paid to the Corporation. Contributions in the form of securities shall be made by depositing the securities with a bank or trust company approved by the Corporation, and delivering to the Corporation a depository receipt, therefore, in such form as the Corporation shall prescribe. Any interest or gain on securities deposited by a Participant with an approved bank or trust company pursuant to this Section shall accrue to the Participant.*

STATEMENT OF BASIS AND PURPOSE

The intent of the proposed rule change is to permit a portion of a participant's contribution to be only in unmatured negotiable debt securities of, or obligations guaranteed by, the U.S. Government with a maturity of one year or less. Securities may be delivered to a bank or trust company approved by the Midwest Clearing Corporation. Evidence of such delivery would be by a depository receipt from the bank or trust company.

The proposed rule change offers reasonable allocation of fees and charges among participants.

Comments have neither been received nor solicited concerning the proposed rule change.

The Midwest Clearing Corporation believes that no burdens have been placed on competition.

Within 35 days of the date of publication of this notice in the FEDERAL REGISTER, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 10, 1976.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-14317 Filed 5-14-76;8:45 am]

UNITED STATES INFORMATION AGENCY

PRIVACY ACT OF 1974

Notice of System of Records

On February 24, 1976, the United States Information Agency published in the FEDERAL REGISTER (41 FR 8154) a Notice of System of Records in accordance with 5 U.S.C. 552a, the Privacy Act of 1974, and 5 U.S.C. 553. An additional Notice inadvertently omitted from the Notice published on February 24, 1976, concerning the system of records designated USIA-39, was published in the FEDERAL REGISTER of March 10, 1976 (41 FR 10272). These notices were published for purposes of inviting public comment thereon. No comments having been received, we have decided to adopt the Notices as published with the following corrections:

1. In the Notice appearing on February 24, 1976 (41 FR 8155), the second line under "USIA-23 (Amendment)" should read "System Locations," followed by the locations as listed.

2. In the Notice appearing on February 24, 1976 (41 FR 8157) on "USIA-38," the paragraphs beginning with "Categories of individuals covered by the system" to the paragraph beginning with

"Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system" should read as follows:

Categories of Individuals Covered by the System: Authors of books selected for inclusion in the Current Thought Series and the Ladder Series; contractual adapters of books.

Categories of Records in the System: Correspondence with authors; rights agreements for use of books; USIA book appraisals and reviews; biographic data on authors; correspondence with and biographic data and namecheck forms on adapters; correspondence with contracting agency concerning contractual arrangements with adapters, qualifying tests and sample material submitted by adapters.

Authority for Maintenance of the System: Executive Order 11034, as amended. Public Law 87–256, Mutual Educational and Cultural Exchange Act of 1961.

Routine Uses of Records Maintained in the System, including categories of Users and the Purposes of Such Uses: Reference material for determination of suitability of books for use in the Agency's Current Thought Series and Ladder Series; to arrange for clearances to use books in Agency programs; for the selection of adapters who can adapt books for use by foreign nationals; final clearance of adaptation by authors of books.

Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the U.S. Information Agency as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the U.S. Information Agency, but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

Dated: May 6, 1976.

EUGENE P. KOPP,
Deputy Director,
United States Information Agency.

[FR Doc.76–14255 Filed 5–14–76;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Docket No. 35895 (Sub-No. 1)]

BELLE FOURCHE PIPELINE CO. ET AL.

Investigation Into the Practices and Procedures Which Are Employed To Assemble, Transport, and Deliver Petroleum

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 27th day of April, 1976.

The Commission's Bureau of Operations has conducted a field investigation as a result of allegations made by Inexco Oil Company in Docket No. 35895, *Inexco Oil Co.* v. *Belle Fourche Pipeline Co. et al.*, that Belle Fourche Pipeline Company and affiliated companies were discriminating against Inexco Oil Company in the transportation of its petroleum through Belle Fourche Pipeline Company. The field investigation disclosed that certain shippers have entered into an arrangement, with another, related company, whereby they are compensated by means of a "gravity bank" for any changes in gravity or quality of petroleum while in transit, which may result from its mixture with other petroleum in the pipeline or tanks of the carrier. Other shippers have at times not been accorded the benefits of this gravity bank. Item 20 of Belle Fourche Pipeline Company tariff Circular No. 1, I.C.C. No. 18 provides:

> Petroleum will be accepted for transportation only on condition that it shall be subject to such changes in gravity, quality or characteristics while in transit as may result from its mixture with other petroleum in the pipe lines or tanks of the carrier or those of any connecting company. Subject to the foregoing, the carrier will use its best efforts to deliver petroleum of a type equivalent to that accepted from the shipper; however, the carrier shall be under no obligation to make delivery of the identical stock.

Upon consideration of the foregoing matters and good cause appearing therefor:

It is ordered, That pursuant to the provisions of Part I of the Interstate Commerce Act, particularly sections 1, 2, 3, 6, 12, 13, and 15, and related supplementary legislation, particularly section 2 of the Elkins Act, 49 U.S.C. 42, a proceeding be, and it is hereby, instituted to investigate and inquire into the practices and procedures which are employed to assemble, transport, and deliver petroleum by Belle Fourche Pipeline Company and affiliated companies, and to determine whether these practices and procedures result in any violation of the Interstate Commerce Act or related supplementary legislation.

It is further ordered, That H. A. True, Jr., Reserve Oil Purchasing Company, True Drilling Company, Black Hills Oil Marketers, Inc., True Oil Company, and all persons controlling, controlled by, or under a common control with Belle Fourche Pipeline Company be, and they are hereby, named respondents in this proceeding.

It is further ordered, That the Commission's Bureau of Enforcement be, and it is hereby, directed to participate in this proceeding as a party.

It is further ordered, That this proceeding be consolidated with Docket No. 35895, *Inexo Oil Co.* v. *Belle Fourche Pipeline Co. et al.*, for consideration.

And it is further ordered, That this order be served on the above named respondent and that notice to the public be given by posting a copy of this order in the office of the Secretary of the Commission and by delivering a copy to the Director, Division of the Federal Register for publication therein

By the Commission (Vice Chairman Clapp not participating).

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.76–14327 Filed 5–14–76;8:45 am]

[Notice No. 47]

ASSIGNMENT OF HEARINGS

MAY 12, 1976.

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 136343 Sub 65, Milton Transportation, Inc., now assigned May 21, 1976, at Columbus, Ohio, is postponed indefinitely.

MC 115904 Sub 38, Grover Trucking Co., now assigned May 20, 1976, at Albuquerque, N.M., will be held in Room 4210, Federal Office Building, 517 Gold Street, instead of Room 1410.

MC 37918 (Sub-No. 13), Direct Winters Transport Limited, now assigned July 26, 1976, at Lansing, Mich., is postponed to September 27, 1976 (1 week), at Lansing, Mich., in a hearing room to be later designated.

MC 117068 (Sub 54), Midwest Specialized Transportation, Inc., now assigned June 8, 1976 (2 days) at Chicago, Illinois and will be held in Room 1614, Court of Claims, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 126276 (Sub 138 and 143), Fast Motor Service, Inc., now assigned June 10, 1976 (1 day), at Chicago, Illinois, and will be held in Room 1614, Court of Claims, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 141425, Thunder Express, Ltd., now assigned June 15, 1976 (1 day), at Chicago, Illinois, and will be held in Room 1614, Court of Claims, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 141456, Midland Truck Line, Inc., now assigned June 16, 1976 (1 day), at Chicago, Illinois, and will be held in Room 1614, Court of Claims, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 123670 (Sub 14), Crowel Trucking, Inc. now assigned June 17, 1976 (2 days), at Chicago, Illinois, and will be held in Room 1614, Court of Claims, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 114457 (Sub 249), Dart Transit Company now assigned June 14, 1976 (1 day), at Chicago, Illinois, and will be held in Room 1614, Court of Claims, Everett McKinley Dirksen Building, 219 South Dearborn Street.

FD 27620, Maine Central Railroad Co., V. Amoskeag Co., Frederick C. Dumaine and Dumaines, and FD 27621, Amoskeag Co.—Control—Maine Central Railroad Co., now being assigned further pre-hearing conference on the 24th day of May, 1976, at the Offices of the Interstate Commerce Commission, Washington, D.C.

I & S 9084, Palm Oil, Pacific Coast Ports to Midwestern States, now being assigned June 16, 1976, at the Offices of the Interstate Commerce Commission, Washington, D.C.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.76–14330 Filed 5–14–76;8:45 am]

[Notice No. 249]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under Section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specificially noted) 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.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before June 16, 1976. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

No. MC–FC–76466, filed April 27, 1976. Transferee: ED DAVENPORT, INC., P.O. Box 907, Highway 71 West, Brady, Texas 76825. Transferor: ED DAVENPORT, P.O. Box 907, Highway 71 West, Brady, Texas 76825. Applicant representative: Billy R. Reid, Registered Practitioner, 6108 Sharon Road, Fort Worth, Texas 76116. Authority sought to purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 140172 Sub-No. 2, issued October 14, 1975, as follows: *Sand* from points in McCulloch County, Tex., to points in Alabama, Arkansas, Georgia, Colorado, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, and Wyoming. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76487, filed May 10, 1976. Transferee: McBROOM INDUSTRIES, LTD., doing business as BENTON VAN LINES, 7300 Lomas Blvd. NE., Albuquerque, N.M. 87110. Transferor: SPRINGER STORAGE CO., a Corporation, doing business as BENTON VAN AND STORAGE CO., 7300 Lomas Blvd. NE., Albuquerque, N.M. 87110. Applicants' representative: Daniel M. Tartaglia, Attorney-at-Law, The Scottelark Building, 3212 Collinsworth, Fort Worth, Texas 76107. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 133200, issued December 22, 1969, as follows: Used household goods, between points in McKinley, Sandoval, Santa Fe, Los Alamos, Valencia, and Bernalillo Counties, N. Mex., restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of the above-described traffic. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC 76515, filed April 8, 1976. Transferee: MARKET EXPRESS, INC., 3342 N. Weber Street, Fresno, Calif. 93705. Transferor: AMERICAN TRANSPORT SYSTEM, INC., 871 Charter Street, Redwood City, Calif. 94063. Applicants' representative: Marvin Handler, Esquire, 100 Pine Street, San Francisco, Calif. 94111. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificates Nos. MC 134460 (Sub-No. 3), MC 134460 (Sub-No. 6), MC 134460 (Sub-No. 7), and MC 134460 (Sub-No. 8), issued March 22, 1972, March 24, 1972, October 8, 1974, and December 4, 1974, respectively, as follows: Bananas, from points in Los Angeles Harbor, Calif., Commercial Zone as defined by the Commission, to points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming; frozen meats, from San Francisco and Oakland, Calif., to points in Alameda, Monterey, Sacramento, San Francisco, San Benito, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Stanislaus, Sonoma, Yolo, Merced, Contra Costra, Napa, and Solana Counties, Calif., and between San Francisco and Oakland, Calif., on the one hand, and, on the other, points in California; and food and foodstuffs, from points in San Francisco, San Mateo, Alameda, Santa Clara, Santa Cruz, Monterey, Stanislaus, and San Joaquin Counties, Calif., to points in Maricopa, Pima, and Pinal Counties, Ariz. Transferee is presently authorized to operate as a contract carrier under No. MC 140982 TA. Application has been filed for temporary authority under Section 210a(b).

No. MC–FC–76529, filed May 6, 1976. Transferee: CHARLES AND JOHN DAVIS, INC., 2904 26th, Forest Grove, Oregon 97116. Transferor: CHARLES O. DAVIS, doing business as STEWART-STILES TRUCK LINE, 2904 26th Avenue, Forest Grove, Oregon 97116. Applicants' attorney: Thomas Y. Higashi, McLaughlin, Gunnar, Woods & Higashi, Suite 1440, 200 Market Building, Portland, Oregon 97201. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 75623, issued July 14, 1959, as follows: General commodities, with specified exceptions, between Portland, Oreg., and Gaston, Oreg., serving the intermediate points of Cornelius, Forest Grove, and Dilley, Oreg., and off-route points within three miles of Gaston, from Portland over Oregon Highway 6 to Forest Grove, Oreg., thence over Oregon Highway 47 to Gaston, and return over the same route. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76536, filed April 22, 1976. Transferee: NASSAU WORLD WIDE MOVERS, INC., 57 Central Avenue, Farmingdale, N.Y. 11735. Transferor: FRANKLIN SQUARE VAN. CO., INC., 1155 Hempstead Turnpike, Franklin Square, N.Y. 11010. Applicants' representative: Alvin Altman, Attorney at Law, 1776 Broadway, New York, N.Y. 10019. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 94990, issued May 4, 1943, as follows: Household goods, as defined in Practice of Motor Common Carriers of Household Goods, between points in Nassau County, N.Y., on the one hand, and, on the other, points in Rhode Island, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76541, filed May 9, 1976. Transferee: RICHARD J. STEIGERWALT, R.D. #5, Box 76–C, Skyline Drive, Lehighton, Pennsylvania 18235. Transferor: MICHAEL C. NARO, R.D. #1, Gouldsboro, Pennsylvania 18424. Applicants' representative: Joseph F. Hoary, 121 S. Main Street, Taylor, Pennsylvania 18517. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate No. MC 138836, issued May 30, 1974, as follows: Petroleum, petroleum products, and anti-freeze preparations, in containers, from the plant site of Texaco, Inc., at Bayonne, N.J., to Scranton, Wilkes-Barre, Dallas, Nanticoke, and Honesdale, Pa.; and empty containers for the above-named commodities, on return. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76562, filed May 3, 1976. Transferee: MONARCH COACHES, INC., 731 North Highland Avenue, Aurora, Illinois 60506. Transferor: JOHN H. WOLF, doing business as AURORA EDUCATIONAL TOURS, 731 North Highland, Aurora, Illinois 60506. Applicants' attorney: Patrick H. Smith, Esq., Suite 521, 19 South LaSalle Street, Chicago, Illinois 60603. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 138942, issued August 6, 1975, as follows: passengers and their

baggage, in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Kane and Kendall Counties, Ill., and extending at points in Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Virginia, Wisconsin, and the District of Columbia. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76569, filed May 4, 1976. Transferee: HERB WHITWORTH MOVING & STORAGE CO., doing business as REPUBLIC OF ST. LOUIS, 3344 Greenwood Blvd., Maplewood, Missouri 63143. Transferor: MID CONTINENT VAN SERVICE, INC., 1601 Pennsylvania Avenue, St. Louis County, Missouri 63133. Applicants' representative: Charles R. Preslar, President, Herb Whitworth Moving & Storage Co., doing business as Republic of St. Louis, 3344 Greenwood Blvd., Maplewood, Missouri 63143. Authority sought for purchase of a portion of the operating rights of transferor, as set forth in Certificate No. MC 76184, issued January 2, 1975, as follows: Household goods, between St. Charles, Mo., and points within 50 miles thereof, on the one hand, and, on the other, points in Illinois. Transferee is presently authorized to operate as a common carrier under Certificate No. MC 126852. Application has been filed for temporary authority under Section 210a(b).

No. MC-FC-76571, filed May 4, 1976. Transferee: DON KOEPP, Route 2, Luck, Wisconsin 54853. Transferor: GLENN E. CARLSON, Route 2, Grantsburg, Wisconsin 54840. Applicants' representative: C. E. deBRUYN, 1745 University Avenue, St. Paul, Minnesota 55104. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 110379, issued April 3, 1972, as follows: general commodities, between points in the Towns of Sterling, and Laketown, Polk County, Wis., and the Towns of Trade Lake and Anderson, Burnett County, Wis., on the one hand, and, on the other, Minneapolis, St. Paul, South St. Paul, Stillwater, and Newport, Minn.; general commodities, with specified exceptions, between points in th Towns of Bone Lake, Luck, Georgetown, and Milltown, Polk County, Wis., on the one hand, and, on the other, South St. Paul, St. Paul, and Minneapolis, Minn., and from Minneapolis, St. Paul, and South St. Paul, Minn., to points in the Towns of West Sweden and Laketown, Polk County, Wis., and the Town of Trade Lake, Burnett County, Wis.; and livestock and agricultural commodities, from points in the Towns of West Sweden and Laketown, Polk County, Wis., and the Town of Trade Lake, Burnett County, Wis., to Minneapolis, St. Paul, and South St. Paul, Minn. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.76-14329 Filed 5-14-76;8:45 am]

[Section 5a Application No. 4; Amdt. No.4]

MOVER'S & WAREHOUSEMEN'S ASSOCIATION OF AMERICA, INC.—AGREEMENT

Receipt of Application for Approval

MAY 3, 1976.

The Commission is in receipt of an application in the above-entitled proceeding for approval of amendments to the agreement therein approved.

Filed April 13, 1976 by:

Herbert Burstein, of Counsel, One World Trade Center, Suite 2373, New York, NY 10048.

Carroll F. Genovese, Executive Director, Mover's & Warehousemen's Association of America, Inc., Suite 522, Munsey Bldg., Washington, D.C. 20006.

The amendments involve: Changes to comply with the standards promulgated in Ex Parte No. 297, 349 I.C.C. 811 and 351 I.C.C. 437; authorize consideration by the tariff committee of quotations or tenders of rates for movements for the United States Government; preclude voting on the Executive Committee by a substitute or alternate of such committee member; authorize the President to select a member of the tariff committee as chairman; and make provision where the tariff committee lacks a quorum.

The complete application may be inspected at the Office of the Commission in Washington, D.C.

Any interested person desiring to protest and participate in this proceeding shall notify the Commission in writing on or before June 7, 1976. As provided by the General Rules of Practice of the Commission, persons other than applicants should fully disclose their interest, and the position they intend to take with respect to the application. Otherwise, the Commission on its discretion, may proceed to investigate and determine the matters involved without public hearing.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.76-14328 Filed 5-14-76;8:45 am]

federal register

MONDAY, MAY 17, 1976



PART II:

DEPARTMENT OF THE INTERIOR

Bureau of Land Management
Geological Survey

■

Coal Mining Operating Regulations

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Geological Survey

COAL MINING OPERATING REGULATIONS

On September 5, 1975, there was published in the FEDERAL REGISTER (40 FR 41122 et seq.) a Notice of Proposed Rulemaking setting forth proposed revisions to 30 CFR Part 211 and 43 CFR 23, and to promulgate a new Part 3041 of 43 CFR. It was also proposed that 30 CFR Part 216, applicable to coal mining operations under leases in the State of Alaska which were issued pursuant to the Alaska Coal Leasing Act of October 20, 1914 (38 Stat. 741), prior to its repeal by Pub. L. 86-252, September 9, 1959 (73 Stat. 490), be revoked and that operations under those leases also be governed by the regulations set forth as proposed amendments to 30 CFR Part 211.

On December 18, 19 and 20, 1975, public meetings on the proposed rulemaking were held in Cheyenne, Wyoming, Denver, Colorado, and Billings, Montana, respectively. On February 13, 1976, the Director of the Bureau of Land Management and the Director of the United States Geological Survey submitted to the Secretary of the Interior proposed Final Rulemaking on the subject matter in question. A Final Environmental Impact Statement pursuant to the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-47) was prepared on those recommendations, transmitted to the President's Council on Environmental Quality on March 5, 1976, and made available to the public on March 10, 1976.

As noted in the Notice of Proposed Rulemaking published on September 5, 1976, previous notices and texts of proposed rulemaking on the same subject matter had been published for public comment as proposed amendments to 30 CFR Part 211 on January 30, 1975, and on April 30, 1973 (38 FR 10686; 40 CFR 4428, respectively).

Extensive comments from other Federal agencies, State governments and representatives thereof, public interest groups, industry representatives and associations, and members of the general public have been received and carefully reviewed and considered by the Department of the Interior in connection with the proposed rulemaking.

Following such review, it has been decided to publish Final Rulemaking to amend 43 CFR 23, promulgate 43 CFR 3041, amend 30 CFR 211, and revoke 30 CFR 216, all as set forth below.

This Final Rulemaking is based upon the proposed rulemaking published on September 5, 1975, and the public comments received thereon, and upon the recommendations of the Directors of the BLM and the USGS to the Secretary of the Interior which were the subject of and were printed in the Final Environmental Impact Statement referred to above. The specific provisions have been addressed and discussed in the referenced Notice of Proposed Rulemaking and in the final Environmental Impact Statement, and need not be discussed in detail again herein.

Two changes from the regulations as they were printed in the Environmental Impact Statement should, however, specifically be noted. First, the provisions by which the Secretary would by formal rulemaking adopt the requirements of State laws and regulations relating to the reclamation of lands disturbed by the surface mining of coal where such requirements are determined to afford general protection of environmental quality and values at least as stringent as would occur under exclusive application of Federal regulations has been modified somewhat from the text published on September 5, 1975.

The decision to adopt the requirements of laws more stringent than Federal regulations is now made subject to the qualification that such adoption will occur unless the Secretary determines that specific provisions relating to overriding national interest require otherwise. Review of State laws for the purpose of making such determinations will be directed upon the effective date hereof, without prior application by a Governor, in those States where Federal coal is being developed. Finally, specific provision is made for the entry into discussions with representatives of such States for the purpose of entering into agreements, by formal rulemaking, to provide for the joint enforcement and administration of coal surface mine control programs within a State, provided Federal interests are protected. The Final Rulemaking is consistent with, and responsive to, the recommendations of numerous representatives of State governments.

Second, the Final Rulemaking does not include the use of the phrase "maximum extent practicable." Instead, the flexibility inherent in the use of this concept as previously proposed is obtained by redrafting some of the specific performance standards contained in the Final Rulemaking, and by the inclusion of provisions for the granting of variances from specific performance standards under certain conditions. (43 CFR Section 3041.8; 30 CFR Section 211.74). This alternative mechanism of achieving the necessary flexibility in the Final Rulemaking was suggested by many commentators on the proposed rulemaking, and is specifically addressed in the final Environmental Impact Statement referred to above, in Chapters VIII and IX and in Appendix 3.

In addition to the decisions made with respect to the Final Rulemaking published below, the Department has made several related decisions in connection with its ongoing review of Federal coal leasing and development. First, it has been decided to formulate and adopt specific criteria by which Departmental officers will be guided in deciding whether or not to withhold public lands from leasing based upon the fact that such lands may be unsuitable for mining. A Departmental task force is currently reviewing this question, and will shortly be presenting its recommendations to the Secretary for appropriate action.

It has also been decided that in view of the great interest and concern expressed by many commentators on the proposed rulemaking, and the presence of some Federally owned coal under land surface configurations that involve what are commonly referred to as "steep slopes," specific standards relating to mining on such terrain should be adopted. Since such standards were not contained in earlier proposed rulemaking published on September 5, 1975, and were not specifically addressed in the Final Environmental Impact Statement, it has been determined that they may not now be published in final form. Accordingly, there have been prepared and will shortly be published as proposed rulemaking amendments to the performance standards set forth in the Final Rulemaking published herein, and to the provisions authorizing the granting of variances therefrom, relating to mining on steep slopes.

Finally, as set forth below, the effective date of this Final Rulemaking is May 17, 1976. The specific operative provisions (43 CFR § 3041.0-5(b); 30 CFR Section 211.1(d)) set forth compliance requirements applicable to existing operations, involving compliance with the performance standards set forth (six months from the effective date) and with the balance of the regulatory requirements (18 months from the effective date.) Authority to take action in emergency circumstances will come into effect immediately on the effective date.

A new subpart 3041 is added to Part 3040 of 43 CFR, to read as follows:

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

PART 3040—ENVIRONMENT AND SAFETY

Subpart 3041—Surface Management

FEDERAL COAL RESOURCES

Sec.

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§ 3041.0–1 Purpose.

(a) The purpose of this subpart is to establish rules and regulations to be followed in the management of the federally owned coal estate consistent with the policies, goals, and objectives established by the Acts cited in § 3041.0–3 of this Subpart, regardless of surface ownership, to ensure effective and reasonable regulation of surface coal mining operations in accordance with the requirements hereof, as an appropriate and necessary means to minimize so far as practicable the adverse social, economic and environmental effects of such operations.

(b) It is the policy of the Department to encourage the development of Federally owned coal, where such development is authorized, through a program that will provide for the protection, orderly development and conservation of Federal mineral and nonmineral resources in a manner that will avoid, minimize or correct adverse impacts on society and the environment resulting from coal development, without undue duplication or administrative delay by Federal officers. It is also the policy of the Department to issue leases, permits, and licenses for coal only where reclamation of the affected lands to the standards set forth herein is attainable and assured and a reclamation program will be undertaken as contemporaneously as practicable with operations. Departmental policy regarding privately owned surface where the mineral estate is Federally owned is that any mineral activity on the private surface should be conducted to result in protection of environmental values which is at least as stringent as would apply to Federally owned surface.

§ 3041.0–3 Authorities.

The regulations contained in this Subpart are issued pursuant to the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181–287), and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), and in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321–47). Additional regulations governing the issuance of Federal coal leases, permits, and licenses are found in 43 CFR 3500 of this Chapter, including the specific requirement in § 3501.2–6 that the consent of the Department of Agriculture or other Federal surface managing agency be obtained with respect to leases, permits, and licenses covering acquired lands subject to the jurisdiction of such agency. Regulations governing operations conducted on lands subject to lease, permit, or license are found in 30 CFR 211. Regulations setting forth the general and basic policies for disposal and management of the public lands are found in 43 CFR 1725 of the Chapter.

§ 3041.0–4 Responsibilities.

(a) The Bureau of Land Management (BLM) exercises at the Bureau level the Secretary's discretionary authority to determine whether or not mineral leases, permits, and licenses are to be issued. The BLM is responsible for issuing coal leases, permits, and licenses, and is the office of record in mineral leasing matters.

(b) The Geological Survey (GS) exercises the Secretary's authority regarding operations conducted within the area of operations by permittees, lessees, and licensees and determines the action to be taken by them from the standpoint of the development, conservation, and management of mineral resources under the jurisdiction of the Department. The Geological Survey is responsible for all geologic, engineering, and economic value determinations for the Department's mineral leasing program. These determinations include: the mineral characteristics of lease and permit areas; parceling; appropriate amounts of bonds; royalties; unit values; rentals; mineral resource evaluations; reserves; investments, diligent development, and minimum production requirements; and all other terms and conditions relating to mineral operations under leases and permits.

(c) The BLM or other Federal surface managing agency, in consultation with the GS and the surface owner if other than the United States, formulates the requirements to be incorporated in leases, permits, and licenses for the protection of the surface and nonmineral resources and for reclamation, using the reclamation obligations and standards of performance contained in § 3041.2–2 of these regulations and in 30 CFR 211.40.

(d) The GS reviews and approves exploration and mining plans, and authorizes the abandonment of operations, in consultation with the BLM or other appropriate Federal surface managing agency, and the surface owner, if other than the United States, on the adequacy of the surface use, environmental protection, and reclamation aspects of such plans and will not grant approval if inconsistent with the BLM's or other Federal surface managing agency's recommendations without further discussions and referrals for resolution pursuant to 30 CFR 211.

(e) As to the lands outside of the area of operations, the authorized officer of the BLM or other appropriate Federal surface managing agency is responsible for conducting compliance examinations and for assuring compliance by the lessee, permittee, or licensee with the requirements of this Subpart, and the terms and conditions of a lease, permit, or license and for reporting noncompliance to the Mining Supervisor for appropriate action. As to the lands inside the area of operations the GS examines operations to ensure compliance by the lessee, permittee, or licensee with the terms and conditions set forth in the provisions of any lease, permit or license or any approved mining or exploration plan. GS refers to BLM any instance of noncompliance with lease terms which may require cancellation action, and BLM may initiate such action. With respect to approval of access roads, pipelines, utility routes and other surface uses outside the area of operations, the BLM, or other Federal surface managing agency, has the primary responsibility but obtains the recommendations of the GS before taking final actions. Except as may be expressly provided for in § 3041.7 of this Subpart and 30 CFR 211.72, orders to operators for any remedial action are the exclusive responsibility of the Geological Survey.

(f) Subject to the supervisory authority of the Secretary, the regulations in this subpart shall be administered by the Director, Bureau of Land Management through the authorized officers having jurisdiction over the lands subject to these regulations and authorized to perform the duties described. Prior to issuance of any coal lease, permit, or license, the authorized officer shall consult with and accept and consider recommendations from the Mining Supervisor, the Federal surface managing agency when other than the BLM, or the surface owner, as to the terms and conditions required to achieve the purpose of this subpart. Any disagreements that cannot be resolved between the GS and the BLM arising in connection with any such issuance of a lease, permit or license will be referred for resolution to the appropriate Assistant Secretaries or to the Under Secretary of the Department of the Interior. Any such disagreements between an authorized officer of the BLM and an appropriate authorized officer of any Federal surface managing agency not in the Department of the Interior will be referred for resolution to comparable higher authorities in each agency, and, if necessary, to the respective Departments, for final resolution.

§ 3041.0–5 Applicability.

(a) This Subpart sets forth regulations governing leasing, permitting, and licensing procedures, reclamation standards, use of surface, bond requirements, and reports relating to leases, permits, and licenses issued by the BLM with respect to Federal coal deposits located on public domain and acquired lands of the United States and reserved Federal coal deposits underlying lands the surface of which is privately owned. These regulations do not govern the leasing or development of coal deposits owned by Indians and subject to the Trust protection of the United States, which are controlled by regulations found in 25 CFR Chapter I.

(b) The provisions of this subpart shall become effective upon the date of publication in the FEDERAL REGISTER as final rulemaking, except as hereinafter provided.

(1) Existing operations. (i) On and after 180 days from the effective date of this subpart, the provisions of §3041.2–2(f) shall apply to all existing operations with respect to lands from which the overburden has not previously been removed, provided, however, that this paragraph shall not be deemed or con-

strued so as to apply the requirements of § 3041.2–2(f) (1) and (2), hereof to any operation for which a mining plan has been approved on or before the effective date of this subpart and for which a variance pursuant to the provisions of § 3041.2–2(f) (2) would be required.

(ii) On or before 18 months from the effective date of this Subpart, the operator of each existing operation shall have submitted and shall have obtained the approval of a plan or modification thereof which shall comply with all applicable provisions of this Subpart, provided, however, that if the Director of the GS determines that a proposed new plan or modification of an existing plan was prepared and submitted in timely fashion, taking into account the complexity of the operation and of the plan or modification involved, but that administrative delay thereafter has prevented approval within the time specified, the time for compliance with this paragraph may be extended by order of the Director of the GS for an amount of time equal to the duration of such delay.

(iii) For the purpose of this paragraph, the term "existing operation" shall mean:

(A) All operations for which a plan has been approved on or before the effective date of this subpart, and

(B) All operations with respect to which a proposed plan has been submitted to the Department on or before the effective date of this Subpart, and with respect to which proposed plan the Department has on that date either completed its environmental impact analysis and determined that no environmental impact statement under Section 102 (2)(C) of the National Environmental Policy Act is necessary, or has determined that such a statement is necessary and has commenced, and expended substantial resources of the Department in the preparation or completion of, such a statement.

(iv) On or before 90 days from the effective date of this subpart, the Director of the Geological Survey shall review all proposed plans which have been submitted to the Department on or before the effective date of this subpart and, after consultation with appropriate Federal surface managing agencies, publish in the FEDERAL REGISTER a list which shall identify each such proposed plan and whether it will be considered to cover an existing operation.

(2) All operations or proposed operations not included in the definition of "existing operation" in the preceding paragraph shall be considered to be new operations, and shall be subject to the provisions of this subpart upon the effective date hereof.

(3) The provisions of § 3041.7(c) of this subpart shall apply immediately upon the effective date of this subpart.

(c) To the maximum extent possible, all environmental impact statements and all approvals of plans covering existing operations which are pending before the Department on the effective date of this subpart shall take into account and shall reflect and implement the provisions and purposes hereof; provided, however, that nothing in this subparagraph shall be construed to relieve any operator of the obligation imposed by paragraph (b)(1)(i) above.

(d) Nothing in this subpart shall be deemed or construed as increasing or diminishing any rights not in conflict with Federal law held by any person, including any surface owner or entryman, arising under the laws of any State and relating to the giving or withholding of consent to, or consultation in connection with, entry to any land for the purpose of conducting operations subject to this subpart.

§ 3041.0–6 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) "Acid or toxic producing materials" means natural or disturbed earth materials having chemical and physical characteristics that, under mining or postmining conditions of drainage, exposure, or other processes, may produce effluents that contain chemical constituents, such as acids, bases, or metallic compounds, in sufficient concentrations to individually or in combination adversely affect the environment.

(b) "Affected lands" means any lands affected or to be affected by exploration, development, and mining operations and the construction of facilities necessary and related to such operations.

(c) "Approximate original contour" means the surface configuration achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining (although not necessarily the original elevation) and blends into and complements the drainage pattern and topography of the surrounding terrain.

(d) "Area of operations" means that area of the leased, permitted, or licensed lands which is required for exploration, development, producing, and processing operations, including all related surface structures and facilities, and which is delineated on a map or plat that is made a part of the approved exploration or mining plan.

(e) "Authorized officer" means any officer designated by any Federal surface managing agency to exercise its authority in matters relating to coal leases, licenses, and permits and to the provisions of this subpart.

(f) "Coal" includes coal of all ranks from lignite to anthracite.

(g) "Compaction" means the reduction of porous spaces among the particles of soil and rock generally caused by running heavy equipment over the earth materials, as in the process of leveling the overburden material on strip mine spoil piles or banks, for the purpose of increasing the bearing capacity and stability of the earth materials.

(h) "Contemporaneously as practicable" means with respect to reclamation of mined or otherwise disturbed areas, the commencement, conduct and completion of reclamation activity as soon after disturbance as possible, without undue physical interference with ongoing opreations, leaving a minimum of land unreclaimed, consistent with the objectives of environmental protection set forth in this subpart.

(i) "Daylighting" is a term used to define the surface mining procedure for exposing an underground mined area to remove remaining coal.

(j) "Director" means the Director of the Bureau of Land Management, U.S. Department of the Interior.

(k) "Exploration" means the detailed investigation and acquisition of data pertaining to a mineral deposit, including activities for identifying regions or specific areas in which deposits are most likely to occur, and activities used to establish the nature of a coal deposit preparatory to mining.

(l) "Exploration plan" means a detailed plan submitted to the Mining Supervisor for approval before exploration operations commence showing the location and type of exploration work to be conducted, environmental protection procedures, roads, and reclamation procedures to be followed upon completion of such appropriations.

(m) "General Coal Mining Order" means a formal numbered order issued by the Mining Supervisor, with the prior approval of the Division Chief, and published, after opportunity for public comment, in the FEDERAL REGISTER, which implements the regulations in this Part and applies to coal mining and related operations in a specified geographic area.

(n) "Impoundment" means an artificially built, dammed, or excavated place for the retention of water or sediments. A permanent impoundment is one that is intended to remain after final abandonment of the operation, and shall be identified as such in an approved plan.

(o) "Leased lands, leased premises, or leased tract" means lands embraced within a coal lease and subject to the regulations in this subpart.

(p) "Lessee" means any person or persons, partnership, association, corporation, or municipality to whom a coal lease is issued, subject to the regulations in this subpart, or an assignee of such lease under an approved assignment.

(q) "Licensee" means any individual, association of individuals, or municipality to whom a coal license is issued pursuant to the provisions of section 20 of Title 30 of the United States Code.

(r) "Logical mining unit" means an area of land designated as such by the Geological Survey pursuant to applicable Departmental regulations.

(s) "Method of operation" means the method and manner by which any activities are performed by the operator, as described in an exploration or mining plan.

(t) "Mine" means an underground or surface excavation and the surface or underground support facilities that contribute directly or indirectly to coal mining, preparation, and handling.

(u) "Mining plan" means a detailed plan for development of the coal re-

source submitted to the Mining Supervisor for approval prior to commencement of any mining operation, showing the proposed location, method, and extent of mining and all related activities necessary and incidental to such operation, including steps to be taken to reclaim disturbed areas, to mitigate adverse impacts, and to otherwise meet the performance standards and requirements set forth in this Subpart.

(v) "Mining Supervisor" means the Area Mining Supervisor, Conservation Division, Geological Survey, or District Mining Supervisor or other subordinate acting under his direction.

(w) "Notice of Availability" means a formal notification, by the appropriate Federal officer, to appropriate Federal, state and local agencies and interested individuals or groups of individuals, of the availability for inspection of information, data, proposed plans or modifications thereof, pending decisions and other documents subject to such notice. Any such notice shall include the nature of the information, data, plan or modification, decision or other document involved; the name and mailing address of any applicant; the nature, location (county, township, range and section), duration and brief description of any proposed operations; the date upon which any proposed action might be taken; and, when appropriate, a specific time limit for public review, comment or request for any departmental action, including the holding of any public meeting. For the purpose of ensuring appropriate distribution of such notices, there shall be maintained at each office of a Mining Supervisor or authorized officer of the Department of the Interior a mailing list which shall consist of the names and mailing addresses of all appropriate Federal, state or local agencies and any individuals or groups of individuals who have requested in writing to be included on such lists. All notices of availability shall be mailed to such agencies, individuals or groups at the addresses indicated on such lists.

(x) "Notice of noncompliance" means a written notice of operator noncompliance issued pursuant to § 211.72 of 30 CFR Part 211.

(y) "Operator" means a lessee, permittee, or licensee, or one conducting operations on lands under the authority of the lessee, permittee, or licensee.

(z) "Overburden" means the earth, soil, rock, and other natural materials which lie above the coal being mined.

(aa) "Permanent abandonment" means the cessation of exploration or mining or other operations set forth in an approved plan on all or any portion of lands covered by a lease, permit or license and subject to the provisions of this Subpart, where it is the intent of the operator not to continue operations at the mine or portion thereof.

(bb) "Permit lands" means lands embraced within a coal prospecting or other permit and subject to the regulations in this subpart.

(cc) "Permittee" means any person or persons, partnership, association, corporation, or municipality to whom a coal prospecting or other permit subject to the regulations in this subpart is issued, or an approved assignee of such permit.

(dd) "Pollution" means man-made or man-induced adverse alteration of the chemical, physical, biological, and radiological integrity of land, water or air, which reduces, or has the potential of reducing the beneficial uses of these resources.

(ee) "Post mining land use" means that use which will be made of affected lands after mining and reclamation is completed and which is specified in a mining or exploration plan approved pursuant to 30 CFR 211.

(ff) "Preliminary data" means data, consisting of maps and text, submitted by an applicant for a lease, permit, or license to the authorized officer of the BLM, which describes the applicant's proposal in the detail necessary to allow the authorized officer to conduct a technical examination and environmental analysis as described in § 3041.2.

(gg) "Preparation" means any crushing, sizing, cleaning, drying, mixing or other processing of coal to prepare it for market which is conducted on lands subject to this subpart.

(hh) "Reclamation" means the process of returning affected lands to a stable condition and form consistent with their premining productivity and use, or other approved post mining land use.

(ii) "Road" means any open way for passage or travel upon which to transport people, equipment, materials, or coal, which is constructed, improved or maintained by the operator and which is used to service the pit, bench, underground mine workings, loading facilities or exploration activities.

(jj) "Secretary" means the Secretary of the Interior.

(kk) "Significant vegetation" means farm crops, including grasses and forbs, that are integral parts of agriculture or ranching operations and the natural vegetation of forests or meadows with significant recreational, watershed, agricultural, or wildlife habitat value.

(ll) "Spoil" means soil, rock, and other earth materials that are broken, moved, dumped, or otherwise significantly disturbed during surface coal mining operations subject to this subpart.

(mm) "Subsidence" means a lowering of surface elevations over an underground mine caused by loss of support and subsequent caving of strata lying above the mine.

(nn) "Surface owner" means an entryman, or a person or persons who hold legal title to the land surface.

(oo) "Topsoil" means natural earth materials at or vertically adjacent to the land surface with physical and chemical characteristics suitable for support of vegetation.

(pp) "Valley floors" means the channelways, floodplains, and adjacent low terraces of streams that are flooded during periods of high flow and that are underlain by unconsolidated stream-laid deposits. Excluded are higher terraces and slopes underlain by colluvial and other surficial deposits normally occurring along valley margins.

(qq) "Waste" means solid or liquid refuse, rubbish, or other valueless material which is produced by or in connection with coal mining operations, including exploration, production, development, preparation and other related activities, and which has no useful purpose in connection with any remaining operations.

§ 3041.0–7 Use of surface.

(a) The operator shall be entitled to use only so much of the surface of the lands subject to a lease, permit, or license as is deemed necessary and has been designated in an approved plan. This subpart shall not be construed to authorize any use of the Federal lands for a power generation plant or a commercial or industrial facility. Separate permits for such uses must be obtained from the appropriate agency. The operator shall not be entitled to use any mineral materials subject to the Materials Act except as provided by Part 3600 of this Chapter.

(b) Operations conducted in connection with other authorized uses on the same lands shall not unreasonably interfere with or endanger operations conducted in connection with uses authorized under this Chapter, nor shall operations authorized and conducted pursuant to this Chapter unreasonably interfere with or endanger operations under any lease, permit, license, or other use authorized pursuant to the provisions of any other Act.

§ 3041.1 Coal leasing, permitting, and licensing planning procedures.

(a) When an area is initially considered for coal development the appropriate authorized officer shall make an environmental analysis of the potential effect of such development upon the resources of the area and its environment, pursuant to Section 3041.2 hereof.

(b) Prior to the selection of tracts for coal leases, permits, or licenses the appropriate authorized officer shall evaluate the potential effects of all phases of such coal development on the environment, including effects on fish and other aquatic resources, wildlife habitats and populations, and visual, recreational, cultural, and other resources in the affected area. This evaluation shall take into account alternative uses of the land and its natural resources, the need for the proposed coal development, and the socio-economic considerations relevant to multiple-use management principles. To aid him in this evaluation and in the selection of coal lease, permit, or license tracts, such authorized officer shall issue a call for information and nominations for tracts to be leased competitively and for areas which should not be leased, as set forth in Subpart 3520 of this Chapter, and shall request and consider the views and recommendations of the Geological Survey and other appropriate Federal agencies; may hold public hearings after appropriate notice, and shall consult with applicants, nominators, State and appropriate local agencies, or-

ganizations, industries, and surface owners if other than the United States.

(c) If the Director determines that a decision to consider areas for coal development or to select tracts to offer for leases, permits, or licenses would be a major Federal action significantly affecting the quality of the human environment, and that an environmental impact statement as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has not been prepared with respect thereto, such a statement will be prepared.

(d) If National Register or eligible National Register cultural resources might be affected by the issuance of coal leases, permits or licenses, none will be authorized until compliance with Section 106 of the Historic Preservation Act (80 Stat. 917; 16 U.S.C. § 470f) and section 2(b) of E.O. 11593 of May 13, 1971 (36 FR 8921; 16 U.S.C. § 470 fn.) has been accomplished.

(e) If a decision is made to offer tracts for coal leases, permits, or licenses, the appropriate authorized officer may, following the procedures in § 3041.2 of this Chapter, develop and include in such offer such special terms and conditions as may be required by specific local conditions to protect the environment, to permit use of the land for other purposes, to allow post mining land uses, and to protect other resources. The authorized officer, in consultation with the Mining Supervisor, the appropriate authorized officer of any surface managing agency other than BLM and the surface owner if other than the United States, shall include in the terms and conditions of any permit, lease or license such specific requirements as may be necessary to meet exceptional and special circumstances relating to the lands covered thereby, including degree of slope, soil conditions, and other site characteristics.

(f) Geological and geophysical data and information, including maps, that may be used to calculate coal reserves in place, and trade secrets and commercial and financial information obtained from any person under this subpart which is identified as privileged or confidential shall not be available for public inspection or made public or disclosed without the consent of the permittee, licensee, lessee or operator, provided however that upon termination of a permit, lease or license, whether by expiration of its terms or otherwise, or final abandonment of operations, resource and reserve data and information that may be used to calculate coal reserves in place submitted and so identified as privileged or confidential may be made available for public inspection or made public or disclosed. As used in this section, "resource and reserve data and information" means geological and geophysical data and information, including maps, relating to the coal deposits within the permit or leased lands or covered by an approved plan which is abandoned. Requests for inspection of resource and reserve data and information shall be made in accordance with the regulations set forth in 43 CFR Part 2, which implement the Freedom of Information Act, as amended (5 U.S.C. 552).

§ 3041.1–1 Applications.

(a) Any person who desires a lease, permit or license for coal development to be issued on his own motion shall file an application in the proper BLM office, in accordance with the regulations in this Chapter.

§ 3041.1–2 Preliminary data.

(a) Any application for coal lease, permit, or license filed pursuant to the regulations in this Chapter shall contain preliminary data to assist the authorized officer in making a technical evaluation and environmental analysis as described in § 3041.2. Provided, however, that in lieu of the requirements of this paragraph, applicants for competitive coal leases offered pursuant to the BLM Energy Minerals Activity Recommendation System (EMARS) will be required to fulfill the requirements of Subpart 3521 of this Chapter.

(b) Such preliminary data shall include: (1) Such map, or maps, as may be available from State or Federal sources, on which shall be shown the topography of the land applied for, and on which the applicant shall show physical features and natural drainage patterns and existing roads, vehicular trails, and utility systems; the location of any proposed exploration operations, including seismic lines, drill holes, to the extent known, the location of any proposed mining operations and facilities, trenches, access roads or trails, and support facilities incidental thereto, including the approximate location and aerial extent of the areas to be used for pits, overburden, and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(2) A narrative statement, including: (i) The anticipated scope, method, and schedule of exploration operations, including the types of exploration equipment to be used.

(ii) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed.

(iii) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

(iv) A brief description, including suitable maps or aerial photographs as appropriate, of the existing land use within and adjacent to the lands applied for; and of known geologic, visual, cultural, or archaeological features; and the known habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed or reasonably anticipated exploration or mining operations.

(v) A brief description of the proposed measures to be taken to maximize, control, or prevent fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution, and hazards to public health and safety; to reclaim the surface; and to otherwise meet applicable laws and regulations, which the applicant wishes to have considered by the authorized officer.

(c) The applicant shall not enter upon the land for any operational purpose, except for casual use, without prior authorization. Casual use, as used in this section, means activities which do not cause significant surface disturbance or damage to lands, resources, and improvements, such as activities which do not include (1) the use of heavy equipment or explosives, or (2) vehicular movement off established roads and trails which causes such disturbance.

(d) The authorized officer, after reviewing the preliminary data contained in an application, and at any time during a technical examination and environmental analysis, may request additional information from the applicant.

§ 3041.2 Technical examination/environmental analysis.

In connection with an application for a coal lease, permit or license, or on BLM motion, the appropriate authorized officer, with the assistance of the Mining Supervisor, shall make a technical examination and environmental analysis of the area covered by such application, pursuant to the provisions of this section.

(a) The technical examination shall include: (1) An examination of the technical aspects of the proposed operations set forth in any preliminary data and information; and

(2) An evaluation of the impacts of such operations or, if on BLM motion, the effect of coal leasing and development, on other land uses, resources, or land management programs on or adjacent to the area.

(b) The environmental analysis shall include an analysis of the impact of the proposed operations set forth in any preliminary data and information and of alternatives thereto, or, if on BLM motion, the impacts of coal leasing and development on the living and nonliving components of the environment.

§ 3041.2–1 Technical examination/environmental analysis report.

(a) Following completion of the technical examination and environmental analysis described in the preceding Section, the authorized officer shall prepare a report which sets forth recommendations as to (1) land which should be excluded from any lease, permit, or license in order to avoid mining where reclamation is not attainable or assured, or in recognition of other exclusive land use management priorities; (2) measures required to comply with the reclamation and performance standards set forth in this subpart; (3) necessary conditions and amounts of bonds to cover estimated reclamation costs for areas that will be disturbed during the initial 5 year period

of the lease, permit, or license; (4) any additional, more stringent requirements needed in the lease, permit, or license pursuant to § 3041.1(e) of this subpart.

(b) If it is recommended that a specific area within the applied for lands be excluded from a lease, permit, or license, or modification thereof, the report shall set forth with reasonable specificity the facts upon which such recommendation is based.

§ 3041.2–2 Obligations and standards of performance.

(a) Any operator who accepts a coal lease, permit, or license shal lcomply with, and be bound by, the general obligations and standards of performance set forth in this section and such additional and more stringent specific requirements as may be contained in the terms and conditions of such lease, permit or license.

(b) If the appropriate authorized officer of the BLM determines that an approved exploration or mining plan should be required to be revised or supplemented to adjust to changed conditions or to correct oversights, he may propose such revision or supplement to the Mining Supervisor for action pursuant to the provisions of 30 CFR Part 211 relating to changes in plans.

(c) Surface coal mining operations shall be conducted so as to assure the extraction of the coal resource to the maximum extent possible, taking into account existing technology, commercially available equipment, the cost of production, and the quality and quantity of the coal resource, so that future environmental disturbance through the resumption of mining will be minimized.

(d) The operator shall, in accordance with the terms and conditions of the lease, permit, or license (1) take visual resources identified by the Federal surface managing agency into account in the planning, design, location, and construction of facilities on the affected lands; and (2) take such action as may be needed to minimize, control, or prevent damage to the recreational, cultural, scientific, historical and known or suspected archeological and paleontological values of the land contained therein.

(e) The following performance standards shall be applicable to the surface effects of underground mining.

(1) Each operator of an underground coal mine shall adopt, measures consistent with feasible known technology in order to prevent or, in those instances where the mining method used requires planned subsidence in a predictable and controlled manner, control subsidence; maximize mine stability; and maintain the value and use of surface lands.

(2) Where pillars or panels are not removed and controlled subsidence is not part of the mining plan, pillars or panels of adequate dimensions shall be left to assure stability giving due consideration of the thickness and strength characteristics of the coal beds and of the strata above and immediately below the coal bed.

(f) The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling, and reclamation operations on the surface of lands subject to this subpart:

(1) The operator shall reclaim affected lands pursuant to his approved plan, as contemporaneously as practicable with operations, to a condition capable of supporting all practicable uses which such lands were capable of supporting immediately prior to any exploration or mining, or equal or better uses that have been approved in accordance with this subpart.

(2) The operator shall replace overburden and waste materials in the mined area by backfilling (compacting, where necessary, to ensure stability or to prevent leaching of toxic materials), grading or other means, so as to cover all acid-forming or other toxic materials and eliminate highwalls and spoil piles and restore the approximate original contour. Where the thickness of the coal deposits relative to the volume of overburden is large and where the overburden and other spoil and waste materials are either insufficient or more than sufficient to restore the approximate original contour, the operator shall, in order to provide adequate drainage, backfill, grade, and where necessary, compact, using all available overburden or spoil material, to obtain the lowest practicable grade, which shall in any event be less than the angle of repose. Excess overburden or other spoil material shall be fully reclaimed in accordance with the requirements of this Subpart. Variance from the requirements of paragraphs (1) and (2) of this subsection may be allowed in an approved mining plan if the Director of the Geological Survey, with the concurrence of the Director of the Bureau of Land Management or the comparable appropriate authorized officer, determines that unusual physical conditions at the site, such as steeply dipping coal beds or multiple seam mining, exist, and such conditions make backfilling pursuant to such requirements impracticable as a result of the volume of material excavated or environmentally undesirable as a result of the duration of the operation.

(3) The operator shall stabilize and protect all surface areas, including spoil piles, affected by the coal mining and reclamation operation, to effectively control slides, erosion, subsidence, and attendant air and water pollution.

(4) The operator shall remove topsoil separately, for replacement on the backfill area, and if not so utilized immediately, segregate it in a separate pile from other spoil. When topsoil is not to be replaced on a backfill area within a time short enough to avoid deterioration, the operator shall establish and maintain an approved quick growing vegetative cover or employ other approved measures so that the topsoil is protected from wind and water erosion and establishment of noxious plan species, and is in a condition for sustaining vegetation when used during reclamation. If topsoil is of insufficient quantity or of poor quality for sustaining vegetation, and if other excavated materials can be shown to be more suitable for revegetation, then the operator may be authorized in the approved plan to remove, segregate, protect, and utilize in a like manner such other materials.

(5) The operator shall ensure that water impoundments, water retention facilities, dams, or settling ponds have been set forth in an approved plan, and ensure that:

(i) Any such facility is adequate for its intended purposes and the quality and quantity of impounded water will be suitable for its intended use.

(ii) Any such facility is designed, located, built, used, and maintained in accordance with sound engineering standards and practices and applicable Federal and State laws and regulations, to ensure that such facilities will have necessary stability with an adequate margin of safety.

(iii) Final grading will provide adequate safety and access for proposed or reasonably anticipated water users.

(iv) Such facilities will not have a significant adverse impact on the water resources utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses, provided, however, that this paragraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(v) No mine or processing waste is used in the construction of such facilities unless authorized in the approved plan.

(6) The operator shall cover or plug all auger mine holes with noncombustible and, where necessary to minimize control or prevent harmful drainage, impervious material.

(7) The operator shall utilize the best practicable commercially available technology to minimize, control or prevent disturbances of the prevailing quality, quantity and flow of water in surface and ground water systems, and of the prevailing erosion and deposition conditions at the mine site and in affected offsite areas, both during and after coal mining operations and reclamation, by:

(i) Controlling acid or toxic drainage and the adverse consequences thereof by such measures as, but not limited to, diverting surface runoff water away from disturbed areas; excluding oxygen from, or restricting the flow of water through acid or toxic-producing minerals; treating drainage to reduce acid or toxic content which adversely affects downstream water upon being released to water courses; and casing, sealing, or otherwise treating drill holes, shafts, and wells to keep acid or toxic drainage from entering ground and surface waters.

(ii) Conducting surface mining operations so as to minimize, control, or prevent (A) contributions of suspended solids to streamflow or runoff outside the mining site above natural levels under seasonal flow conditions as measured for a period and at sites determined by the Mining Supervisor, in consultation with

the appropriate authorized officer, and (B) except where specifically authorized in an approved plan, deepening or enlarging of stream channels where operations include the discharge of water from mines.

(iii) Removing or modifying siltation structures after disturbed areas are revegetated and stabilized unless otherwise authorized by the Mining Supervisor in an approved plan, with the concurrence of the appropriate authorized officer, provided, however, that any siltation structure retaining water shall, in any event, be subject to the requirements of § 3041.2–2(f)(5) of this subpart.

(iv) Protecting the quality, quantity and flow, including depth of flow, of upstream and downstream surface and ground water resources of those valley floors which provide water sources that support significant vegetation or supply significant quantities of water for other purposes, by such measures as, but not limited to, relocating and maintaining the gradients of stream, avoiding mining installing, reestablishing or replacing aquifiers or aquicludes, and replacing soils, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(8) The operator shall: (i) Treat or dispose of all rubbish and noxious substances in a manner designed to minimize, control or prevent air and water pollution and the hazards of ignition and combustion.

(ii) Dispose of all waste resulting from the mining and preparation of coal in a manner designed to minimize, control or prevent air and water pollution and hazards of ignition and combustion. Where surface disposal of solid wastes in areas other than the mine workings or other excavations has been authorized in the approved plan, stabilize such waste including, where necessary, constructing waste piles in compacted layers with the use of incombustible and impervious materials; shape waste piles to be compatible with the natural surroundings and terrain; cover with topsoil or other suitable material in accordance with paragraph (f)(4) of this section; and revegetate in accordance with paragraph (f)(13) of this Section. All impoundments of liquid wastes shall comply with the requirements of subparagraph (f)(5) of this Section. Waste containing coal in such quantity that it may be later separated from the waste by washing or other means shall be stored separately.

(9) Except as provided herein, the operator shall not conduct excavation, drilling, or blasting operations within 200 feet of an active or abandoned underground mine. Where it can be established by certified maps or inspection of such an underground mine that such activities may be conducted without danger of interference with, or penetration of, an underground mine, they may be authorized in an approved plan to be conducted up to but not less than 25 feet from such underground mine provided that nothing in this paragraph shall preclude daylighting or similar surface coal mining activities intended to improve resource recovery, abate water pollution, or eliminate public hazards resulting from such underground mines.

(10) To prevent personal injury or damage to public and private property, the operator shall use explosives only in accordance with all applicable Federal and State laws and an approved plan and shall:

(i) Provide adequate advance written notice, by publication and/or posting of planned blasting schedules, to local governments and to residents who might be affected by the use of such explosives, and maintain a log of the magnitudes and times of blasts for a period of at least two years.

(ii) Limit the size, timing, and frequency of blasts, as determined by the physical conditions of the site.

(11) The operator shall design to applicable standards, construct, maintain and, when no longer necessary and unless otherwise authorized in an approved plan, remove, all roads, pipelines, powerlines and similar utility access facilities and associated bridges, culverts and ditches, into and across the site of operations, in a manner that will minimize, control or prevent erosion and siltation, fugitive dust, pollution of water, damage to fish or wildlife or their habitat and public or private property.

(12)(i) Roads shall not be surfaced with any acid or toxic producing material. No access roads will be constructed unless (A) the operator shall have first submitted a surveyed profile accompanied by typical cross-sections of the road and ditches, showing pipe, entrance, exit channels and sediment control structures and other structures or configurations to be used on the road to meet performance standards and (B) the location shall have been marked and inspected, and approved by the Mining Supervisor, in consultation with the appropriate authorized officer and the surface owner, if other than the United States.

(ii) No access road shall be constructed in a stream, nor shall any stream or stream bed be used as an access road. Insofar as possible, all roads shall be located on benches, ridges, and flatter slopes to enhance stability and minimize disturbance. Stream fordings shall be avoided and the normal seasonal flow and the normal seasonal sediment load shall not be detrimentally affected by access roads in a continuous fashion that results in harm to the aquatic ecosystem. Provided, however, that nothing in this subparagraph shall be construed to prohibit relocation or alteration of such beds or channels pursuant to the provisions of this subpart and as set forth in an approved plan.

(13)(i) The operator shall, except where other reclamation based upon post-mining land use and not requiring revegetation pursuant to the requirements of this section is expressly provided for in an approved plan, establish on regraded areas and all other affected lands a diverse vegetative cover, native to the area and capable of regeneration and plan succession at least equal in density and permanence to the natural vegetation provided, however, that the Mining Supervisor, with the concurrence of the appropriate authorized officer may allow the use of approved mixtures of introduced or native species where preferable to achieve quick cover or assure successful revegetation. In approving such mixture, preference will be given to non-toxious species.

(ii) The operator's responsibility and liability under his performance bond for revegetation of each planting area shall extend until such time as the appropriate authorized officer, in consultation with the Mining Supervisor and the surface owner, if other than the United States, determines that successful revegetation in compliance with paragraph (i) of this subsection has occurred, provided, however, that this period shall extend for a minimum of five full years after the first planting, and for a total period of liability not to exceed 10 years from the original planting; and further provided that,

(A) where the appropriate officer, in consultation with the Mining Supervisor, determines that natural conditions such as annual precipitation, soil characteristics and native vegetation are stable and favor rapid revegetation, and that revegetation pursuant to subparagraph (i) of this subsection is likely to occur before the expiration of such minimum period, he may specify in the lease, permit, or license that such minimum period will not apply with respect to some or all of the lands included in such lease, permit or license; and

(B) where during any such minimum period such authorized officer, in consultation with the Mining Supervisor and the surface owner, if other than the United States, determines that natural conditions such as annual precipitation and soil characteristics are sufficiently unstable so as to favor only slow and uncertain revegetation, he may recommend to the Mining Supervisor that the liability of the operator be extended for a period of up to five years beyond the period initially established, if the financial liability that would be incurred by the operator as a result is reasonably commensurate with the increased probability of successful revegetation.

(iii) During the relevant period of liability, the Mining Supervisor and the appropriate authorized officer shall jointly inspect and evaluate the revegetated areas pursuant to subsection 3041.6(b)(2) hereof.

(14) The operator shall: (i) Except as provided in subparagraph (ii) hereof, allow public access to and upon Federal lands subject to his lease, permit, or license for all lawful and proper purposes, except where such access would unduly interfere with his authorized use.

(ii) Regulate public access, vehicular traffic, and wildlife or livestock grazing in all areas of active operations, including lands undergoing reclamation, in order to protect the public, wildlife and livestock from hazards associated with

such operations, and to protect revegetated areas from unplanned and uncontrolled grazing. For this purpose, the operator shall provide warning signs, fencing, flagmen, barricades, and other safety and protective measures as may be necessary.

(15) Coal storage areas shall be designed and maintained so as to eliminate fire hazards from spontaneous combustion and other accidental ignition. If a coal seam exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited during the term of a lease, the operator shall immediately take all necessary steps to extinguish the fire.

(16) Upon completion or temporary or permanent abandonment of mining operations in all or any part of a strip pit, the face of the coal shall be covered with noncombustible material that will effectively protect the coal bed from becoming ignited.

(17) The driving of any underground openings by auger or other methods from any strip pit shall not be undertaken except as specifically approved by the Mining Supervisor, in an approved plan.

§ 3041.3 Compliance or performance bond.

(a) The provisions of subpart 3504 of this Chapter are hereby made applicable to this subpart. In addition each compliance bond will be conditioned upon faithful compliance with the regulations in this subpart and any additional terms and conditions of the lease, permit, or license.

(b) Prior to issuing a lease, permit, or license, the authorized officer, after consultation with the Mining Supervisor, shall ensure that the amount of the compliance bond or bonds to be furnished is sufficient to ensure reclamation in accordance with the performance and reclamation standards in § 3041.2–2, and with the terms and conditions of the lease, permit, or license.

(c) An application for a lease, permit, or license may be denied any applicant or offeror who has previously forfeited a bond because of failure to comply with an approved plan unless the affected lands covered by such plan have been reclaimed without cost to the Federal Government. Nothing in this paragraph shall be deemed to modify or limit any discretionary authority of the authorized officer of the BLM otherwise to deny for cause any application for a lease, permit, or license.

(d) Once a lease, permit, or license has been issued the authorized officer, after consulting with and receiving the recommendation of the Mining Supervisor, shall take such action as may be necessary to increase or to release in whole or in part any compliance bond or bonds so that the amount of the compliance bond or bonds will at all times be sufficient to cover the estimated costs of completion of the remaining reclamation requirements of the approved plan and of the terms and conditions of the lease, permit, or license.

§ 3041.4 Procedures and public participation.

(a) Written findings. Except as may be otherwise expressly set forth in this subpart, decisions and determinations of any appropriate authorized officer acting pursuant to this subpart or to 30 CFR Part 211 with respect to issuance of leases, approval of mining plans or modifications thereof, and abandonment of operations shall be in writing, shall set forth with reasonable specificity the facts and the rationale upon which such decisions or determinations are based, and shall be available for public inspection during normal business hours at the offices of such officer.

(b) Availability of documents. Any application for a lease, permit, or license, together with the proposed terms, conditions, and special stipulations and any preliminary data submitted under § 3041.1–2 and reports made pursuant to § 3041.2 of this subpart shall be available for public inspection in the appropriate BLM office. To allow for such public inspection, a notice of the availability of any such documents shall be prepared by the appropriate officer of the BLM and promptly posted at his office and mailed to the surface owner, if other than the United States, to appropriate Federal and State agencies, and to the clerk or other appropriate officer in the county in which the proposed operation is located for posting or publication in accordance with the procedures of that office. No action with respect to such documents shall be taken for a period of 30 days after such posting and mailing. A copy of such notice shall be published by the applicant in a local newspaper of general circulation in the locality of the proposed operation at least once a week for four consecutive weeks.

(c) Public participation. (1) Upon the timely written request to the appropriate authorized officer of any person having an interest which is or may be adversely affected, a public meeting shall be conducted prior to issuance of a lease subject to the provisions of these regulations or determination of any specific terms and conditions thereof. A public meeting may be conducted prior to approval of final abandonment, including release of bonds, of any operation or portion thereof.

(2) Prior to the making of any decision or the taking of any action described in subparagraph (1) hereof, a notice of availability of such proposed decision or action shall be published in a newspaper of general circulation in the geographical area involved at least once in each of two consecutive weeks. In addition, not less than 20 days prior to the making of any such decision such notice shall be posed at the appropriate State or regional offices of the Bureau of Land Management and the Geological Survey, mailed to the operator, to all appropriate Federal and State agencies, including all agencies whose concurrence or consultation is sought or required, and to the surface owner if other than the United States; and published in the FEDERAL REGISTER. Such notice shall set a reasonable time period, not less than 20 days from the date of publication in the FEDERAL REGISTER, within which any person having an interest which is or may be adversely affected may, in writing, request a public meeting thereon.

(3) A complete transcript of any such public meeting, including any written comments submitted for the record, shall be kept and maintained available to the public during normal business hours at the appropriate Federal office under whose auspices such meeting is conducted, and shall be furnished at cost to any interested party. In making any decision or taking any action subject to such public meeting, the appropriate officer shall take into account all testimony submitted at such meeting, including any written comments submitted for the record. All such decisions and actions shall be subject to appeal pursuant to the provisions of Part 1850 of this Title.

(4) The public meeting requirements of paragraph (c) (1) of this section shall be deemed to have been satisfied if (a) a public hearing has been conducted upon an environmental statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, or (b) public meetings in connection with a proposed Bureau of Land Management land use plan covering the affected lands, or in connection with selection of tracts for coal leasing under the Bureau's Energy Minerals Activity Recommendation System (EMARS) have been conducted, and provided that during such hearing or public meetings, all major issues and proposed terms and conditions have been considered, and with respect to which hearing or public meeting all notice requirements of this section have been met.

§ 3041.5 Completion of operations and abandonment.

(a) Grading and backfilling. Upon completion of backfilling and grading as required by the approved plan and prior to replacing topsoil and revegetation, the operator shall submit a report thereon, in duplicate, to the Mining Supervisor and request inspection for approval. Whenever it is determined by such inspection that the backfilling and grading has met the requirements of the approved plan, the Mining Supervisor shall recommend to the appropriate authorized officer release of an appropriate amount of the compliance bond for the area satisfactorily backfilled and graded.

(b) Temporary abandonment. In areas in which there are no current operations, but operations are to be resumed under an approved plan, the operator shall substantially backfill, fence, protect, or otherwise effectively close all surface openings, auger holes, areas prone to subsidence, and surface facilities or workings which are a hazard to people or animals. Conspicuous signs shall be posted prohibiting entrance of unauthorized persons. All such protective

measures shall be maintained in a secure condition until such operations are resumed or permanently abandoned.

(c) Permanent abandonment. Before permanent abondonment of exploration or mining operations, all openings and excavations, including water discharge points, shall be closed or backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved plan. Drill holes, trenches, and other excavations for exploration, development or prospecting shall be abandoned in such a manner as to protect the surface and not to endanger any present or future underground operations or any deposit of oil, gas, other mineral resources, or ground water. Methods of abandonment shall be approved in advance by the Mining Supervisor in an approved plan, and may include backfilling, regrading, revegetation, cementing, and capped casing, or combinations of these, or other methods. Reclamation and clean-up of surface areas around and near permanently abandoned underground or surface mines, including, except where otherwise expressly provided in an approved plan, removal of equipment and structures related to the mining operation, shall commence without delay following cessation of mining operations. Areas affected by access roads will be graded, drained, and revegetated in accordance with the approved Mining Plan and therein approved post mining land use prior to bond release. In the event that access or haul roads are intended to remain after abandonment of the operation, pursuant to § 3041.2–2(f)(11) of this subpart, they must be designed and constructed so as to be permanently stabilized using adequate drains, water barriers, and other practices.

(d) Notice of abandonments release of bond. (1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall submit to the Mining Supervisor, in duplicate, a notice of his intention to cease or abandon operations, together with a statement of the exact number of acres affected by his operations, the extent and kind of reclamation accomplished, and a statement as to the structures and other facilities that are to be removed from or remain on the leased, permitted, or licensed lands.

(2) Upon receipt of such notice, the Mining Supervisor and the appropriate authorized officer or officers shall promptly make a joint inspection to determine whether all operations have been completed in accordance with the terms and conditions of all leases, permits, and licenses, and with the requirements of approved operating plan. Where the operator has complied with all such terms, conditions and requirements and the regulations of this subpart, the Mining Supervisor shall recommend to the appropriate authorized officer that the appropriate period of bonded liability be terminated.

(3) When the surface of lands in a lease, permit, or license is not owned by the United States, the Mining Supervisor shall notify the surface owner and solicit and take into account his comments before recommending to the appropriate authorized officer that the period of such bond liability be terminated.

§ 3041.6 Reports.

(a) Operations. The operator shall file with the Mining Supervisor, within 30 days after the end of each calendar year, and within 30 days after any temporary or permanent abandonment of operations, a report, in duplicate, containing the following with respect to his operations or the operations subject to such abandonment.

(1) Serial number of the lease, permit, or license and a description of the lands affected by operations.

(2) The number of acres disturbed and the number of acres reclaimed, including areas on which revegetation is being conducted.

(3) A description of the reclamation work remaining to be done on lands disturbed.

(b) Revegetation. (1) The operator shall file a report, in duplicate with the Mining Supervisor within 30 days after each planting is completed. The report shall:

(i) Identify the lease, permit, or license.

(ii) Show the types of planting or seeding, including mixtures and amounts.

(iii) Show the date of planting or seeding.

(iv) Identify or describe the planted or seeded lands.

(v) Describe any surface manipulation, mulching, fertilization, and irrigation procedures, if any, and contain such other information as may be considered relevant.

(2) The Mining Supervisor and the authorized officer of the Federal surface managing agency shall, as soon as possible after each full growing season, jointly inspect and evaluate the revegetated areas to determine, in consultation with the surface owner if other than the United States, whether satisfactory vegetative growth has been established, or whether additional revegetation efforts should be ordered pursuant to 30 CFR § 211.62(b)(2).

§ 3041.7 Notice of noncompliance: Revocation.

(a) The appropriate authorized officer and the Mining Supervisor shall have the right to enter upon the lands subject to this subpart under lease, permit, or license, at any reasonable time.

(b) If an appropriate authorized officer discovers that an operator is conducting on lands subject to this subpart activities which are not in compliance with the requirements of a lease, permit, or license, applicable regulations, or an approved plan and such activities do not threaten immediate and serious damage to the environment, resources, or the health and safety of the public, such authorized officer shall or, in the case of an appropriate authorized officer of any Federal surface managing agency not in the Department of the Interior, may refer the matter to the Mining Supervisor for remedial action pursuant to 30 CFR 211.72(a).

(c) If an appropriate authorized officer discovers that an operator is conducting on lands subject to this subpart activities which are not in compliance with the requirements of a lease, permit, or license, applicable regulations or an approved plan and such activities threaten immediate and serious damage to the environment, resources, or the health and safety of the public, and the Mining Supervisor is not available for appropriate remedial action pursuant to 30 CFR 211.72(c), such authorized officer may order the immediate cessation of such activities and shall promptly notify the Mining Supervisor. Upon such notification, the Mining Supervisor shall order immediate remedial action pursuant to 30 CFR 211.72(c).

(d) Failure to the operator to take action in accordance with an order for cessation of activities issued pursuant to paragraph (c) of this section, or with a written notice of noncompliance issued by the Mining Supervisor in accordance with the provisions of 30 CFR 211.72 shall be grounds for suspension of the operation and for possible cancellation of the lease, permit, or license in accordance with the regulations in 43 CFR 3500 of this Chapter.

§ 3041.8 Variances.

(a) Variances from compliance with the performance standards set forth in this subpart may be allowed as part of an approved mining plan under either of the following circumstances:

(1) Where an applicant states in a proposed plan or modification thereof that he cannot meet a performance standard specified in paragraphs 3041.2–2(f)(2), (4), (6), (11), (12) or (13) of this subpart, he may request a variance from such performance standard where such variance would be compatible with the approved post mining land use, and shall support his request with appropriate information demonstrating the need therefor. The Mining Supervisor, after consultation with the appropriate authorized officer and the surface owner, if other than the United States, may approve or disapprove such variance, and shall advise the applicant and approve or disapprove the proposed plan or modification accordingly;

(2) Where an applicant proposes a post-mining land use that is substantially different from the land use immediately prior to any exploration and mining, the Mining Supervisor, with the concurrence of the appropriate authorized officer and after consultation with the surface owner, if other than the United States, may approve a mining plan containing variances from the performance standards of 30 CFR 211 and § 3041.2–2(f) hereof, provided that:

(A) After consultation with the appropriate land use planning agencies, if any, the proposed development is deemed to constitute an equal or better economic or public use of the affected land, as compared with the premining use.

(B) The granting of such variance is essential to achieving the proposed post mining land use.

(C) The applicant presents specific plans for the proposed post mining land use and appropriate assurances that such use will be:

(i) Compatible with adjacent land uses;

(ii) Supported by commitments and assured of investment from public agencies where appropriate;

(iii) Practicable with respect to private financial capability for completion of the proposed development;

(iv) Planned pursuant to a schedule made part of the proposed mining plan so as to integrate the mining operation and reclamation with the post mining land use;

(v) Designed by qualified personnel in conformance with professional standards in order to assure the stability, drainage, and configuration necessary for the intended use of the site.

(D) To the degree possible and taking into account the subjective nature of the assessment, the applicant has considered the impact of the proposed land use on the aesthetic character of the area by consulting with inhabitants of the area, and utilizing expertise in the landscape and geomorphologic fields.

(b) Any application for a variance pursuant to paragraph (a) of this Section shall demonstrate that any proposed disturbance of land above a highwall will facilitate compliance with the environmental protection and performance standards set forth in this subpart.

(c) Any application for variance pursuant to paragraph (a) of this Section which proposes to place spoil or other material on the downslope below the bench used to mine an area classed as "steep slope," shall demonstrate to the satisfaction of Mining Supervisor that the permanent or temporary sediment loads in the receiving drainages and reclamation to the post-mining land use will not have significant adverse effects upon the aesthetics of the area.

(d) All variances granted pursuant to this Section shall be reviewed by the Mining Supervisor and the appropriate authorized officer not more than three years after granting of the variance and incorporation in the mining plan, to ensure that the development is proceeding in accordance with the terms of the approved plan and the terms and conditions of any lease, permit, or license.

(e) An operator may apply for a variance pursuant to the provisions of paragraph (a) of this Section only by submitting a new or revised mining plan to the Mining Supervisor for approval pursuant to the provisions of 30 CFR 211. Minor changes of operations which do not involve violations of the performance standards set forth in this subpart, and the granting of a variance pursuant to the description in § 3041.2–2(a)(2) of this subpart, will not be deemed to be subject to or require compliance with, the provisions of this Section.

(f) If the Director of the GS determines that a decision to grant a variance would constitute a major Federal action significantly affecting the quality of the human environment, and that an environmental impact statement as required by section 102(2)(C) of the National Environmental Policy Act has not been prepared with respect thereto, such a statement shall be prepared. If the Mining Supervisor grants a variance pursuant to this section, he shall notify the appropriate land managing agency or land planning agency for the purpose of determining whether any changes may, as a result of such variance, be required in any Management Framework Plan or equivalent land use plan.

Part 211 of 30 CFR is revised to read as follows:

Title 30—Mineral Resources

CHAPTER II—GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

PART 211—COAL MINING OPERATING REGULATIONS

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MAPS AND PLANS

211.10 Exploration and mining plans.
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PROSPECTING AND EXPLORATION OPERATIONS

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RECLAMATION AND PERFORMANCE STANDARDS

211.40 Operating and reclamation standards.
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REPORTS, RECORDS, ROYALTIES AND AUDITS

211.62 Reports.
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INSPECTION, ISSUANCE OF ORDERS, ENFORCEMENT OF ORDERS AND APPEALS

211.70 Inspection.
211.71 Notices and orders.
211.72 Enforcement of orders.
211.73 Appeals.
211.74 Variances.
211.75 Applicability of State law.

§ 211.1 Scope and purpose.

(a) The regulations in this Part shall govern operations for the discovery, testing, development, mining, preparation, and handling of coal under leases, licenses, and permits issued for federally-owned coal, regardless of surface ownership, pursuant to the regulations in 43 CFR Group 3500 and the Alaska Coal Leasing Act of October 20, 1914, as amended (38 Stat. 741; 48 U.S.C. 432–445); and for the reclamation of lands disturbed by such operations. Except as may otherwise be provided in 25 CFR Chapter I, these regulations do not apply to operations for the discovery, testing, development, mining, preparation, and handling of coal in tribal and allotted Indian lands under leases and permits issued under the regulations in 25 CFR Parts 171, 172, and 174.

(b) The purpose of the regulations in this Part is to assure orderly and efficient prospecting, exploration, testing, development, mining, preparation and handling operations, and production practices, without avoidable waste or loss of coal or other mineral resources or damage to coal-bearing or other mineral-bearing formations, and without undue duplication or administrative delay by Federal officers and agents in review, approval or other actions provided for by this Part; to encourage maximum recovery and use of coal resources; to protect the public health and safety and to ensure effective and reasonable regulation of surface coal mining operations in accordance with the requirements hereof, as an appropriate and necessary means to minimize, so far as practicable, the adverse social, economic, and environmental effects of such operations; to require effective reclamation of affected lands as contemporaneously as practicable with coal development; to assure that all such operations which involve significant surface disturbance take place only pursuant to plans approved in advance thereof and only where reclamation of the affected lands to the standards set forth herein is attainable and assured; and to require a proper record and accounting of all coal produced.

(c) The responsibility for enforcement of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742; 30 U.S.C. 801) and the coal mine health and safety regulations contained in Chapter I of this Title is vested in the Mining Enforcement and Safety Administration, Department of the Interior.

(d) The provisions of this Part shall become effective upon the date of publication in the FEDERAL REGISTER as final rulemaking, except as hereinafter provided:

(1) Existing operations. (i) On and after 180 days from the effective date of this Part, the provisions of § 211.40(a) shall apply to all existing operations with respect to lands from which the overburden has not previously been removed, provided, however, that this paragraph shall not be deemed to apply the requirements of § 211.40(a)(1) and (2) hereof to any operation for which a mining plan has been approved on or before the effective date of this Part and for which a variance pursuant to the provisions of § 211.40(a)(2) would be required.

(ii) Except as may be required to comply with the provisions of paragraph (i), all existing operations shall be conducted pursuant to their approved plan. On or before 18 months from the effective date of this Part, the operator of each existing operation shall have ob-

tained the approval of a plan or modification thereof which shall comply with all of the provisions of this Part, provided, however, that if the Director of the Geological Survey determines that a proposed new plan or modification of an existing plan was prepared and submitted in timely fashion, taking into account the complexity of the operation and of the plan or modification involved, but that administrative delay thereafter has prevented approval within the time specified, such time period may be extended for an amount of time equal to the duration of such delay.

(iii) For the purpose of this paragraph, the term "existing operations" shall mean:

(A) All operations for which a plan has been approved on or before the effective date of this Part, and

(B) All operations with respect to which a proposed plan has been submitted to the Department on or before the effective date of this Part, and with respect to which proposed plan the Department has on that date either completed its environmental impact analysis and determined that no environmental impact statement under section 102(2)(C) of the National Environmental Policy Act is necessary, or has determined that such a statement is necessary and has commenced, and expended substantial resources of the Department in the preparation or completion, of such a statement.

(iv) On or before August 16, 1976, the Director of the Geological Survey shall review all proposed plans which have been submitted to the Department on or before the effective date of this Part and after consultation with appropriate Federal surface managing agencies, publish in the FEDERAL REGISTER a list which shall identify each such proposed plan and whether it will be considered to cover a new or existing operation.

(2) All operations or proposed operations not included in the definition of "existing operations" in the preceding paragraph shall be considered to be new operations, and shall be subject to the provisions of this Part upon the effective date hereof.

(3) The provisions of § 211.72(c) shall apply immediately upon the effective date of this Part.

(e) To the maximum extent possible, all environmental impact statements and all approvals of plans covering existing operations which are pending before the Department on the effective date of this Part shall take into account and shall reflect and implement the provisions and purposes hereof, provided, however, that nothing in this subparagraph shall be construed to relieve any operator of the obligation imposed by paragraph (d)(1)(i) above.

(f) Nothing in this Part shall be deemed or construed to increase or diminish any rights not in conflict with Federal law held by any person, including any surface owner or entryman, arising under the laws of any State and relating to the giving or withholding of consent to, or consultation in connection with, entry to any land for the purpose of conducting operations subject to this Part.

§ 211.2 Definitions.

As used in this Part, the following terms shall have the following meanings:

(a) *Acid or toxic producing materials* means natural or disturbed earth materials having chemical and physical characteristics that, under mining or post mining conditions of drainage, exposure, or other processes, may produce effluents that contain chemical constituents, such as acids, bases, or metallic compounds, in sufficient concentrations to individually or in combination adversely affect the environment.

(b) *Affected lands* means any lands affected or to be affected by exploration, development, and mining operations and the construction of facilities necessary and related to such operations.

(c) *Approximate original contour* means the surface configuration achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining although not necessarily the original elevation) and blends into and complements the drainage pattern and topography of the surrounding terrain.

(d) *Area of operations* means that area of the leased, permitted, or licensed lands which is required for exploration, development, producing, and processing operations, including all related surface structures and facilities, and which is delineated on a map or plat that is made a part of the approved exploration or mining plan.

(e) *Authorized officer* means any officer designated by any Federal agency having administrative jurisdiction over lands or minerals to exercise its authority in matters relating to the provisions of this Part.

(f) *Coal* includes coal of all ranks from lignite to anthracite.

(g) *Compaction* means the reduction of porous spaces among the particles of soil and rock generally caused by running heavy equipment over the earth materials, as in the process of leveling the overburden material on strip mine spoil piles or banks, for the purpose of increasing the bearing capacity and stability of the earth materials.

(h) *Conservation Manager* means a Conservation Manager, Conservation Division, Geological Survey.

(i) *Contemporaneously as practicable* means, with respect to reclamation of mined or otherwise disturbed areas, the commencement, conduct, and completion of reclamation activity as soon after disturbance as possible, without undue physical interference with ongoing operations, leaving a minimum of land unreclaimed, consistent with the objectives of environmental protection set forth in this Part.

(j) *Daylighting* is a term used to define the surface mining procedure for exposing an underground mined area to remove remaining coal.

(k) *Director* means the Director of the Geological Survey, U.S. Department of the Interior.

(l) *Division Chief* means the Chief of the Conservation Division, Geological Survey.

(m) *Exploration* means the detailed investigation and acquisition of data pertaining to a mineral deposit, including activities for identifying regions or specific areas in which deposits are most likely to occur, and activities used to establish the nature of a coal deposit preparatory to mining.

(n) *Exploration plan* means a detailed plan submitted to the Mining Supervisor for approval before exploration operations commence showing the location and type of exploration work to be conducted, environmental protection procedures, roads, and reclamation procedures to be followed upon completion of such operations.

(o) *General Coal Mining Order* means a formal numbered order issued by the Mining Supervisor, with the prior approval of the Division Chief, and published, after opportunity for public comment, in the FEDERAL REGISTER, which implements the regulations in this Part and applies to coal mining and related operations in a specified geographic area.

(p) *Impoundment* means an artificially built, dammed, or excavated place for the retention of water or sediments. A permanent impoundment is one that is intended to remain after final abandonment of the operation, and shall be identified as such in an approved plan.

(q) *Leased lands, leased premises, or leased tract* means lands embraced within a coal lease and subject to the regulations in this Part.

(r) *Lessee* means any person or persons, partnership, association, corporation, or municipality to whom a coal lease is issued, subject to the regulations in this Part, or an assignee of such lease under an approved assignment.

(s) *Licensee* means any individual, association of individuals, or municipality to whom a coal license is issued pursuant to the provisions of section 208 of Title 30 of the United States Code.

(t) *Logical mining unit* means an area of land designated as such by the Geological Survey pursuant to applicable Departmental regulations.

(u) *Method of operation* means the method and manner by which any activities are performed by the operator, as described in an exploration or mining plan.

(v) *Mine* means an underground or surface excavation and the surface or underground support facilities that contribute directly or indirectly to coal mining, preparation, and handling.

(w) *Mining plan* means a detailed plan for development of the coal resource submitted to the Mining Supervisor for approval prior to commencement of any mining operation, showing the proposed location, method, and extent of mining and all related activities necessary and incidental to such operation, including steps to be taken to reclaim disturbed areas, to mitigate adverse impacts, and to otherwise meet the performance standards and requirements set forth in this Part.

(x) *Mining Supervisor* means the Area Mining Supervisor, Conservation Division, Geological Survey, or District Mining Supervisor or other subordinate acting under his direction.

(y) *Notice of Availability* means a formal notification, by the appropriate Federal officer, to appropriate Federal, State, and local agencies and interested individuals or groups of individuals, of the availability for inspection of information, data, proposed plans or modifications thereof, pending decisions and other documents subject to such notice. Any such notice shall include the nature of the information, data, plan or modification, decision or other document involved; the name and mailing address of any applicant, the nature, location (county, township, range, and section), duration and a brief description of any proposed operations; the date upon which any document involved was received and the date upon or after which any proposed action might be taken; and, when appropriate, a specific time limit for public review, comment, or request for any Departmental action, including the holding of any public meeting. For the purpose of ensuring appropriate distribution of such notices, there shall be maintained at each office of a Mining Supervisor or authorized officer of the Department of the Interior a mailing list which shall consist of the names and mailing addresses of all appropriate Federal, State, or local agencies and any individuals or groups of individuals who have requested in writing to be included on such lists. All notices of availability shall be mailed to such agencies, individuals, or groups at the addresses indicated on such lists.

(z) *Notice of noncompliance* means a written notice of operator noncompliance issued pursuant to § 211.72 of this Part.

(aa) *Operator* means a lessee, permittee, or licensee, or one conducting operations on lands under the authority of the lessee, permittee, or licensee.

(bb) *Overburden* means the earth, soil, rock, and other natural materials which lie above the coal being mined.

(cc) *Permanent abandonment* means the cessation of exploration or mining or other operations set forth in an approved plan on all or any portion of lands covered by a lease, permit, or license and subject to the provisions of this Part, where it is the intent of the operator not to continue operations at the mine or portion thereof.

(dd) *Permit lands* means lands embraced within a coal prospecting or other permit and subject to the regulations in this Part.

(ee) *Permittee* means any person or persons, partnership, association, corporation, or municipality to whom a coal prospecting or other permit subject to the regulations in this Part is issued, or an approved assignee of such permit.

(ff) *Pollution* means man-made or man-induced adverse alteration of the chemical, physical, biological, and radiological integrity of land, water, or air, which reduces, or has the potential of reducing, the beneficial uses of these resources.

(gg) *Post mining land use* means that use which will be made of the affected lands after mining and reclamation is completed and which is specified in a mining or exploration plan approved pursuant to this Part.

(hh) *Preparation* means any crushing, sizing, cleaning, drying, mixing, or other processing of coal to prepare it for market which is conducted on lands subject to this Part.

(ii) *Reclamation* means the process of returning affected lands to a stable condition and form consistent with their premining productivity and use, or other approved post mining land use.

(jj) *Road* means any open way for passage or travel upon which to transport people, equipment, materials, or coal, which is constructed, improved, or maintained by the operator and which is used to service the pit, bench, underground mine workings, loading facilities, or exploration activities.

(kk) *Secretary* means the Secretary of the Interior.

(ll) *Significant vegetation* means farm crops, including grasses and forbs, that are integral parts of agriculture or ranching operations and the natural vegetation of forests or meadows with significant recreational, watershed, agricultural, or wildlife habitat value.

(mm) *Spoil* means soil, rock, and other earth materials that are broken, moved, dumped, or otherwise significantly disturbed during surface coal mining operations subject to this Part.

(nn) *Subsidence* means a lowering of surface elevations over an underground mine caused by loss of support and subsequent caving of strata lying above the mine.

(oo) *Surface owner* means an entryman, or a person or persons who hold legal title to the land surface.

(pp) *Topsoil* means natural earth materials at or vertically adjacent to the land surface with physical and chemical characteristics suitable for support of vegetation.

(qq) *Valley floors* means the channelways, floodplains, and adjacent low terraces of streams that are flooded during periods of high flow and that are underlain by unconsolidated stream-laid deposits. Excluded are higher terraces and slopes underlain by colluvial and other surficial deposits normally occurring along valley margins.

(rr) *Waste* means solid or liquid refuse, rubbish, or other valueless material which is produced by or in connection with coal mining operations, including exploration, production, development, preparation and other related activities, and which has no useful purpose in connection with any remaining operations.

§ 211.3 Responsibilities.

(a) Subject to the supervisory authority of the Secretary, the regulations in this Part shall be administered by the Director, through the Division Chief, the Conservation Manager, and the Mining Supervisor.

(b) The Mining Supervisor is empowered to approve, disapprove, approve upon condition, or require modification of exploration and mining plans pursuant to the provisions of this Part.

(c) The Mining Supervisor is empowered to oversee prospecting, exploration, testing, development, mining, preparation, handling, reclamation, and abandonment operations subject to the provisions of this Part. The Mining Supervisor, in the performance of his duties, is authorized to consult with and solicit the views of other appropriate Federal, State and local agencies including the United States Environmental Protection Agency, and other interested parties, and shall:

(1) *Inspection of operations.* Examine, as frequently as necessary but at least quarterly, the lease, permit, or license lands where operations for the discovery, testing, development, mining, preparation, handling of coal, and reclamation of affected lands, are conducted, or are to be conducted; inspect such operations, for the purpose of determining whether waste or degradation of mineral substances or damage to formations and deposits or non-mineral resources affected by the operations is being minimized, and whether all provisions of applicable laws, regulations and orders, all terms and conditions of leases, permits, or licenses, and all requirements of approved exploration or mining plans are being complied with.

(2) *Compliance.* Require operators to conduct operations subject to this Part in compliance with all provisions of applicable laws, regulations, and orders, all terms and conditions of leases, permits, or licenses, and all requirements of approved exploration or mining plans.

(3) *Reports and recommendations.* Make reports to the Division Chief, through the Conservation Manager, as to the general conditions of lands under lease, permit or license, and the manner in which operations are being conducted and orders are being complied with; and submit information and recommendations for protecting the coal, the coal-bearing formations, other mineral resources, and the non-mineral resources. A copy of all such reports shall be furnished to the operator upon request, and shall be made available for public inspection during normal business hours at the Offices of the Mining Supervisor.

(4) *Manner and form of records, reports and notices.* Prescribe, subject to the approval of the Division Chief, the manner and form in which records of operations, reports, and notices shall be made.

(5) *Records of production; rentals and royalties.* Obtain and check coal production and sales records; determine rental and royalty liability of lessees and permittees; collect and deposit rental and royalty payments; maintain rental and royalty accounts.

(6) *Waiver, suspension, or reduction of rental or minimum royalty.* Act on applications for waiver, suspension, or reduction of rental or minimum royalty filed pursuant to 43 CFR 3503.3–2(d).

(7) *Suspension of operations and production.* Act on applications for suspension of operations or production, or both, filed pursuant to 43 CFR 3503.3–2(e), and terminate, when appropriate, suspensions which have been granted.

(8) *Cessation and abandonment of operations.* Upon receipt of notice of proposed abandonment of operations, or relinquishment of a lease, permit, or license, inspect and determine pursuant to § 211.41(d) hereof whether the operator has completed his operations in accordance with all applicable terms and conditions and whether all rentals and royalties due the lessor have been paid; determine and report to the appropriate authorized officer that the lands have been properly conditioned for abandonment; and recommend that the period of liability under the appropriate bond or bonds be terminated. Before taking any such action, the Mining Supervisor shall consult with and, where required, obtain the concurrence of, the appropriate authorized officer. When the surface of lands in a lease, permit or license is not owned by the United States, the Mining Supervisor shall, in addition, notify the surface owner, and shall solicit and take into account his comments and recommendations.

(9) *Wells or prospect holes.* Prescribe or approve the methods for protecting coal-bearing formations from damage or contamination that might be incurred as a result of any wells or prospect holes drilled to, or through, the coal-bearing formations for any purpose, on lands embraced within a coal lease, permit, or license.

(10) *Trespass.* Report to the appropriate authorized officer any trespass that involves exploration activities or removal of coal.

(11) *Water and air quality.* Inspect operations to determine compliance with air and surface and ground water management and pollution control measures required by the terms and conditions of applicable leases, permits, or licenses, and approved plans, and promptly notify appropriate representatives of other Federal and State agencies in the event of any noncompliance.

(12) *Implementation of regulations.* Issue General Coal Mining Orders and other orders, make determinations, and grant consents and approvals as necessary to implement or assure compliance with the regulations in this Part. Any oral orders, approvals, or consents shall be promptly confirmed in writing.

(13) *Compliance or performance bonds.* Determine whether the total amount of any bond or bonds furnished with respect to operations subject to this Part is at all times adequate to satisfy the estimated costs of completion of remaining reclamation requirements of the approved exploration or mining plan and the terms and conditions of the lease, permit, or license, and notify the appropriate authorized officer in the event of any inadequacies.

(14) *Consultation.* Consult with all appropriate authorized officers before taking any final action to approve an exploration or mining plan or modification thereof or to determine the appropriate amount of a compliance or performance bond or bonds. Any disagreements that cannot be resolved between the Geological Survey and the Bureau of Land Management arising in connection with any such final action or determination will be referred for resolution to the appropriate Assistant Secretaries or to the Under Secretary of the Department of the Interior. Any such disagreements between the Mining Supervisor and the appropriate authorized officer of any Federal surface management agency not in the Department of the Interior will be referred for resolution to comparable higher authorities in each agency, and, if necessary, to the respective Departments, for final resolution.

§ 211.4 General obligations.

(a) All operations involving the discovery, testing, development, mining, preparation and handling of coal, and the reclamation and abandonment of affected lands, shall be conducted pursuant to the obligations and standards of performance set forth in this Part, and shall conform to the provisions of all other applicable laws and regulations, including effluent and emission limitations; the terms and conditions of any applicable lease, permit, or license; the requirements of any applicable approved exploration or mining plan; and any orders issued by the Mining Supervisor.

(b) Coal mining operations shall be conducted so as to ensure the extraction of the coal resource to the maximum extent possible, taking into account existing technology, commercially available equipment, the cost of production, and the quality and quantity of coal resource, so that future environmental disturbance through the resumption of mining will be minimized.

(c) The operator shall take all actions necessary to minimize waste and damage to any remaining coal-bearing formations and other mineral resources.

(d) The operator shall take such action as may be needed to minimize, control, or prevent (1) soil erosion; (2) pollution of air; (3) pollution of surface or ground water; (4) serious diminution of the normal flow of water; (5) adverse impact upon fish and wildlife, especially threatened or endangered species, and their habitat; (6) permanent damage to vegetative growth, crops or timber; (7) creation of unsafe or hazardous conditions; (8) damage to improvements, whether owned by the United States, its permittees, licensees, or lessees, or by others; (9) damage to the recreational, cultural, scientific, historical, and known or suspected archaeological and paleontological values of the land; and (10) adverse impacts upon adjacent land uses. Good housekeeping practices shall be observed at all times. Where any question arises as to the necessity for, or the adequacy of, an action to meet the requirements of this paragraph, the determination of the Mining Supervisor shall be final, subject to the right of appeal as provided in Part 290 of this Title.

(e) The operator shall, when and as required by the Mining Supervisor, monitor water quality to establish data necessary to determine procedures which may be required to minimize, control, or avoid water pollution pursuant to the regulations in this Part.

(f) The operator shall promptly report to the Mining Supervisor by telephone accidents threatening damage to the mine, the lands or other resources, or accidents which could cause air or water pollution, along with corrective actions initiated. Within 30 days after any such accident the operator shall submit to the Mining Supervisor a detailed report of any damage caused by such accident and any corrective actions taken. The obligation set forth in this paragraph shall be in addition to any obligations which may arise pursuant to the Coal Mine Health and Safety Act of 1969 and any regulations promulgated thereunder.

(g) The operator shall submit the reports required by Part 200 of this Chapter, this Part, and any other reports required by the Mining Supervisor.

§ 211.5 Procedures and public participation.

(a) *Written findings.* Except as may be otherwise expressly set forth in this Part, all major decisions and determinations of any Mining Supervisor acting pursuant to this Part or to 43 CFR Subpart 3041 shall be in writing, shall set forth with reasonable specificity the facts and the rationale upon which such decisions or determinations are based, and shall be available for public inspection during normal business hours at the Offices of such Mining Supervisor.

(b) *Availabilty of proposed plans and major modifications of plans.* All proposed mining plans and major modifications thereof, and all modifications containing a request for a variance pursuant to the provisions of this Part, submitted under Section 211.10 of this Part shall be available for public inspection in the office of the appropriate Mining Supervisor. To allow for such public inspection, a notice of the availabilty of any such plan or modification shall be prepared by the Mining Supervisor and promptly posted at his office and mailed to the surface owner, if other than the United States, to appropriate Federal and State agencies, and to the clerk or other appropriate officer in the county in which the proposed operations are located for posting or publication in accordance with the procedures of that office. No action with respect to approval of any such plan or modification shall be taken by the Mining Supervisor for a period of 30 days after such posting and mailing. A copy of such notice shall be published by the operator in a local newspaper of general circulation in the locality of the proposed operation at least once a week for four consecutive weeks.

(c) *Public participation.* (1) Upon the timely written request to the appropriate Mining Supervisor of any person having an interest which is or may be adversely affected, a public meeting shall be con-

ducted with respect to any of the following actions:

(i) Approval of a new or major modification, including any modification containing a request for a variance pursuant to § 211.74 hereof, of a previously approved exploration or mining plan.

(ii) Release of any substantial portion of a bond submitted pursuant to this Part covering obligations of performance or reclamation, including revegetation.

(iii) Aproval of final abandonment of any operation or portion thereof.

(2) Prior to the making of any decision or the taking of any of the actions described in paragraph (1) hereof, a notice of availability of such proposed decision or action shall be published in a newspaper of general circulation in the geographical area involved at least once in each of two consecutive weeks. In addition, not less than 20 days prior to the making of any such decision such notice shall be posted at the appropriate State or regional offices of the Bureau of Land Management and the Geological Survey; mailed to the operator, to all appropriate Federal and State agencies, including all agencies whose concurrence or consultation is sought or required, and to the surface owner if other than the United States; and published in the FEDERAL REGISTER. Such notice shall set a reasonable time period, not less than 20 days from the date of publication in the FEDERAL REGISTER, within which any person having an interest which is or may be adversely affected may, in writing, request a public meeting thereon.

(3) A complete transcript of any such public meeting including any written comments submitted for the record, shall be kept and maintained available to the public during normal business hours at the appropriate Federal office under whose auspices such meeting is conducted, and shall be furnished at cost to any interested party. In making any decision or taking any action subject to any such public meeting, the Mining Supervisor shall take into account all testimony submitted at such meeting, including any written comments submitted for the record. All such decisions or determinations shall be subject to appeal pursuant to the provisions of Part 290 of this Title.

(4) The public meeting requirements of subparagraph (1) of this subsection shall be deemed to have been satisfied if any public meeting, or a public hearing upon an environmental statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, has previously been conducted, in which all major issues and proposed terms and conditions of any such proposed decision or action have been considered, and with respect to which meeting or hearing all notice requirements of this Section have been met.

§ 211.6 Confidentiality.

Geological and geophysical data and information, including maps, that may be used to calculate coal reserves in place, and trade secrets and commercial and financial information obtained from any person under this Part which is identified as privileged or confidential shall not be available for public inspection or made public or disclosed without the consent of the permittee, licensee, lessee or operator, provided however that upon termination of a permit, lease or license, whether by expiration of its terms or otherwise, or final abandonment of operations, resource and reserve data and information that may be used to calculate coal reserves in place submitted and so identified as privileged or confidential may be made available for public inspection or made public or disclosed. As used in this Section, "resource and reserve data and information" means geological and geophysical data and information, including maps, relating to the coal deposits within the permit or leased lands or covered by an approved plan which is abandoned. Requests for inspection of resource and reserve data and information shall be made in accordance with the regulations set forth in 43 CFR Part 2, which implement the Freedom of Information Act, as amended (5 U.S.C. 552).

MAPS AND PLANS

§ 211.10 Exploration and mining plans.

(a) *General.* (1) Before conducting any operation on leased, permitted or licensed lands other than casual use, the operator shall submit to the Mining Supervisor, and obtain his approval of, an exploration or mining plan. Casual use, as used in this subsection means activities which do not cause significant surface disturbance or damage to lands, resources and improvements, such as activities which do not include use of heavy equipment or explosives, or vehicular movement off established roads and trails which causes such disturbance. The operator shall submit seven copies of such plans. All such plans shall be identified by the name, address, and permit or lease number(s) of coal permits or leases included in the plan, and shall show in detail the proposed prospecting, exploration, testing, development, mining, preparation, reclamation, and abandonment operations to be conducted. Exploration or mining plans shall be consistent with and responsive to the requirements of the lease, permit, or license for maximizing recovery of mineral resources, for the protection of non-mineral resources, and for the reclamation of the surface of the lands affected by the operations. The exploration or mining plans shall show that reclamation is an integral part of the proposed operations and will progress as contemporaneously as practicable with such operations, and shall provide sufficient information to substantiate the effectiveness of the proposed reclamation method.

(2) The mining plan shall cover all operations to be conducted on a lease or in a logical mining unit, provided, however, that if the size of a lease or unit or the duration of a proposed operation make it impossible at the time of submission of a proposed plan to set forth in full and complete detail all of the specific information required to be submitted under paragraph (c) hereof with respect to the minor operational details of future operations, a proposed plan may be approved which sets forth only such information as is available at the time of submission, and further provided, that: (i) The duration of the operations as to which full and complete information is set forth shall in no event be less than five years; (ii) the nature of the information as to which full and complete detail is not set forth, and the reasons therefor, shall be identified in the proposed plan and in any related notice of availability of any pending decision thereon; and (iii) the complete and detailed information not submitted shall be promptly submitted and made a part of the plan pursuant to the change in plan provisions of subparagraph (d)(2) hereof as soon as such information becomes available. Nothing in the preceding sentence shall be deemed to allow any operation other than casual use to be conducted in advance of approval of a plan or modification thereof which contains all such specific information with respect to such operation.

(b) *Exploration plans.* An exploration plan shall include all of the following:

(1) Names, addresses, and telephone number of persons responsible for operations under the plan and to whom notices and orders are to be delivered, and the names and addresses of surface owners of record and owners of record of sub-surface minerals, if other than the United States.

(2) A brief description, with maps where applicable, of geologic, water, vegetation, and other physical factors, and the distribution, abundance, and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area.

(3) A narrative description including:

(i) The method of exploration and types of equipment to be used.

(ii) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources, and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations.

(iii) The method for plugging drill holes.

(iv) The measures to be taken for surface reclamation, which shall include as appropriate:

(A) A reclamation schedule.

(B) The method of grading, backfilling, soil stabilization, and compacting and contouring.

(C) The method of soil preparation and fertilizer application.

(D) The type and mixture of shrubs, trees, grasses, forbs, or other vegetation to be planted.

(E) The method of planting, including approximate quantity and spacing.

(4) The estimated timetable for each phase of the work and for final completion of the program.

(5) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural, and drainage features, and the proposed location of drill holes, trenches and roads.

(6) Such other data as may be required by the Mining Supervisor.

(c) *Mining plans.* A mining plan shall include all of the following:

(1) Names, addresses, and telephone numbers of persons responsible for operations under the plan to whom notices and orders are to be delivered, and the names and addresses of surface owners of record, and owners of record of subsurface minerals, if other than the United States.

(2) A description, with maps and tables where appropriate, of the environment within the area where mining is to be conducted. Such description shall include, as a minimum, geologic conditions, including potential geologic hazards; types, depths, and distribution of soils; types, density, productivity, dominance, and distribution of vegetation; climatological data, including a monthly range of temperatures, precipitation and average direction and velocity of prevailing winds; and distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species.

(3) A description of the condition of the land covered by the mining plan, including:

(i) The uses existing at the time the mining plan is submitted for approval, and

(ii) The capability of the land immediately prior to any mining to support alternative uses, giving consideration to soil characteristics, including series, types, depths and distribution, topography, annual precipitation, and vegetative cover, including identification of dominant species.

(4) A description of the use which is proposed to be made of the land following reclamation, which shall take into account all applicable land use plans and programs.

(5) A description of how the proposed postmining land use is to be achieved, including any necessary support activities and facilities.

(6) A description of the proposed operation, including:

(i) The nature and extent of the coal deposit in terms of Btu content, ash, water, sulphur, volatile matter and carbon content, and including estimated recoverable reserves.

(ii) The method of mining, including mining sequence and proposed production rate.

(iii) The nature and timing of measures to be taken for surface reclamation, including as appropriate:

(A) A reclamation schedule, including the estimated timetable for each phase of the work and for final completion of the program.

(B) The method of grading, backfilling, soil stabilization, and compacting and contouring.

(C) The method of soil preparation and fertilizer application.

(D) The type and mixture of shrubs, trees, grasses, forbs, or other vegetation to be planted.

(E) The method of planting, including approximate quantity and spacing.

(iv) The engineering techniques proposed to be used in mining and reclamation, including the design and construction of roads, ditches, water retention facilities, dams, or settling ponds, and the control of water drainage and accumulation.

(v) A list of all major equipment.

(vi) An estimate of the cost per acre of reclamation including a separate breakdown for the cost of backfilling and grading, replacement of topsoil, seeding and/or planting, irrigation, fertilizing, and maintenance.

(vii) The method of operation and measures by which the operator plans to comply with the obligations and requirements set forth in §§ 211.4 and 211.40 of this Part and any special terms and conditions of the lease, permit, or license.

(viii) The anticipated starting and termination dates of each phase of the mining operation and number of acres of land to be affected.

(ix) The steps to be taken to comply with all applicable air and water quality laws and regulations.

(x) The measures for ensuring the maximum practicable recovery of the mineral resource.

(xi) The method of abandonment.

(xii) Logs and analyses of overburden samples of each stratum from a number of drill holes sufficient to obtain a representative sample of the overburden overlying the coal and the stratum immediately below the coal to be mined, which unless specifically authorized by the Mining Supervisor based upon data already known to the Geological Survey or upon the nature of the coal seam and geological inferences which may be drawn therefrom, shall be not less than one hole on each 40 acres. Such logs and analyses shall identify each stratum penetrated, and shall contain an analysis of each such stratum for at least the following: nitrogen, phosphorus, potassium, pH, specific conductance, exchangeable sodium percentage and sodium absorption ratio. Such analyses will be used to determine which materials shall be buried and which materials are suitable for placement near the surface for favorable propagation of vegetation.

(xiii) The hydrology of the area, including quantity and quality of water in surface and ground water systems, water levels and water table measurements, data regarding dissolved and suspended solids under seasonal flow conditions, and an assessment of the probable impacts of the anticipated mining operation upon the hydrology of the area.

(xiv) Plans for protecting oil, gas, and water wells as well as oil, gas, and underground water resources, when encountered.

(xv) Any justification for not recovering any coal deposits that may be detrimentally affected in terms of future recovery by the coal development operations proposed.

(7) Suitable topographic maps or aerial photographs showing:

(i) Topographic, cultural, archaeological, and natural drainage features, roads, and vehicular trails.

(ii) The name of the watershed and location of the surface stream or tributary into which mine waters will be discharged, if applicable.

(iii) Cross sections and plan views of the land to be affected, including the actual area to be mined, showing elevation and location of drill holes and depicting the following information: the nature and depth of the various strata of overburden; the nature and thickness and extent of any coal, or if rider seams above the specific coal proposed to be mined; the nature of the strata beneath the coal to be mined for a vertical distance of at least 20 meters beneath the base of the coal seam; the location of the next known deeper coal seam below the deepest seam to be mined and representative characteristics thereof; the location of any other mineral values encountered; hydrologic data and other information relevant to the mining plan; all mineral crop lines and the strike and dip of the coal to be mined within the area of land to be affected; location and extent of known surface and underground mine workings, oil or gas wells, and water wells within ¼ mile of the affected lands, the location of aquifers; the estimated elevation of the water table, and potentiometric surface; the location of spoil, waste, or refuse areas, and sequence of placement and topsoil preservation area; the location of all impoundments or water treatment facilities; constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation activities.

(iv) Locations of surface structures and facilities, including loading facilities.

(v) For an underground mine, in addition, the planned mine layout, including location and dimensions of shafts, slopes, drifts, crosscuts, rooms, haulageways, aircourses, entries, and barrier pillars.

(vi) If auger mining is proposed, the location and diameter of auger holes, the depth to be drilled, and the estimated percentage of recovery. In determining whether or not to approve proposed auger mining, the Mining Supervisor shall take into account the percentage of recovery, which shall in general exceed 30 percent, and probable adverse effects upon water quality.

(8) Any requests for variances from the performance standards of this Part.

(d) *Action on plans.* (1) The Mining Supervisor, after reviewing and considering a proposed plan and all comments received thereon, and after consultation with the appropriate authorized officer, shall in writing promptly approve or disapprove such plan. In approving such a

plan the Mining Supervisor shall determine that such plan complies with all requirements of this Part, 30 CFR subpart 3041 and any lease, permit or license, and that reclamation as required thereby can be accomplished under the procedures set forth in such plan. The Mining Supervisor may impose such conditions upon such approval as may be necessary for the plan and operations to conform to the provisions of this Part and the terms and conditions of the lease, permit, or license. In disapproving such a plan, the Mining Supervisor shall indicate what modifications, if any, are necessary to, and would in fact, achieve such conformity. No such plan may be approved unless a bond executed pursuant to the provisions of 43 CFR subpart 3504, and conditioned upon compliance with all of the provisions of such plan, has been furnished to and approved by the appropriate authorized officer.

(2) *Changes in plans.* (i) *By Mining Supervisor.* Approved plans may be required to be reasonably revised or supplemented at any time by the Mining Supervisor, after consultation with the operator and the appropriate authorized officer, to adjust to changed conditions or to correct oversights.

(ii) *By the operator.* The operator may propose changes to an approved plan, and shall submit a written statement of any such proposed change and the justification therefor to the Mining Supervisor. The Mining Supervisor shall, after consultation with the appropriate authorized officer, in writing promptly approve or disapprove any such proposed change, or specify the modifications thereto under which it would be acceptable.

(iii) *By petition.* Any interested person may petition the Mining Supervisor to exercise the authority set forth in subparagraph (i) hereof. Any such petition shall be in writing, shall set forth the proposed revision, and shall state with reasonable particularity facts which demonstrate changed conditions or that oversights occurred at the time of approval which make modification necessary to bring the operation and plan into conformity with the obligations and requirements of this Part. Upon receipt of any such petition, the Mining Supervisor shall promptly decide whether the facts set forth are sufficient to warrant exercise of his authority pursuant to paragraph (i) above. A decision by the Mining Supervisor denying any such petition shall be considered a final decision of the Department.

(iv) *Public Notice.* If any change proposed under this subsection would constitute a major modification of an approved plan, or the grant of a variance pursuant to § 211.74 hereof, the Mining Supervisor shall follow the procedures provided in § 211.5(b) and (c) of this Part, and shall take any comments received into account in his decision.

§ 211.11 Approaching oil, gas, or water wells.

When mining operations are conducted in areas of known wells or bore holes that may liberate oil, gas, water or other fluid substances, the lessee shall include in his proposed plan all measures determined necessary by the Mining Supervisor in consultation with the appropriate Oil and Gas Supervisor of the Geological Survey to protect wells or bore holes, and obtain maximum recovery of the coal resource. If operations reveal unsuspected wells or bore holes, the operator shall promptly notify the Mining Supervisor and take no further actions which would disturb such wells or bore holes without his prior approval.

§ 211.12 Mine maps.

(a) *General requirements.* The operator shall maintain accurate and up-to-date maps of the mine, drawn to scales acceptable to the Mining Supervisor. All maps shall be appropriately marked with reference to government landmarks or lines and elevations with reference to sea level. Before a mine, or section of a mine, is abandoned, closed, or made inaccessible, a survey of such mine or section shall be made and recorded on such maps and a copy shall be furnished to the Mining Supervisor. All excavations in each separate bed shall be shown in such a manner that the production of coal for any royalty period can be accurately ascertained. Additionally, the maps shall show the name of the mine; the name of the lessee; the lease, permit, or license serial number; the lease boundary lines; surface buildings; dip of the bed; true north; map scale and explanatory legend; location, surface elevation, depth and thickness of the coal, and total depth of each borehole; auger holes; improvements; reclamation completed; topography, including subsidence resulting from mining; and the geologic and hydrologic conditions as determined from outcrops, drill holes, exploration or mining; water monitoring stations and such other information as the Mining Supervisor may request. Copies of such maps shall be properly posted to date and furnished, in duplicate, to the Mining Supervisor annually, or at such other times as he may request.

(b) *Underground mine maps.* Underground mine maps shall, in addition to the general requirements of paragraph (a) of this Section, show all mine workings; the date of extension of the mine workings and a coal section at each entry face; the location of all surface mine fans; the position of all fire walls, dams, main pumps, fire pipelines, permanent ventilation stoppings, doors, overcasts, undercasts, permanent seals, and regulators; the direction of the ventilating current in the various parts of the mine at the time of making the latest surveys; sealed areas; known bodies of standing water, either in or above the workings of the mine; areas affected by squeezes; the elevations of surface and underground levels of all shafts, slopes or drifts, and the elevation of the floor, or bottom of the mine workings, at regular intervals in main entries, panels or sections, and sump areas. Any maps submitted to the Mining Enforcement and Safety Administration for the purpose of showing, and which in fact show, any of the specific data required by this subparagraph shall be acceptable in fulfillment of the requirements hereof.

(c) *Surface mine maps.* Surface mine maps shall, in addition to the general requirements of paragraph (a) of this Section, include the date of extension of the mine workings and a detailed stratigraphic section at intervals specified in the approved mining plan. Such sections shall include the highwall; all worked out and reclaimed areas; the uncovered, but unmined, coal beds; and the elevation of the top of the coal beds.

(d) *Vertical projections and cross sections of mine workings.* When required by the Mining Supervisor, vertical projections and cross sections shall accompany plan views.

(e) *Accuracy of maps.* The accuracy of maps furnished shall meet acceptable standards and shall be certified by a professional engineer, professional land surveyor, or other professionally qualified person.

§ 211.13 Failure of lessee to furnish maps.

(a) *Liability of lessee for expense of survey.* If the operator fails to furnish a required or requested map, the Mining Supervisor shall employ a professionally qualified person to make the required survey and map, the cost of which shall be charged to, and promptly paid by, the operator.

(b) *Incorrect maps.* If any map submitted by an operator is believed to be incorrect, the Mining Supervisor may employ a professionally qualified person to make a survey and any necessary maps. If the survey shows the maps submitted by the lessee to be substantially incorrect, in whole or in part, the cost of making the survey and preparing the maps shall be charged to, and promptly paid by, the operator.

Prospecting and Exploration Operations

§ 211.20 Information required to be submitted.

The operator shall submit promptly to the Mining Supervisor, upon request, upon completion or suspension of prospecting or exploration operations, or as provided in his lease, permit, and license, duplicate signed copies of records and geologic interpretations of all prospecting and exploration operations performed on the lease or permit lands, including recoverable reserve calculations, along with vertical cross sections through the land and a map showing the location of coal outcrops, all drill holes, trenches, and other exploration activities. The records shall include a log of all strata penetrated and conditions encountered, such as water, quicksand, gas, or any unusual conditions; copies of all other in-hole surveys, such as electric logs, gamma ray-neutron logs, sonic logs, or any other logs produced; and copies of coal analyses and results of other tests conducted on the land. All drill holes, trenches, and excavations will be logged under the su-

pervision of a qualified geologist or engineer. Unless otherwise authorized by the Mining Supervisor, representative samples of all drill cores or cuttings shall be retained by the operator for one year and shall be available for inspection or analysis at the convenience of the Mining Supervisor. Confidentiality of such information will be accorded pursuant to the provisions of § 211.6 of this Part.

§ 211.21 Core and test holes.

(a) *Surveillance wells.* With the approval of the Mining Supervisor, drill holes may be utilized as surveillance wells for the purpose of monitoring the effect of subsequent operations upon the quantity, quality, or pressure of ground water or mine gases.

(b) *Blowout control devices.* When drilling on lands valuable or potentially valuable for oil and gas or geothermal resources, the operator shall, when required by the Mining Supervisor, set and cement casing in the hole and install suitable blowout prevention equipment.

(c) *Use of wells by others.* Upon receipt of a written request from the surface owner or the appropriate authorized officer, the Mining Supervisor may approve the transfer of an exploratory well for further use as a water well. Approval of such well transfer will be accompanied by a corresponding transfer of responsibility for any liability for damage and eventual plugging. Nothing in this paragraph shall be deemed to supercede or affect the applicability of any State law requirements with respect to such transfer.

UNDERGROUND MINING

§ 211.30 Maximum recovery.

Underground mining operations shall be conducted so as to yield the maximum recovery of the coal deposits consistent with the protection and use of other natural resources, sound economic practice, and the protection of the environment—land, water, and air. No entry, level, or panel workings in which the pillars have not been completely extracted within safe limits shall be permanently abandoned or rendered inaccessible, except with the prior written approval of the Mining Supervisor.

§ 211.31 Subsidence.

(a) Each operator of an underground coal mine shall adopt measures consistent with feasible known technology in order to prevent or, in those instances where the mining method used requires planned subsidence in a predictable and controlled manner, control subsidence; maximize mine stability; and maintain the value and use of surface lands.

(b) Where pillars or panels are not removed, and controlled subsidence is not part of the mining plan, pillars or panels of adequate dimensions shall be left for surface stability, giving due consideration to the thickness and strength of the coal beds and of the strata above and immediately below the coal bed.

(c) The Mining Supervisor may require the operator to install a subsidence monitoring system consisting of elevation stations and tiltmeters in a number sufficient to determine the extent of any area that may be affected. All records of such surveys shall be accessible for review by the Mining Supervisor.

§ 211.32 Multiple seam mining.

(a) *Sequence of mining.* In general, the available coal in the upper beds shall be worked out before the coal in the lower beds is mined, and simultaneous workings in an upper coal bed shall be kept in advance of the workings in each lower bed. The Mining Supervisor may authorize mining of any lower beds before mining the available coal in each known upper bed.

(b) *Protective barrier pillars in multiple seam mining.* In areas subject to multiple seam extraction, the protective barrier pillars for all main and secondary slope entries, main haulageways, primary aircourses, bleeder entries and manways in each seam shall be superimposed, regardless of vertical separation or rock competency; however, modifications, exceptions, or variations of this requirement may be approved in advance by the Mining Supervisor.

§ 211.33 Advance workings.

Where the room and pillar or other system of mining requires advance workings in solid coal, including entries, rooms or crosscuts, the lessee shall leave sufficient pillars to ensure the maximum practicable recovery of the coal deposits, upon retreat.

§ 211.35 Pillars left for support.

(a) *Barrier pillars.* The operator shall not, without the prior consent of the Mining Supervisor, mine any coal, drive any underground workings, or drill any lateral bore holes within 50 feet of any of the outside boundary lines of the leased lands, or within such greater distance of said boundary lines as the Mining Supervisor may prescribe. Payment up to and including the full value of the coal mined may be required for coal mined within such designated distances of the boundary without the written consent of the Mining Supervisor.

(b) *Lessee may be required to mine barrier pillars on adjacent lands.* If the coal beyond any barrier pillar has been worked out and the water level beyond the pillar is below the lessee's adjacent operations, the lessee shall, on the written order of the Mining Supervisor, mine out and remove all available Federal coal in such barrier, both in the lands covered by the lease and in the adjoining premises, if it can be mined without undue hardship to the lessee.

(c) *Privately or Indian owned coal on adjoining premises.* If the coal in adjoining premises is privately or Indian owned and this coal has been worked out, an agreement may be made with the coal owner for the extraction of the cost remaining in the boundary pillars which otherwise may be lost.

§ 211.36 Development of leased tract through adjoining mines.

An operator may, with the approval of the Mining Supervisor, mine leased lands from an adjoining underground mine on land privately owned or controlled or from adjacent leased lands, subject to the right of free access to the Federal premises by the Mining Supervisor.

RECLAMATION AND PERFORMANCE STANDARDS

§ 211.40 Operating and reclamation standards.

(a) *Performance standards.* The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling, and reclamation operations on the surface of land subject to this Part, including the surface effects of underground mining:

(1) The operator shall reclaim affected lands pursuant to his approved plan, as contemporaneously as practicable with operations, to a condition capable of supporting all practicable uses which such lands were capable of supporting immediately prior to any exploration or mining, or equal or better uses that have been approved in accordance with this Part.

(2) The operator shall replace overburden and waste materials in the mined area by backfilling (compacting, where necessary, to ensure stability or to prevent leaching of toxic materials), grading, or other means, so as to cover all acid-forming or other toxic materials, eliminate highwalls and spoil piles and restore the approximate original contour. Where the thickness of the coal deposits relative to the volume of overburden is large and where the overburden and other spoil and waste materials are either insufficient or more than sufficient to restore the approximate original contour, the operator shall, in order to provide adequate drainage, backfill, grade, and, where necessary, compact, using all available overburden or spoil material, to obtain the lowest practicable grade, which shall in any event be less than the angle of repose. Excess overburden or other spoil material shall be fully reclaimed in accordance with the requirements of this Part. Variance from the requirements of paragraphs (1) and (2) of this subsection may be allowed in an approved mining plan if the Director of the Geological Survey, with the concurrence of the Director of the Bureau of Land Management or the comparable appropriate authorized officer, determines that unusual physcial conditions at the site, such as steeply dipping coal beds or multiple seam mining, exist, and such conditions make backfilling pursuant to such requirements impracticable as a result of the volume of material excavated or environmentally undesirable as a result of the duration of the operation.

(3) The operator shall stabilize and protect all surface areas, including spoil piles, affected by the coal mining and reclamation operation, to effectively control slides, erosion, subsidence, and attendant air and water pollution.

(4) The operator shall remove topsoil separately, for replacement on the back-

fill area, and if not so utilized immediately, segregate it in a separate pile from other soil. When topsoil is not to be replaced on a backfill area within a time short enough to avoid deterioration, the operator shall establish and maintain an approved quick growing vegetative cover or employ other approved measures so that the topsoil is protected from wind and water erosion and establishment of noxious plant species, and is in a condition for sustaining vegetation when used during reclamation. If topsoil is of insufficient quantity or of poor quality for sustaining vegetation, and if other excavated materials can be shown to be more suitable for revegetation, then the operator may be authorized in the approved plan to remove, segregate, protect, and utilize in a like manner such other material.

(5) The operator shall utilize water impoundments, water retention facilities, dams, or settling ponds only pursuant to an approved plan, and shall ensure that:

(i) Such facility is adequate for its intended purposes and the quality and quantity of impounded water will be suitable for its intended use.

(ii) Such facility is designed, located, built, used, and maintained in accordance with sound engineering standards and practices and applicable Federal and State laws and regulations to ensure that such facilities will have necessary stability with an adequate margin of safety.

(iii) Final grading will provide adequate safety and access for proposed or reasonably anticipated water users.

(iv) Such facilities will not have a significant adverse impact on the water resources utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(v) No mine or processing waste is used in the construction of such facilities unless authorized in the approved plan.

(6) The operator shall cover or plug all auger mine holes with noncombustible and, where necessary to minimize, control or prevent harmful drainage, impervious material.

(7) The operator shall utilize the best practicable commercially available technology to minimize, control, or prevent disturbances of the prevailing quality, quantity, and flow of water in surface and ground water systems, and of the prevailing erosion and deposition conditions at the mine site and in affected offsite areas, both during and after coal mining operations and reclamation, by:

(i) Controlling acid or toxic drainage and the adverse consequences thereof by such measures as, but not limited to, diverting surface runoff water away from disturbed areas; excluding oxygen from, or restricting the flow of water through, acid or toxic-producing materials; treating drainage to reduce acid or toxic content which adversely affects downstream water upon being released to water courses; and casing, sealing, or otherwise treating drill holes, shafts, and walls to keep acid or toxic drainage from entering ground and surface waters.

(ii) Conducting surface mining operations so as to minimize, control, or prevent (A) contributions of suspended solids to streamflow or runoff outside the mining site above natural levels under seasonal flow conditions as measured for a period and at sites determined by the Mining Supervisor, in consultation with the appropriate authorized officer, and (B) except where specifically authorized in an approved plan, deepening or enlarging of stream channels where operations include the discharge of water from mines.

(iii) Removing or modifying siltation structures after disturbed areas are revegetated and stabilized unless otherwise authorized by the Mining Supervisor in an approved plan, with the concurrence of the appropriate authorized officer, provided, however, that any siltation structure retaining water shall in any event be subject to the requirements of § 211.40(a)(5) of this section.

(iv) Protecting the quality, quantity, and flow, including depth of flow, of both upstream and downstream surface and ground water resources of those valley floors which provide water sources that support significant vegetation or supply significant quantities of water for other purposes, by such measures as, but not limited to, relocating and maintaining the gradients of streams, avoiding mining, installing, reestablishing, or replacing aquifers or aquiludes, and replacing soil, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(8) The operator shall: (i) Treat or dispose of all rubbish and noxious substances in a manner designed to minimize, control, or prevent air and water pollution and the hazards of ignition and combustion.

(ii) Dispose of all waste resulting from the mining and preparation of coal in a manner designed to minimize, control, or prevent air and water pollution and hazards of ignition and combustion. Where surface disposal of solid wastes in areas other than the mine workings or other excavations has been authorized in the approved plan, stabilize such waste including, where necessary, constructing waste piles in compacted layers with the use of incombustible and impervious materials; shape waste piles to be compatible with the natural surroundings and terrain; cover with topsoil or other suitable material in accordance with paragraph (a)(4) of this section, and revegetate in accordance with paragraph (a)(13) of this section. All impoundments of liquid wastes shall comply with the requirements of paragraph (a)(5) of this section. Waste containing coal in such quantity that it may be later separated from the waste by washing or other means shall be stored separately.

(9) Except as provided herein, the operator shall not conduct excavation, drilling, or blasting operations within 200 feet of an active or abandoned underground mine. Where it can be established by certified maps or inspection of such an underground mine that such activities may be conducted without danger of interference with, or penetration of, an underground mine, they may be authorized in an approved plan to be conducted up to but not less than 25 feet from such underground mine, provided that nothing in this paragraph shall preclude daylighting or similar surface coal mining activities intended to improve resource recovery, abate water pollution, or eliminate public hazards resulting from such underground mines.

(10) To prevent personal injury or damage to public and private property, the operator shall use explosives only in accordance with all applicable Federal and State laws and an approved plan, and shall:

(i) Provide adequate advance written notice by publication and/or posting of planned blasting schedules, to local governments and to residents who might be affected by the use of such explosives, and maintain a log of the magnitudes and times of blasts for a period of at least two years.

(ii) Limit the size, timing, and frequency of blasts, as determined by the physical conditions of the site.

(11) The operator shall design to applicable standards, construct, maintain, and, when no longer necessary and unless otherwise authorized in an approved plan, remove all roads, pipelines, powerlines and similar utility access facilities and associated bridges, culverts, and ditches, into and across the site of operations, in a manner that will minimize, control, or prevent erosion and siltation, fugitive dust, pollution of water, damage to fish or wildlife or their habitat and public or private property.

(12)(i) Roads shall not be surfaced with any acid or toxic producing material. No access roads will be constructed unless (A) the operator shall have first submitted a surveyed profile accompanied by typical cross-sections of the road and ditches, showing pipe, entrance and exit channels and sediment control structures and other structures or configurations to be used on the road to meet performance standards and (B) the location shall have been marked, and inspected and approved by the Mining Supervisor, in consultation with the appropriate authorized officer and the surface owner, if other than the United States.

(ii) No access road shall be constructed in a stream, nor shall any stream or stream bed be used as an access road. Insofar as possible, all roads shall be located on benches, ridges, and flatter slopes to enhance stability and minimize disturbance. Stream fordings shall be avoided and the normal seasonal flow and the normal seasonal sediment load shall not be detrimentally affected by access roads in a continuous fashion that results in harm to the aquatic ecosys-

tem, provided, however, that nothing in this subparagraph shall be construed to prohibit relocation or alteration of such beds or channels pursuant to the provisions of this Part and as set forth in an approved plan.

(13) (i) The operator shall, except where other reclamation based upon post mining land use and not requiring revegetation pursuant to the requirements of this section is expressly provided for in an approved plan, establish on regraded area and all other affected lands a diverse vegetative cover, native to the area and capable of regeneration and plant succession, at least equal in density and permanence to the natural vegetation; provided, however, that the Mining Supervisor with the concurrence of the appropriate authorized officer may allow the use of approved mixtures of introduced or native species where preferable to achieve quick cover or assure successful revegetation. In approving such mixture, preference will be given to non-noxious species.

(ii) The operator's responsibility and liability under his performance bond for revegetation of each planting area shall extend until such time as the appropriate authorized officer, in consultation with the Mining Supervisor and the surface owner if other than the United States, determines that successful revegetation in compliance with paragraph (a) (13) (i) of this section has occurred, provided, however, that this period shall extend for a minimum of five full years after the first planting, and for a total period of liability not to exceed 10 years from the original planting; and further provided that,

(A) Where the appropriate authorized officer, in consultation with the Mining Supervisor, determines that natural conditions such as annual precipitation, soil characteristics, and native vegetation are stable and favor rapid revegetation, and that revegetation pursuant to paragraph (i) of this section is likely to occur before the expiration of such minimum period, he may specify in the lease, permit, or license that such minimum period will not apply with respect to some or all of the lands included in such lease, permit, or license; and

(B) where during any such minimum period such authorized officer, in consultation with the Mining Supervisor and the surface owner, if other than the United States, determines that natural conditions such as annual precipitation and soil characteristics are sufficiently unstable so as to favor only slow and uncertain revegetation, he may recommend to the Mining Supervisor that the liability of the operator be extended for a period of up to five years beyond the period initially established, if the financial liability that would be incurred by the operator as a result is reasonably commensurate with the increased probability of successful revegetation.

(iii) During the relevant period of liability, the Mining Supervisor and the appropriate authorized officer shall jointly inspect and evaluate the revegetated areas pursuant to § 211.62(b) (2) hereof.

(14) The operator shall: (i) Except as provided in paragraph (ii) hereof, allow public access to and upon Federal lands subject to his lease, permit, or license for all lawful and proper purposes, except where such access would unduly interfere with his authorized use.

(ii) Regulate public access, vehicular traffic and wildlife or livestock grazing in all areas of active operations, including lands undergoing reclamation, in order to protect the public, wildlife and livestock from hazards associated with such operations, and to protect revegetated areas from unplanned and uncontrolled grazing. For this purpose, the operator shall provide warning signs, fencing, flagmen, barricades and other safety and protective measures as may be necessary.

(15) Coal storage areas shall be designed and maintained so as to eliminate fire hazards from spontaneous combustion and other accidental ignition. If a coal seam exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited during the term of a lease, the operator shall immediately take all necessary steps to extinguish the fire.

(16) Upon completion or temporary or permanent abandonment of mining operations in all or any part of a strip pit, the face of the coal shall be covered with noncombustible material that will effectively protect the coal bed from becoming ignited.

(17) The driving of any underground openings by auger or other methods from any strip pit shall not be undertaken except as specifically approved by the Mining Supervisor in an approved plan.

§ 211.41 Completion of operations and abandonment.

(a) *Grading and backfilling.* Upon completion of backfilling and grading as required by the approved plan and prior to replacing topsoil and revegetation, the operator shall submit a report thereon, in duplicate, to the Mining Supervisor and request inspection for approval. Whenever it is determined by such inspection that the backfilling and grading has met the requirements of the approved plan, the Mining Supervisor shall recommend to the appropriate authorized officer release of an appropriate amount of the compliance bond for the area satisfactorily backfilled and graded.

(b) *Temporary abandonment.* In areas in which there are no current operations, but operations are to be resumed under an approved plan, the operator shall substantially backfill, fence, protect, or otherwise effectively close all surface openings, auger holes, areas prone to subsidence, and surface facilities or workings which are a hazard to people or animals. Conspicuous signs shall be posted prohibiting entrance of unauthorized persons. All such protective measures shall be maintained in a secure condition until such operations are resumed or permanently abandoned.

(c) *Permanent abandonment.* Before permanent abandonment of exploration or mining operations, all openings and excavations, including water discharge points, shall be closed or backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved plan. Drill holes, trenches, and other excavations for exploration, development, or prospecting shall be abandoned in such a manner as to protect the surface and not to endanger any present or future underground operations or any deposit of oil, gas, other mineral resources, or ground water. Methods of abandonment shall be approved in advance by the Mining Supervisor in an approved plan, and may include backfilling, regrading, revegetating, cementing, and capped casing, or combinations of these, or other metthods. Reclamation and clean-up of nently abandoned underground or surfa surface areas around and near permanently abandoned underground or surface mines, including, except where otherwise expressly provided in an approved plan, removal of equipment and structures related to the mining operation, shall commence without delay following cessation of mining operations. Areas affected by access roads will be graded, drained, and revegetated in accordance with the approved mining plan and therein approved post mining land use prior to bond release. In the event that access or haul roads are intended to remain after abandonment of the operation, pursuant to § 211.40 of this Part, they must be designed and constructed so as to be permanently stabilized, using adequate drains, water barriers, and other practices.

(d) *Notice of Abandonment; release of bond.* (1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall submit to the Mining Supervisor, in duplicate, a notice of his intention to cease or abandon operations, together with a statement of the exact number of acres affected by his operations, the extent and kind of reclamation accomplished, and a statement as to the structures and other facilities that are to be removed from or remain on the leased, permitted, or licensed lands.

(2) Upon receipt of such notice, the Mining Supervisor and the appropriate authorized officer or officers shall promptly make a joint inspection to determine whether all operations have been completed in accordance with the terms and conditions of all leases, permits, or licenses, and with the requirements of the approved operating plan. Where the operator has complied with all such terms, conditions, and requirements, and the regulations of this Part, the Mining Supervisor shall recommend to the appropriate authorized officer that the appropriate period of bonded liability be terminated.

(3) When the surface of lands in a lease, permit, or license is not owned by the United States, the Mining Supervisor shall notify the surface owner and solicit and take into account his com-

ments before recommending to the appropriate authorized officer that the period of such bond liability be terminated.

REPORTS, RECORDS, ROYALTIES AND AUDITS

§ 211.62 Reports.

(a) *Operations.* The operator shall file with the Mining Supervisor within 30 days after the end of each calendar year and within 30 days after any temporary or permanent abandonment of operations, a report, in duplicate, containing the following with respect to his operations or the operations subject to such abandonment.

(1) Serial number of the lease, permit, or license and a description of the affected lands.

(2) The number of acres disturbed and the number of acres reclaimed, including areas on which revegetation is being conducted.

(3) A description of the reclamation work remaining to be done on lands disturbed.

(b) *Revegetation.* (1) The operator shall file a report, in duplicate, with the Mining Supervisor within 30 days after each planting is completed. The report shall:

(i) Identify the lease, permit, or license.

(ii) Show the types of planting or seeding, including mixtures and amounts.

(iii) Show the date of planting or seeding.

(iv) Identify or describe the planted or seeded lands.

(v) Describe any surface manipulation, mulching, fertilization, and irrigation procedures, if any, and contain such other information as may be considered relevant.

(2) The Mining Supervisor and the authorized officer of the Federal surface managing agency shall, as soon as possible after each full growing season, inspect and evaluate the revegetated areas to determine, in consultation with the surface owner if other than the United States, whether satisfactory vegetative growth is being established, or whether additional revegetation efforts should be ordered by the Mining Supervisor.

(c) *Production and payments.* (1) *Lessees and permittees.* Lessees and permittees shall report, on the report form provided, within 30 days after expiration of the period covered by the report, all coal mined during each calendar quarter and the basis on which royalty has been paid or will be paid. The royalty for coal mined shall be paid on or before the end of the third month succeeding the extraction of the coal.

(2) *Licensees.* Licensees shall report all coal mined on a semi-annual basis on the report form provided.

(3) *Penalty.* If a lessee or permittee records or reports less than the true weight or value of coal mined, the Secretary may impose a penalty equal to either double the amount of royalty due on the shortage, or the full value of the shortage. If, after notice, a lessee or permittee maintains false records or files false reports, the Mining Supervisor may recommend that action be initiated to cancel the lease or permit, in addition to the imposition of any penalties.

§ 211.63 Value basis for royalty computation.

(a) Where only crushing, storing, and loading are performed prior to the point of sale, the value of the coal for royalty purposes shall be the gross value at the point of sale. However, if additional processing of the coal is performed prior to sale, such as washing to remove waste, bone, or other impurities, the processing cost above the cost of primary crushing, storing, and loading may be deducted from the gross value in determining value for royalty purposes. The Mining Supervisor will allow such deductions only when, in his judgment and subject to his audit, the lessee provides him an accurate account of the costs so incurred.

(b) The gross value shall be the sale or contract unit price times the number of units sold, provided, however, that where the Mining Supervisor determines (i) that a contract of sale or other business arrangement between the lessee and a purchaser of some or all of the coal produced from the lease is not a bona fide transaction between independent parties because it is based in whole or in part upon considerations other than the value of the coal, or (ii) that no consideration is received for some or all of such coal because the lessee is consuming such coal for his own use or adding it to inventories, the Mining Supervisor shall determine the gross value of such coal, taking into account (A) any consideration received by the lessee in other related transactions, (B) the highest price paid for coal of like quality produced from the same general area during the lease month, (C) contracts or other business arrangements between coal producers and purchasers for the sale of coal other than coal produced under such lease, which are comparable in terms, volume, time of execution, area of supply and other circumstances, and (D) such other relevant factors as the Mining Supervisor may deem appropriate, and further provided that in cases where coal which was added to inventories and for which the gross value has been determined in accordance with this subsection is eventually sold, the Mining Supervisor may require the payment of such additional royalties, or allow such credits or refunds, as may be necessary to adjust the royalty payments to reflect the actual gross value of the coal.

§ 211.64 Weight basis for royalty computation.

(a) All bone coal, rock, and other impurities may be removed from the raw coal prior to determination of coal weights for royalty purposes.

(b) If royalties become due and payable prior to removal of bone coal, rock, and other impurities or final weighing of coal, the Mining Supervisor may determine, by estimate, the weight of the coal for royalty purposes. In addition, the Mining Supervisor may, after the removal of bone coal, rock, and other impurities and final weighing of the coal, require the payment of such additional royalties, or allow such credits or refunds, as may be necessary to adjust the royalty payments to reflect the true weight of the coal.

§ 211.65 Audits.

An audit of the accounts and books of lessees and permittees for the purpose of determining compliance with lease or permit terms relating to royalties may be required annually, or at other such times as may be directed by the Mining Supervisor, by a qualified independent certified public accountant or by an independent public accountant licensed prior to December 31, 1970, by a State, territory, or insular possession of the United States or by the District of Columbia, and at the expense of the lessee. The lessee shall furnish, free of cost, duplicate copies of audit reports which express opinions on such compliance to the Mining Supervisor within 30 days after the completion of each audit. Where such audits are required, the Mining Supervisor will specify the purpose and scope of the audit and the information which is to be verified or obtained.

§ 211.66 Maintenance of and access to records.

(a) Lessees and permittees shall maintain current and accurate records showing: (i) The type, quality or grade, and weight of all coal mined, sold, used on the premises, or otherwise disposed of, and all coal in storage (remaining in inventory); (ii) the prices received for all coal sold and to whom sold, by type and by quality or grade.

(b) The Mining Supervisor, or his designee, shall have access to all records of the lessees and permittees pertaining to compliance with lease or permit terms relating to royalties, including, but not limited to, (i) quantities mined, processed, sold, delivered, or used by the lessee; (ii) prices received for mined or processed products, prices paid for like or similar products, and internal transfer prices; and (iii) costs of mining, processing, and transportation.

(c) Licensees must maintain a current record of all coal mined and removed.

INSPECTION, ISSUANCE OF ORDERS, ENFORCEMENT OF ORDERS AND APPEALS

§ 211.70 Inspection.

The operator shall provide access and means at all reasonable times for the Mining Supervisor to inspect or investigate the operation to determine whether it is in compliance with all applicable laws, regulations, and orders; the terms and conditions of the lease, permit, or license; and the requirements of any approved plan.

§ 211.71 Notices and orders.

(a) *Address of responsible party.* Before beginning operations, the operator shall inform the Mining Supervisor, in writing, of the operator's temporary and permanent post office address and the name and post office address of the su-

perintendent, or designated agent, who will be in charge of the operations and who will act as the local representative of the operator. Thereafter, the Mining Supervisor shall be informed of any change of such address.

(b) *Receipt of notices and orders.* The operator shall be construed to have received all notices and orders that are mailed by certified mail, return receipt requested, posted at the mine or mine office or handed to the superintendent, the mine foreman, the mine clerk, or higher officials connected with the mine or exploration site for transmittal to the operator or his local representative.

§ 211.72 Enforcement of orders.

(a) If the Mining Supervisor determines that an operator subject to the provisions of this Part has failed to comply with the regulations in this Part, other applicable Departmental regulations, the terms and conditions of the lease, permit, or license, the requirements of an approved plan, or orders of the Mining Supervisor and such noncompliance does not threaten immediate and serious damage of the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Mining Supervisor shall serve a notice of noncompliance upon the operator by delivery in person to him or his agent or by certified or registered mail addressed to the operator at his last known address. Failure of the operator to take action in accordance with the notice of noncompliance within the time limits specified by the Mining Supervisor or to initiate an appeal pursuant to Part 290 of this Title shall be grounds for suspension of operations subject to such notice by the Mining Supervisor or his recommendations for the initiation of action for cancellation of the lease, permit, or license and forfeiture of any compliance bonds.

(b) The notice of noncompliance shall specify in what respect the operator has failed to comply with the provisions of applicable regulations, the terms and conditions of the lease, permit, or license, the requirements of an approved plan, or the orders of the Mining Supervisor, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action must be taken. A written report shall be submitted by the operator to the Mining Supervisor when such noncompliance has been corrected.

(c) If, in the judgment of the Mining Supervisor, an operator is conducting activities on lands subject to the provisions of this Part which fail to comply with the provisions of this Part the terms and conditions of the lease, permit, or license, the requirements of approved plans or the Mining Supervisor's orders, and which threaten immediate and serious damage to the environment, the mine or the deposit being mined, or other valuable ore-bearing mineral deposits or other resources, the Mining Supervisor shall order the immediate cessation of such activities, without prior notice of noncompliance. Such order may be appealed as provided in Part 290 of this Title. Compliance with such order shall not be suspended by reason of the taking of such an appeal, unless such suspension is ordered in writing by the official before whom such appeal is pending, and then only upon a determination by such official that such suspension will not be detrimental to the lessor or adversely affect the public interest, or upon submission of a bond deemed adequate to indemnify the lessor from any resulting loss or damage.

§ 211.73 Appeals.

Orders, determinations, decisions, and notices issued pursuant to the provisions of this Part may be appealed as provided in Part 290 of this Title.

§ 211.74 Variances.

(a) Variances from compliance with the performance standards set forth in this Part may be allowed as part of an approved mining plan under either of the following circumstances:

(1) Where an applicant states in a proposed plan or modification thereof that he cannot meet a performance standard specified in § 211.40(a) (2), (4), (6), (11), (12), or (13) of this Part, he may request a variance from such performance standard where such variance would be compatible with the approved post mining land use, and shall support his request with appropriate information demonstrating the need therefor The Mining Supervisor, after consultation with the appropriate authorized officer and the surface owner, if other than the United States, may approve or disapprove such variance, and shall advise the applicant and approve or disapprove the proposed plan or modification accordingly; or

(2) Where an applicant proposes a post mining land use that is substantially different from the land use immediately prior to exploration and mining, the Mining Supervisor, with the concurrence of the appropriate authorized officer and after consultation with the surface owner, if other than the United States, may approve a mining plan containing variances from the performance standards of 43 CFR 3041 and § 211.40(a) hereof, provided that:

(A) After consultation with the appropriate land use planning agencies, if any, the proposed development is deemed to constitute an equal or better economic or public use of the affected lands, as compared with the premining use.

(B) The granting of such variance is essential to achieving the proposed post mining land use.

(C) The applicant presents specific plans for the proposed post mining land use and appropriate assurances that such use will be:

(i) Compatible with adjacent land uses;

(ii) Supported by commitments and assured of investments from public agencies, where appropriate;

(iii) Practicable with respect to private financial capability for completion of the proposed development;

(iv) Planned pursuant to a schedule made part of the proposed mining plan so as to integrate the mining operations and reclamation with the post mining land use;

(v) Designed by qualified personnel in conformance with professional standards in order to assure the stability, drainage, and configuration necessary for the intended use of the site.

(D) To the degree possible, and taking into account the subjective nature of the assessment, the applicant has considered the impact of the proposed land use on the aesthetic character of the area by consulting with inhabitants of the area, and utilizing expertise in the landscape and geomorphologic fields.

(b) Any application for a variance pursuant to paragraph (a) of this Section shall demonstrate that any proposed disturbance of land above a highwall will facilitate compliance with the environmental protection and performance standards set forth in this Part.

(c) Any application for a variance pursuant to paragraph (a) of this section which proposes to place spoil or other material on the downslope below the bench in an area classed as "steep slope" shall demonstrate to the satisfaction of the Mining Supervisor that the permanent or temporary sediment loads in the receiving drainages and reclamation to the post mining land use will not have significant adverse effects upon the aesthetics of the area.

(d) All variances granted pursuant to this section shall be reviewed by the Mining Supervisor and the appropriate authorized officer not more than three years after granting of the variance and incorporation in the mining plan, to ensure that the operation is proceeding in accordance with the terms of the approved plan and the terms and conditions of any lease, permit, or license.

(e) An operator may apply for a variance pursuant to the provisions of paragraph (a) of this section only by submitting a new or revised mining plan to the Mining Supervisor pursuant to the provisions of this Part. Minor changes of operations which do not involve violations of the performance standards set forth in this Part, and the granting of a variance pursuant to § 211.40(a)(2) of this Part, will not be deemed to be subject to or require compliance with, the provisions of this section.

(f) If the Director determines that a decision to grant a variance would constitute a major Federal action significantly affecting the quality of the human environment, and that an environmental impact statement, as required by section 102(2)(C) of the National Environmental Policy Act, has not been prepared with respect thereto, such a statement shall be prepared. If the Mining Supervisor grants a variance to this section, he shall notify the appropriate land managing agency or land use planning agency for the purpose of determining whether any changes may, as a result of such variance, be required in any Management Framework Plan or equivalent land use plan.

§ 211.75 Applicability of State law.

(a) On the effective date of this Part, and from time to time thereafter, the Secretary shall direct a prompt review of State laws and regulations in effect or adopted and due to come into effect, relating to reclamation of lands disturbed by surface mining of coal in each State in which Federal coal has been leased, permitted, or licensed. If, after such review, the Secretary determines that the requirements of the laws and regulations of any such State afford general protection of environmental quality and values at least as stringent as would occur under exclusive application of this Part, he shall, by rulemaking, direct that the requirements of such State laws and regulations thereafter be applied as conditions upon the approval of any proposed exploration or mining plan, unless (i) the Secretary determines that such application of the requirements of such laws and regulations would unreasonably and substantially prevent the mining of Federal coal in such State, and (ii) the Secretary determines that it is in the overrriding national interest that such coal be produced without such application of such requirements. In any such determination of overriding national interest, the Secretary will consult in advance of such determination with the Governor of the State involved.

(b) On the effective date of this Part, the Secretary will direct representatives of the Department to consult with appropriate representatives of each State or a number of States for the purpose of formulating and entering into agreements to provide for a joint Federal-State program with respect to surface coal mining reclamation operations for administrative and enforcement purposes. Such agreements shall, wherever possible, provide for State administration and enforcement of such programs, provided that Federal interests are protected. Any such agreement shall be entered into by rulemaking, and shall have as its principal purpose the avoiding of quality of administration and enforcement of reclamation laws governing surface coal mine reclamation operations.

PART 216 [RESERVED]

Part 216 of Chapter II of this Title 30 of the Code of Federal Regulations is revoked.

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR

PART 23—SURFACE EXPLORATION MINING AND RECLAMATION OF LANDS

§ 23.2 [Amended]

Section 23.2(b) of Part 23 of Title 43 of the Code of Federal Regulations is amended by the deletion of the period and the addition at the end thereof of the following language: "; nor minerals or operations subject to the provisions of 43 CFR Subpart 3041."

Dated: May 11, 1976.

THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.76-14285 Filed 5-14-76;8:45 am]

federal register

MONDAY, MAY 17, 1976



PART III:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Low Income Housing

■

PHA-Owned Projects; Utilities

Title 24—Housing and Urban Development

CHAPTER VIII—LOW-INCOME HOUSING; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-76-354]

PART 865—PHA-OWNED PROJECTS—PROJECT MANAGEMENT

Utilities

On September 25, 1975, at 40 FR 44159, the Department proposed to amend Title 24 by adopting a new Part 865—PHA-Owned Projects—Project Management; Subpart D—Utilities; §§ 865.401 through 865.410 Individual Metering of Utilities for Existing PHA-Owned Projects. This amendment would implement HUD policies in support of national energy conservation goals by reducing energy consumption with the consequent reduction of operating costs for housing units in existing PHA-owned projects assisted under the United States Housing Act of 1937, by requiring that, to the extent, practicable, all utilities consumed directly by tenants shall be individually metered.

HUD received approximately 15 responses to the September 25, 1975 publication. All of these comments have been seriously considered and certain changes have been incorporated in these regulations as a result of these comments and other pertinent considerations. The principal changes are set forth below.

1. The provisions concerning Actions Affecting Tenants, § 865.407, have been strengthened by requiring PHA's to advise and assist tenants with high utility consumption to reduce their usage of utilities.

2. A new § 865.409 has been added to provide authority for HUD Field Offices to waive the requirements for individual Benefit/Cost Analysis on projects of similar design and utilities services when a Benefit/Cost Analysis of a representative project has determined that conversion to individual metering will not be cost effective.

3. A new § 865.410 has been added requiring PHAs to reevaluate Mastermeter systems without checkmeters at least every 36 months to determine if changes in Utility costs or regulations have resulted in a new situation where conversion to individual metering will now be cost effective.

Some of the recommendations contained in the comments received are not reflected in the final regulations. The more recurrent and significant of these comments are discussed below.

Several of the comments concerned the establishment of allowance for reasonable amounts of utilities to be consumed by tenants. The policies and procedures for establishing tenant allowances are under consideration and will be published in the near future as a proposed amendment to Title 24.

A few comments demonstrated concern that the PHAs could not fund the costs of conversion. Section 865.405 of the final regulation expressly provides that all costs of conversion plus any costs for performing the Benefit/Cost Analysis are eligible for Modernization Program funding and Development funds, if available, when operating funds are insufficient.

A variety of other comments indicated a partial misunderstanding of some of the details of the provisions that should be rectified by a careful reading of the final regulations. In general, the consensus of the comments was favorable to the concept of tenant responsibility for their Utilities consumption through the use of individual metering.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A finding that this regulation is not subject to inflation impact requirements has also been made in accordance with HUD procedures. A copy of these findings is available for public inspection in the Office of the Secretary, Rules Docket Clerk, Department of Housing and Urban Development, Room 10245, 451 7th Street, S.W., Washington, D.C.

Accordingly, Title 24 is amended by adding a new Part 865—PHA-owned Projects—Project Management; Subpart D—Utilities; to Chapter VIII, to read as follows:

Individual Metering of Utilities for Existing PHA-Owned Projects.

Subpart D—Utilities

Sec.

865.401 Purpose.
865.402 Definitions.
865.403 Individually metered service.
865.404 Benefit/cost analysis.
865.405 Funding.
865.406 Order of conversion.
865.407 Actions affecting tenants.
865.408 Compliance schedule.
865.409 Waivers for similar projects.
865.410 Reevaluations of mastermeter systems.

AUTHORITY: Section 6(a)(4) United States Housing Act of 1937 (42 U.S.C. 1437d); section 7(d) Department of HUD Act (42 U.S.C. 3535(d)).

§ 865.401 Purpose.

The purpose of §§ 865.401–865.410 of this subpart is to implement HUD policies in support of national energy conservation goals by reducing energy consumption with consequent reduction of operating costs for existing PHA-owned housing projects assisted under the United States Housing Act of 1937, (the Act), by requiring that, to the extent practicable, all Utilities consumed directly by tenants shall be individually metered. Such individual metering will be accomplished either by (a) direct billing of charges to tenants by the Utility supplier with tenants receiving a reasonable allowance from the PHA for the tenant-supplied Utilities; or (b) utilizing a Mastermeter system with Checkmeters operated by the PHA and with tenants Surcharged for Utility consumption in excess of reasonable requirements.

§ 865.402 Definitions.

(a) "Benefit/Cost Analysis" means a direct comparison of the present worth of any savings generated by a given system during the expected useful life of the system or the estimated remaining life of the project, whichever is the shortest number of years, to the cost of the change.

(b) "Checkmeter" means a device for measuring Utility consumption within each individual dwelling unit where the Utility Service is supplied to the PHA through a Mastermeter. The PHA then ascertains from its reading of the Checkmeter it has installed the amount of tenant usage and Surcharges the tenants for excess usage.

(c) "HUD Field Office" means the HUD Regional, Area or Insuring Office which has been delegated authority under the United States Housing Act of 1937 to perform functions pertaining to this Subpart for the area in which the PHA is located.

(d) "Mastermeter System" means a Utility distribution system in which a PHA is supplied Utility Service by a Utility supplier through a system meter or meters and distributes the Utility Service to its tenants.

(e) "Meter Loops" means a device provided to accommodate future installation of a Utility meter.

(f) "Minimum Loan Interest Rate" means the rate of interest determined periodically by HUD applicable to loans and loan commitments made by HUD to PHAs.

(g) "Modernization Program" means the provision of financial assistance to PHAs under the Act for the purpose of upgrading living conditions, correcting serious physical deficiencies and achieving operating efficiency and economy with respect to PHA-owned housing assisted under the Act.

(h) "Retail Service" means purchase of Utility Service by PHA tenants directly from the Utility supplier.

(i) "Surcharge" means the amount charged to tenants for consumption of Utilities in excess of a reasonable allowance therefore, based on Utility use determined by means of a Checkmeter.

(j) "Utilities or Utility Service" means electricity, gas, heating fuel and water.

§ 865.403 Individually metered services.

(a) All Utility Service shall be individually metered to tenants, either through provision of Retail Service to the tenants by the Utility supplier or through the use of Checkmeters, unless:

(1) Individual Metering is impracticable, such as in the case of a central heating system in an apartment building;

(2) Change from a Mastermetering System to individual meters would not be financially justified based upon a Benefit/Cost Analysis; or

(3) Checkmetering is not permissible under state or local law, or under the policies of the particular Utility Supplier or public service commission.

(b) If Checkmetering is not permissible, Retail Service must be considered. Where Checkmetering is permissible the type of individual metering offering the most savings to the PHA shall be selected.

§ 865.404 Benefit/cost analysis.

(a) A Benefit/Cost Analysis shall be made to determine whether a change from a Mastermetering System to individual meters will be cost effective, except as otherwise provided in Section 865.407. In making this analysis the following percentage factors shall be used to estimate Utility consumption resulting from changes from a Mastermeter System without Checkmeters to systems with individual meters.

[In percent]

Utility function	Tenant retail service	Checkmeters
Lighting and refrigeration	75	85
Cooking	75	85
Domestic hot water	75	85
Space heating	65	75

(b) Proposed installation of Checkmeters must be justified on the basis that the cost of debt service (interest and amortization) of the estimated installation costs plus the operating costs of the Checkmeters will be more than offset by reduction in future Utilities expenditures to the PHA under the Mastermeter System. The following steps will normally be performed in making this analysis:

(1) Ascertain current Utility cost in terms of consumption by tenants and the applicable rate utilizing monthly billings and data from the Utility supplier. The monthly average should be based on data for the preceding 12-month period.

(2) Estimate changes in consumption after installation of Checkmeters utilizing the table set forth in (a) above.

(3) Compute Utility cost after installation of Checkmeters using the applicable rate.

(4) Compute the gross annual savings resulting from use of Checkmeters.

(5) Estimate the costs of operation of the Checkmeter System, including maintenance, repairs, meter reading, and billing.

(6) Compute the net annual savings.

(7) Compute the present worth of savings for a 20-year period using the current Minimum Loan Interest Rate.

(8) Estimate costs of Checkmeter purchase and installation, including cost of meters, meter loops, labor, and materials.

(9) Compare (b) (7) and (8) above. If (b) (7) is greater than (b) (8) the conversion is cost effective.

Example

1. Electricity is used for tenant lighting and refrigeration in a 210-unit family project. Average monthly billing is $3,120 for 120,000 Kwh. Annual cost of electricity is:

$$\$3,120 \times 12 = \$37,440$$

2. After installation of Checkmeters (with surcharging of tenants for excess consumption) tenant electric consumption will be reduced to 85% of consumption under Mastermetering without Checkmeters.

Estimated consumption:

$$120,000 \text{ Kwh} \times 0.85 = 102,000 \text{ Kwh}$$

3. Compute expense of electricity after installation of Checkmeters. Applicable electric rate schedule, obtained from electric company is:

Energy charge: 3.50¢ per Kwh first 20,000 Kwh, 2.50¢ per Kwh next 30,000 Kwh, 1.50¢ per Kwh next 50,000 Kwh, 1.00¢ per Kwh all additional. Fuel adjustment is 0.6¢ Kwh for all power sold.

Application of the above light and power rate, computed on the basis of consumption is:

20,000 Kwh at 3.5¢ per Kwh	$700
30,000 Kwh at 2.5¢ per Kwh	750
50,000 Kwh at 1.5¢ per Kwh	750
2,000 Kwh at 1.0¢ per Kwh	20
Fuel adjustment: 102,000 Kwh at 0.6¢ per Kwh	612
Average monthly expense	2,832
Total annual expense for electricity after installation of Checkmeters is: $2,832×12	33,984

4. Gross annual savings is:

$$\$37,440 - \$33,984 = \$3,456$$

5. Cost of operating Checkmeters is estimated to be $683 annually.

6. Net annual savings:

$$\$3,456 - \$683 = \$2,773$$

7. Compute present worth of savings using present worth factor from interest tables (present worth factor used is for a 5% Minimum Loan Interest Rate and a 20-year period):

$$\$2,773 \times 12.462 = \$34,557$$

8. Estimated installation cost of Checkmeters is $10,500.

9. (7) is greater than (8) therefore conversion is cost effective.

(c) Proposed conversion to Retail Service must be justified on the basis of net savings to the PHA. This determination involves making a comparison between the reduction in Utility expense obtained through eliminating the expense to the PHA for PHA-supplied Utilities compared to the resultant allowance for tenant-supplied Utilities based on the cost of Utility Service to the tenants after conversion. The following steps will normally be performed in making this analysis:

(1) Ascertain current Utility costs in terms of consumption by tenants and the applicable rate utilizing monthly billings and data from the Utility supplier, based on data for the preceding 12-month period.

(2) Estimate annual cost of maintenance and repair of existing Utility system for the same 12-month period.

(3) Compute total annual expense of Utility service (sum of (c) (1) and (2)).

(4) Estimate changes in consumption after conversion to Retail Service, utilizing the table set forth in (a) above.

(5) Compute Utility cost after conversion to Retail Service using the applicable Retail Service schedule.

(6) Compare (c) (3) and (5). If (c) (3) is greater, conversion to Retail Service will be cost effective.

Example

1. Electricity is used for tenant lighting and refrigeration for a 505-unit family project. Average monthly billing is $7,807 for 237,400 Kwh. Annual cost of electricity is:

$$\$7,807 \times 12 = \$93,684$$

2. Estimated average cost of maintenance and repair to the Mastermeter System is $754 per month. (Assume the system can be converted to Retail Service without cost to the PHA.) Annual expense is:

$$\$754 \times 12 = \$9,048$$

3. The total annual expense of Utility service is:

$$\$93,684 + \$9,048 = \$102,732$$

4. The estimated average tenant monthly consumption after conversion to Retail Service is 75% of consumption under Mastermetering without Checkmeters:

$$(237,400 \text{ Kwh} \times 0.75) \div 505 = 353 \text{ Kwh}$$

5. Applicable residential electric rate schedule obtained from power company is: $2.00 for first 10 Kwh, 5.0¢ per Kwh for next 40 Kwh, 4.0¢ per Kwh for next 50 Kwh, 2.5¢ per Kwh for all additional. Fuel adjustment is 0.5¢ per Kwh for all power sold.

6. Annual cost of electricity based on foregoing schedule and estimated average tenant monthly consumption is:

$$\$14.10 \times 12 \times 505 = \$85,446$$

7. Since (3) is larger than (6) conversion is cost effective.

§ 865.405 Funding.

The cost to change Mastermeter Systems to Individual metering of tenant consumption including the costs of Benefit/Cost Analysis, and complete installation of Checkmeters shall be funded from operating funds of the PHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a Modernization Program or for funding from any available Development Funds.

§ 865.406 Order of conversion.

Conversions to individually metered Utility Service shall be accomplished in the following order where a PHA has projects of two or more of the designated categories, unless otherwise approved by the HUD Field Offices:

(a) In projects where Retail Service is provided by the Utility supplier and the PHA is paying all the individual Utility bills, no Benefit/Cost Analysis is necessary and tenants shall be billed directly after the PHA adopts revised rent schedules providing appropriate allowances for tenant-supplied utilities.

(b) In projects where Checkmeters have been installed but are not being utilized as the basis for determining Utility charges to tenants, no Benefit/Cost Analysis is necessary and the Checkmeters shall be utilized as the basis for such charges, and tenants shall be Surcharged for excess Utility use.

(c) Projects where Meter Loops have been installed for utilization of Checkmeters, shall be analyzed both for the installation of Checkmeters and for conversion to Retail Service.

(d) Low or medium rise family units with a Mastermeter System should be analyzed for both Checkmetering and conversion to Retail Service, because of their large potential for energy savings.

(e) Low or medium rise housing for elderly should next be analyzed for both Checkmetering and conversion to Retail Service, since the potential for energy saving is less than for family units.

(f) Electric Service under Mastermeters for high rise buildings, including

projects for the elderly, should be analyzed for both use of Retail Service and of Checkmeters.

§ 865.407 Actions affecting tenants.

(a) Prior to making any conversion to Retail Service the PHA shall adopt revised rent schedules providing appropriate allowances for the tenant-supplied Utilities resulting from the conversion.

(b) Prior to implementing any modifications to Utility Services arrangements with the tenants or charges with respect thereto, the requisite changes shall be made in tenant dwelling leases in accordance with the requirements of 24 CFR Part 866 Subpart A.

(c) To the extent practicable, PHAs should work closely with tenant organizations in making plans for conversion of Utility Service to individual metering, explaining the national policy objectives of energy conservation, the changes in charges and rent structure which will result, and the goals of achieving an equitable structure which will be advantageous to tenants who conserve energy.

(d) A transition period of at least six months shall be provided in the case of initiation of Checkmeters during which tenants will be advised of the charges but during which no Surcharge will be made, based on such readings. This trial period will afford tenants ample notice of the effects the Checkmetering System will have on their individual Utility charges and also afford a test period for the adequacy of the Utility allowances established.

(e) During and after the transition period PHA's shall advise and assist tenants with high utility consumptions on methods for reducing their usage. This advice and assistance may include counseling, installation of new energy conserving equipment or appliances and corrective maintenance.

§ 865.408 Compliance schedule.

(a) PHA's shall complete Benefit/Cost Analysis for all Mastermetered projects within eighteen (18) months after the effective date of the final rule.

(b) Mastermetered projects determined to be cost effective for conversion to Retail Service or Checkmetering shall be so converted within thirty (30) months after issuance of the final rule unless the HUD Field Office determines that funds are not available for this purpose.

§ 865.409 Waivers for similar projects.

PHA's with more than one project of similar design and utilities service may prepare a Benefit/Cost Analysis for a representative project. A finding that a change in metering is not cost effective for the representative project is sufficient reason for the HUD Field Office to waive the requirements of this subpart for Benefit/Cost Analysis on the remaining similar projects.

§ 865.410 Reevaluations of Mastermeter Systems.

Because of changes in the cost of utility services and the periodic changes in utility regulations, PHA's with Mastermeter Systems are required to reevaluate Mastermeter systems without checkmeters by making Benefit/Cost Analyses at least every 36 months. HUD Field Offices may grant waivers of this requirement upon making a finding as provided in paragraph 865.409.

Effective date: This part is effective on May 17, 1976.

JAMES L. YOUNG,
Assistant Secretary
for Housing Management.

[FR Doc.76-14120 Filed 5-14-76;8:45 am]

federal register

MONDAY, MAY 17, 1976



PART IV:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Consumer Affairs and Regulatory Functions

■

REAL ESTATE SETTLEMENT COSTS

Special Information Booklet

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Consumer Affairs and Regulatory Functions

[Docket No. N–76–525]

REAL ESTATE SETTLEMENT COSTS

Special Information Booklet

This Department published regulations effective January 2nd, 1976, (41 FR 1672), implementing the Real Estate Settlement Procedures Act of 1974 (Pub. L. 93–533 herein, "RESPA") as amended effective January 2, 1976 by RESPA amendments of 1975 (Pub. L. 94–205). Acting under authority contained in section 12 of RESPA Amendments, however, the operation of RESPA provisions dealing with the information booklet was suspended until June 30, 1976, in order to allow for orderly revision to the previous information booklet (entitled "Settlement Costs").

The information booklet as published for comment below, is intended to implement Section 5 of RESPA, "Special Information Booklets." The published text reflects Regulation X in its proposed form as pubilshed at 41 FR 13032, March 29, 1976. It is intended that the contents of the booklet, when published in final form, will be consistent with Regulation X requirements in effect on June 30, 1976.

Specific comment, however, is requested regarding the effectiveness of the substantive presentations, organization and/or readability of the following:

1. The booklet was designed to provide a general description and explanation of the nature and purpose of each cost incident to a real estate settlement. The booklet, however, does not describe the numerous variations in practice that exist throughout the country. Should Regulation X be revised to permit lenders to provide an addendum that describes particular settlement practices current in their localities?

2. A worksheet approach has been utilized in the booklet. The borrower is encouraged to shop for settlement services and compare cost information between service providers by noting dollar amounts on a worksheet. Other comparison devices are also included. Is this helpful?

3. The booklet presents a discussion of RESPA Section 10 requirements regarding reserve (escrow) accounts and a discussion of the nature of prorations. This is an area of real estate settlement practices which is very difficult to understand and describe. It is done well here? What alternative language would be preferable?

4. The booklet provides information about choices available to borrowers in selecting persons to provide necessary services incident to a real estate settlement. Will this information be helpful?

5. The booklet is designed to satisfy the Section 5 RESPA requirement that an explanation be provided the borrower of the unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real etstate settlement. Does the booklet accomplish that goal?

6. Some homebuyers may obtain a copy of the booklet prior to signing a sales contract; therefore, some information about sales contract provisions that affects settlement costs is appropriate. How helpful is that prior information?

Interested persons are invited to participate in this proposed rulemaking by submitting written data, views and arguments with regard to this proposal. Communications should be identified by the above docket number and title, and should be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. All relevant material received on or before May 31, 1976, will be considered before adoption of the final rule. Copies of comments submitted will be available for public inspection during normal business hours at the above address.

The Department intends to publish the final booklet by June 1, 1976.

SETTLEMENT COSTS

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INTRODUCTION

THE REAL ESTATE SETTLEMENT PROCEDURES

One of the principal objectives of the Real Estate Settlement Procedures Act (RESPA) is to help you secure adequate settlement services at reasonable prices, by requiring that you be provided with meaningful information on a timely basis. To this end, the law requires that

the lender, usually a bank, provide you with good faith estimates of settlement services at the time you file an application for a loan. The law also requires that the lender provide you with this information booklet, developed by the U.S. Department of Housing and Urban Development. RESPA was not designed to set the prices of settlement services at the lowest cost but rather to provide information about the settlement process, and about prevailing costs in your locality. You can then shop for competitive prices and make the selection best suited to your means and needs.

This booklet describes the settlement process and charges, suggests questions you might ask of lenders, attorneys and others to clarify what services they will provide you for the charges quoted, and alerts you to unfair or illegal practices. It also contains information on your rights and remedies available under RESPA.

You can exert greater control over the settlement process than you might have thought, especially if you use the advice given in the booklet. However, this booklet will not provide answers for all settlement problems or explain all possible events that may occur during the settlement process. Procedures vary too greatly for one booklet to provide all the answers. This booklet will give you some general ideas, though, that ought to be helpful in any circumstance.

WHAT IS SETTLEMENT

Settlement is a formal transaction in which ownership of real property passes from seller to buyer. It is the end of the home buying process, not the beginning; it is the time when papers are signed, monies are transferred between buyer and seller, and the buyer is satisfied with the seller's ability to convey good title. It may well be the last time you will see the seller and those who have helped in the settlement process.

When the settlement day arrives, you are committed to the purchase of the property and have made a downpayment called earnest money. Services have been performed on your behalf for which you are obligated to pay. Unless a seller fails to perform a legally binding promise or has acted in a fraudulent fashion, you are obligated to complete the contract and pay settlement costs. Thus the time to decide the terms of sale, raise questions, and establish fair fees is not at time of settlement, but earlier, when you negotiate the sales contract and select the providers of settlement services. By the time of settlement, any changes in settlement costs and purchase terms are difficult to negotiate.

SETTLEMENT COSTS AND TERMS

Perhaps the best way to begin is at the end, with the Uniform Settlement Statement (HUD–1 Form), which will be given to you at or before settlement. This form records the actual charges incurred for your particular purchase. (There are some exceptions to this requirement. Ask your lender about these.) This section provides an explanation of each fee or charge which appears on the statement. A sample copy of the form is included beginning at page 4 to help you understand the usefulness of the statement. You should note that each item discussed does not necessarily apply in every locality. In addition, charges may be made for some services not mentioned in this booklet which are unique to your area.

The section after the explanations and definitions gives suggestions and provides questions which can be asked of the providers of settlement services. It is impossible in a short booklet of this type to explain fully each item. Therefore, the questions you ask of each service firm become the principal source of information in helping you decide what firm to use. While public libraries have real estate books which may be of value to you, and the federal government has pamphlets explaining various aspects of home buying (see Appendix C), the most helpful information will be that obtained through answers to the questions you ask in your community.

Sections A through I of the Uniform Settlement Statement contain information about the loan, the house, and the actors in the process. Sections J and K contain a summary of all funds transferred between the buyer/borrower, the seller, the lenders, and the providers of settlement services. The bottom line for both borrower's and seller's transactions shows the net cash to be paid and received at settlement. Section L is a detailed statement of all settlement charges, and includes blank lines to be filled in by the person conducting the settlement for any items not listed on the printed form. The totals of these costs are carried forward to sections J and K, in order to arrive at the net cash figures. Your form, as received from the lender, may not look exactly the same as the one in this booklet. The lender is allowed to vary the form to make it fit the particular circumstances of your locality, but all the items contained on his form must have the same titles and line numbers as the ones described below. Thus, you should have no difficulty following this discussion with the form the lender provides.

HUD-1 UNIFORM SETTLEMENT FORM

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT SETTLEMENT STATEMENT	B. TYPE OF LOAN 1. ☐ FHA 2. ☐ FMHA 3. ☐ CONV. UNINS. 4. ☐ VA 5. ☐ CONV. INS. 6. File Number: 7. Loan Number: 8. Mortgage Insurance Case Number:

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME OF BORROWER:	E. NAME OF SELLER:	F. NAME OF LENDER:

G. PROPERTY LOCATION:	H. SETTLEMENT AGENT: PLACE OF SETTLEMENT:	I. SETTLEMENT DATE:

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (from line 1100, Section L)		403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance:		*Adjustments for items paid by seller in advance*	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109. to		409. to	
110. to		410. to	
111. to		411. to	
112. to		412. to	
120. GROSS AMOUNT DUE FROM BORROWER:		420. GROSS AMOUNT DUE TO SELLER:	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money		501. Deposit or earnest money	
202. Principal amount of new loan(s)		502. Payoff of first mortgage loan	
203. Existing loan(s) taken subject to		503. Payoff of second mortgage loan	
204.		504. Settlement charges to seller (line 1400, Sec. L)	
205.		505.	
206.		506.	
Credits to borrower for items unpaid by seller:		*Credits to borrower for items unpaid by seller:*	
207. City/town taxes to		507. City/town taxes to	
208. County taxes to		508. County taxes to	
209. Assessments to		509. Assessments to	
210. to		510. to	
211. to		511. to	
212. to		512. to	
213. to		513. to	
		514. Existing loan(s) taken subject to	
		515.	
		516.	
		517.	
		518.	
		519.	
220. TOTAL AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		520. TOTAL REDUCTIONS IN AMOUNT DUE TO SELLER:	
300. CASH AT SETTLEMENT REQUIRED FROM OR PAYABLE TO BORROWER:		600. CASH TO SELLER FROM SETTLEMENT:	
301. Gross amount due from borrower (from line 120)		601. Gross amount due to seller (from line 420)	
302. Less amounts paid by or in behalf of borrower (from line 220)	( )	602. Less total reductions in amount due to seller (from line 520)	( )
303. CASH (☐ REQUIRED FROM) OR (☐ PAYABLE TO) BORROWER:		603. CASH TO SELLER FROM SETTLEMENT	

L. SETTLEMENT CHARGES	PAID FROM BORROWER'S FUNDS	PAID FROM SELLER'S FUNDS
700. SALES/BROKER'S COMMISSION based on price $ @ %		
701. Total commission paid by seller Division of commission as follows:		
702. $ to		
703. $ to		
704.		
800. ITEMS PAYABLE IN CONNECTION WITH LOAN		
801. Loan Origination fee %		
802. Loan Discount %		
803. Appraisal Fee to		
804. Credit Report to		
805. Lender's inspection fee		
806. Mortgage insurance application fee to		
807. Assumption fee		
808.		
809.		
810.		
811.		
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE		
901. Interest from to @ $ /day		
902. Mortgage insurance premium for mo. to		
903. Hazard insurance premium for yrs. to		
904. yrs. to		
905.		
1000. RESERVES DEPOSITED WITH LENDER FOR:		
1001. Hazard insurance mo. @ $ /mo.		
1002. Mortgage insurance mo. @ $ /mo.		
1003. City property taxes mo. @ $ /mo.		
1004. County property taxes mo. @ $ /mo.		
1005. Annual assessments mo. @ $ /mo.		
1006. mo. @ $ /mo.		
1007. mo. @ $ /mo.		
1008. mo. @ $ /mo.		
1100. TITLE CHARGES:		
1101. Settlement or closing fee to		
1102. Abstract or title search to		
1103. Title examination to		
1104. Title insurance binder to		
1105. Document preparation to		
1106. Notary fees to		
1107. Attorney's Fees to (includes above items No.:		
1108. Title insurance to (includes above items No.:		
1109. Lender's coverage $		
1110. Owner's coverage $		
1111.		
1112.		
1113.		
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES		
1201. Recording fees: Deed $; Mortgage $ Releases $		
1202. City/county tax/stamps: Deed $; Mortgage $		
1203. State tax/stamps: Deed $; Mortgage $		
1204.		
1300. ADDITIONAL SETTLEMENT CHARGES		
1301. Survey to		
1302. Pest inspection to		
1303.		
1304.		
1305.		
1400. TOTAL SETTLEMENT CHARGES (entered on lines 103 and 503 Sections J and K)		

Definitions begin with the specific settlement charges found in Section L, followed by the summary items, Sections J and K.

SPECIFIC CHARGES

The specific charges in Section L are on page 2 of the HUD–1 Form.

Settlement charges.—Sales/Broker's Commission (700). This is the dollar amount of the sales commission, usually paid by the seller. Fees are usually a percentage of the selling price of the house, and are intended to compensate brokers or salesmen for their services. Custom and/or the negotiated agreement between the seller and the broker determine thse amount of the commission.

Total Commission and Division of Commission (701–703). If several brokers or salesmen work together to sell the house, the commission may be split among them. The total commission on the sales price of the house is entered on line 701 in the seller's column and the split is shown along with the dollar amount and names of those receiving a part of the commission on lines 702–703.

Items Payable in Connection with Loan (800). These are all the fees which lenders may charge to process, approve and make the mortgage loan.

Loan Origination Fee (801). This fee covers the lender's administrative costs in processing the loan. Often expressed as a percentage of the loan, the fee will vary between lenders and from locality to locality. Generally the buyer pays the fee unless another arrangement has been made with the seller and written into the sales contract. However, the amount chargeable to the buyer under FHA-insured or VA-guaranteed transactions involving existing structures is limited to no more than one percent of the mortgage amount.

Loan Discount (802). Often called "points," this is a one-time charge made by the lender to compensate for making a loan at a lower interest rate than would be otherwise charged. This is done because State or Federal law limits the interest rate for the type of loan involved. Each "point" is one percent of the mortgage amount. For example, if a lender charges four points on a $29,250 loan this amounts to a discount of $1,170. In FHA and VA transactions, the buyer may not be charged a discount by the lender, but the seller may agree to pay points in order to help the buyer obtain financing.

Appraisal Fee (803). This charge, which may vary significantly from transaction to transaction, pays for a statement of property value made by an independent appraiser or by a member of the lender's staff. The appraiser will report to the lender on the property's value. In some jurisdictions, the lender needs to know if the value of the property is sufficient to adequately secure the loan if you fail to foreclose and take title to the house.

The appraiser inspects the house and the neighborhood, and considers sale prices of comparable houses and other factors in determining the value. The appraisal report may contain photos and sketches. It will provide the factual data which the appraiser relied upon in fixing an appraised value. Ask the lender for a copy of the appraisal report or review the original. The report should contain information of value to you. Not all conventional lenders will cooperate in furnishing a report. However, lenders making FHA or VA loans must do so. The appraisal fee may be paid by either the buyer or the seller, as agreed in the sales contract. In some cases this fee is included in the Mortgage Insurance Application Fee. See line 806.

On FHA and VA loans the appraisal is made for the government agency rather than the lender and the borrower has the right to inspect the report.

Credit Report Fee (804). This fee covers the cost of the credit report. The lender uses this report in conjunction with information you submitted with the application regarding your income, outstanding bills, and employment, to determine whether you are an acceptable credit risk and to help determine how much money he will lend.

The credit report shows how you have handled other credit transactions. It generally includes a check of court records for judgments, law suits, divorce decrees, etc. If incorrect information in the credit report disqualifies or adversely affects your loan application, you may be able to take corrective action. Your protections under the Fair Credit laws are summarized under "Homebuyers' Rights" in this booklet.

Lender's Inspection Fee (805). This charge covers inspections, usually of newly constructed housing, made by personnel of the lending institution. (Pest or other inspections made by companies other than the lender are discussed in connection with line 1302).

Mortgage Insurance Application Fee (806). This fee covers processing the application for federal or private mortgage insurance on your loan. It includes the appraisal fee on FHA or VA loans. For a privately insured loan it may cover both the appraisal and application fee. However, generally a private mortgage insurer will accept the lender's appraisal. See line 803.

Assumption Fee (807). This fee is charged for processing papers in cases in which the buyer takes over payments on the prior loan of the seller. While most transactions do not involve an assumption, an assumption may save money for you both in settlement costs and in the form of a lower interest rate. The possibility is worth exploring.

Items Required by Lender to be Paid in Advance (900).—Interest (901). Lenders usually require that borrowers prepay the interest that accrues on the mortgage from the date of settlement to the beginning of the period covered by the first monthly payment. For example, suppose your settlement takes place on March 15, and your first regular monthly payment will be due May 1, to cover the month of April. On the settlement date the lender will collect interest for the period from March 15 to April 1. If you borrowed $30,000 at 9% interest, the interest item would be $112.50. This amount will be entered on line 901.

NOTE.—Some lenders collect interest at the beginning of the monthly period to which it applies, rather than at the end. On such a loan, the first monthly payment in the foregoing example would be due on April 1; the "interest in advance" calculation would be the same, $112.50. FHA, Farmer's Home Adm., and VA do not allow lenders to charge interest in advance of use, since it increases the effective rate of interest.

Mortgage Insurance Premium (902). Mortgage insurance protects the lender from loss due to payment default by the home owner. With this protection the lender is willing to make a larger loan, thus reducing your downpayment requirements. The premium charge for FHA mortgage insurance is paid by the borrower as a small addition to his monthly payments. Private mortgage insurance premiums may be paid in this way, or in a lump sum when the loan is made. There is no charge to veterans for a VA guarantee. If your loan is insured by private mortgage insurance, you may be required to pay a mortgage insurance premium for a specific number of months or a year in advance. FHA and the Farmers Home Administration limit the amount to be collected.

Hazard Insurance Premium (903). This premium prepayment is for insurance protection for you and the lender against loss due to fire, windstorm, and natural hazards. This coverage may be included in a Homeowners Policy which insures against additional risks which may include personal liability and theft. Lenders often require payment of the first year's premium at settlement.

A hazard insurance or homeowner's policy may not protect you against loss caused by flooding. In special flood-prone areas identified by HUD, you may be required to carry flood insurance on your home. Such insurance may be purchased at low federally subsidized rates in communities eligible under the National Flood Insurance Act. Contact a local hazard insurance agent concerning eligibility in your case.

Reserves Deposited with Lenders (1000). Reserves (sometime called "escrow" or "impound" accounts) are your funds held in an account by the lender to assure payment for such recurring items as real estate taxes and hazard insurance.

You will probably have to pay an initial amount for each of these items to start the reserve account at the time of settlement. A portion of your regular monthly payments will be added to the escrow account. RESPA places limitations on the amount of reserve funds which may be required by the lender. Read "Reserve Accounts" in this booklet for reserve calculation procedures. Do not hesitate to ask the lender to explain any variance between your own calculations and the figure presented to you.

Hazard Insurance (1001). The lender determines the amount of money that must be placed in the reserve in order

to pay the insurance premium when due. See "Reserve Accounts" for calculations.

Mortgage Insurance (1002). The lender, using the yearly premium amounts set by FHA, the Farmers Home Administration or the private mortgage insurance company, may require that part of the total annual premium be placed in the reserve account at settlement. The amount may be negotiable. FHA places limits on this amount.

City/County, Property Taxes (1003–1004). The lender may require a regular monthly payment to the reserve account for property taxes.

Annual Assessments (1005). This reserve item covers county or city taxes assessed on the property for special improvements, such as sidewalks or sewers, sometimes called front footage taxes.

Title Charges (1100). Title charges may cover a variety of services performed by the lender or others for handling and supervising the settlement transaction and services related thereto. The specific charges discussed in connection with line 1101 through 1109 are those most frequently incurred on settlement. Due to the great diversity of practices from area to area, your particular settlement may not include all these items or may include others not listed. Ask your lender to clarify how these fees relate to services performed on your behalf. An extended discussion is presented in "Searching a Title" later in this booklet.

Settlement or Closing Fee (1101). This fee is paid to the settlement agent for his service in seeing that Title to the property is passed to you at settlement. Certain expenses are properly divided between the buyer and seller and that the seller receives the money and/or the executed mortgage which he should have. Responsibility for payment of this fee is usually negotiable between the seller and buyer.

Abstract or Title Search, Title Examination, Title Insurance Binder, Document Preparation (1102–1105). These charges cover the costs of the search and examination of records of previous ownership, transfers, etc., to determine whether the seller holds good title to the property, and to disclose any matters on record that could adversely affect the buyer or the lender. Examples of Title problems are unpaid mortgages, judgment or tax liens, conveyances of mineral rights, leases, and power line easements or road rights-of-way that could limit use and enjoyment of the real estate.

There may be a separate document fee that covers preparation of final legal papers, such as a deed of trust, mortgage note, title insurance binder, or title insurance application form. Further discussion is included in section C, part 4. You should check to see that these services, if charged, are not also covered under some other service fees. Ask the lender.

Notary Fee (1106). This fee is charged for the cost of having a licensed person fix his or her name and seal to various documents authenticating the execution of these documents by the parties.

Attorney's Fees (1107). You may be required to pay for legal services provided to the lender in connection with the settlement, such as examination of the title binder or sales contract. Occasionally this fee can be shared with the seller. If a lawyer's involvement is required by the lender, the fee will appear on this part of the form. The buyer and seller may each retain an attorney to check the various documents and to represent them at the settlement. Where this service is not required or is paid for outside of closing, the lender is not obligated to record the fee on the settlement form.

Title Insurance (1108). The total cost of owner's and lender's title insurance is shown here. The borrower may pay all or only a part of this cost depending on the terms of the sales contract or local custom.

Lender's Insurance (1109). A one-time premium may be charged at settlement for a policy which protects the lender against loss due to problems or defects in connection with the title. The insurance is usually written for the amount of the mortgage loan and covers losses due to defects or problems not identified by title search and examination. This is customarily paid by the borrower unless the seller agrees to pay part or all of it in the sales contract.

Owner's Insurance (1110). This charge is for owner's title insurance protection and protects you against losses due to title defects. In some areas it is customary for the seller to pay for this policy.

Government Recording and Transfer Charges (1201–1204). These fees may be paid either by borrower or seller. The borrower usually pays the fees for legally recording the new deed and mortgage. These fees, collected when property changes hands or when a mortgage loan is made, may be quite large and are set by state and/or local governments. City, county and/or state tax stamps may have to be purchased as well.

Additional Settlement Charges (1300–1305).—Survey (1301). The lender may require that a surveyor conduct a property survey to determine exact location of the house and lot lines. This is a protection to the buyer as well. Usually the buyer pays the surveyor's fee, but sometimes this may be handled by the seller.

Pest inspection (1302). This fee is to cover inspections for termite or other pest infestation of the house. This may be important if the sales contract includes a promise by the seller to transfer the property free from pests or pest-caused damage. Be sure that the inspection shows that the property complies with the sales contract before you complete the settlement. Where the seller has failed to correct the problems, do not complete your closing without an explicit written promise by the seller to correct the situation. You may wish to require a bond or other financial assurance that the work will be completed. You need not complete the closing if the seller has failed to perform.

This fee can be paid either by the borrower or seller depending upon the terms of the sales contract. Lenders vary in their requirements as to such an inspection. There may also be pre-sale inspections for the buyer's benefit to evaluate the heating, plumbing, and electrical systems and overall structural soundness. The charge for such an inspection may include a fee for insurance or warranty services to back up the inspection. Warranty insurance costs may also be listed here. If you are buying a new house, check with the builder for the availability of a warranty.

Total Settlement Charges (1400). All the fees in the borrower's column entitled "Paid from borrower's fund" are totaled here and transferred to line 103 of section J, "Settlement Charges to Borrower" in the Summary of Borrower's Transaction on page 1 of HUD–1. All the settlement fees paid by the seller are transferred to line 504 of section K, "Settlement Charges to Seller" in the Summary of Seller's Transaction on page 1 of HUD–1.

SUMMARY OF BORROWER'S TRANSACTION

(Section J, Page 1 of HUD Form 1)

Gross Amount Due (From Borrower (100)) (To Seller (400)). Page 1 of the Uniform Settlement Statement HUD Form 1 summarizes all actual costs and adjustments for the borrower and seller, including the settlement fees and charges found on line 1400 of Section L. Sections 301–303 aggregate all costs and amounts to be paid by or on behalf of the buyer resulting in line 303, the net cash figure payable to the borrower (buyer).

Contract Sales Price (101). This is the price of the home agreed to in the sales contract between the buyer and seller.

Personal Property (102). If, at the time the sales contract is made, you and the seller agreed that some items are to be transferred with the house, the price is entered here. If it was agreed to include these items in the price of the home, their cost will be part of the sales price recorded on line 100. Personal property includes items like carpets, drapes, stove, refrigerator, etc.

Settlement Charges to borrower (103). The total charges detailed in Section L and totaled on line 1400, are recorded here. This figure includes all of the items payable in connection with the loan, items required by the lender to be paid in advance, reserves deposited with the lender, title charges, government recording and transfer charges, and any additional related charges.

Additional Costs (104 & and 105). This space is for listing any additional amounts owed the seller, such as reserve funds if the buyer is assuming the seller's loan. This may not be applicable to your settlement.

Adjustments (106–112). These include taxes, front footage charges insurance, fuel and other items that the seller has previously paid for covering a period which runs beyond the settlement date. The costs are usually divided on a proportional basis with the seller being reimbursed for accruals occurring after the date of transfer of Title.

Gross Amount Due (120). This is the total of lines 100 through 112.

Amounts Paid By Borrower (200).—Deposit or earnest money (201). This is the amount which you paid against the sales price when the sales contract was signed.

Principal amount of new loan (202). This is the amount of the new mortgage which you will repay to the lender in the future.

Existing loan(s) (203). If you are taking over the seller's mortgage(s) instead of obtaining a new loan or paying all cash, the amount still owed on those prior loans will be shown here.

Credit to borrower (207–213). This includes so much of taxes or assessments as become due after settlement but which cover a period of time prior to settlement and therefore represent costs properly payable by the seller. See "Reserve Accounts" for a further discussion of these matters.

Total Amounts Paid By Borrower (220). This is the sum of lines 201 through 213.

Cash At Settlement (300–303). Remaining are the summary lines which are 300–303 for the borrower (and 600–603 for the seller). Subtracting line 302 (gross amount paid by or on behalf of the borrower) from line 301 (gross amount due from the borrower) results in the net cash the borrower must pay at settlement. A sample worksheet is included, to allow you to trace an illustrative transaction.

Escrow Closings: A Note. In some parts of the country, settlement may be conducted by an esecrow agent, a lender, real estate broker, title company representative or an attorney. After entering into a contract of sale, the parties sign an escrow agreement which requires them to deposit specified documents and funds with the agent. Unlike the typical closing in many parts of the East, the parties do not meet together around a table to sign and exchange documents. If all the papers and money are deposited within the agreed time, the escrow is "closed". The escrow agent then records the appropriate documents and gives each party the documents and money he is entitled to receive. This includes the completed HUD–1 Form. If one party has failed to fulfill his agreement, the escrow is not closed and a law suit may follow.

Escrow practices differ from state to state. In some areas, like California, they are the dominant mode of settlement. The agent may request a title reports and policy; draft a deed or other documents; obtain rent statements; pay off existing loans; adjust taxes, rents, and insurance between the buyer and seller; compute interest on loans; and acquire hazard insurance. All this is authorized in the escrow agreement.

RESERVE ACCOUNTS

In most instances, a monthly mortgage payment is made up of a payment on principal amount of the mortgage debt which reduces the balance due on the loan, and interest payment which is the charge for use of the borrowed funds, and a reserve payment (also known as an escrow or impound payment) which represents approximately one-twelfth of the estimated annual insurance premiums, property taxes, assessments and recurring property-related charges. This sum is placed in a special account and allowed to accumulate until the next due date of each specific recurring charge.

When settlement occurs you may need to make an initial deposit into the reserve account; otherwise, your regular monthly deposits to it will not accumulate enough to pay the taxes, insurance or other charges when they fall due. Under RESPA, the maximum amount the lender can require borrowers or prospective borrowers to deposit into a reserve account at settlement is a total gross amount not to exceed: (a) a sum that would have been sufficient to pay taxes, insurance premiums, and other charges for the period beginning with the last date on which taxes, or insurance premiums, or other charges would have been paid under normal conditions, and ending on the due date of the first full monthly mortgage installment payment; plus (b) an additional amount not in excess of one-sixth (2 months) of the estimated total amount of taxes, insurance premiums and other charges to be paid on the dates indicated above during any twelve month period to follow.

An illustration will help clarify this calculation. Assume the following set of facts on a loan. Also assume that taxes are paid at the end of the period against which taxes are assessed.

Example.—Settlement date: April 30, 1977; Due Date of first mortgage loan repayment: June 1, 1977; (a) Taxes due yearly: $360.00; (b) Monthly tax accrual: $30.00; Due date for taxes: December 1st for the calendar year.

The reserve amount for category (a) is $180.00. This represents the amount of taxes accruing between December 1, 1976 (the last tax due date) and May 30, 1977 ($30.00 x 6 months). Reserve amounts chargeable under category (b) could be up to two months advance payment times $30.00 or a total of $60.00. Therefore, total reserve deposits for taxes at settlement would be a maximum of $240.00.

NOTE.—Changing the due date for taxes and/or the first mortgage payment results in a different reserve amount for the same illustration.

The same procedure is used to determine the maximum amounts that can be collected by the lender for insurance premiums or other charges. You need to know the charges and due dates in order to compute the amounts.

Once you begin your monthly mortgage repayments, you can not be required to pay more than one-twelfth of the annual taxes and other charges each month, unless a larger payment is necessary to make up for a deficit in your account or to maintain the cushion of the one-sixth of annual charges mentioned in (b) above. A deficit may be caused, for example, if your taxes or insurance premiums are raised.

You should note that the above reserve limitations apply to all federally related mortgage loans whether they were originated before or after the implementation of RESPA.

ADJUSTMENTS BETWEEN BUYER AND SELLER

The previous section dealt with setting up and maintaining your reserve account with the lender. At settlement it is also usually necessary to make an adjustment between buyer and seller for property taxes and other charges. This is an entirely separate matter from the initial deposit which the borrower makes into the new reserve account.

The adjustments between buyer and seller are shown in sections J and K of the Uniform Settlement Statement. In the example of the taxes given in the foregoing section, the taxes, which are payable annually, had not yet been paid when the settlement occurs on April 30th. The home buyer will have to pay a whole year's taxes on the following December 1st. However, the seller lived in the house for the first four months of the year. Thus, four-twelfths of the year's taxes are to be paid by him. Accordingly, Lines 208 and 508 on the Uniform Settlement Statement would read as follows:

County taxes 1/1/77 to 4/30/77: $120.00.

The buyer would be given credit for this amount in the settlement and the seller would have to pay this amount or count it as a deduction from sums which will be payable to him.

In some areas taxes are paid at the beginning of the taxable year. If, in our example, the taxes were paid by the seller on January 1, for the tax year 1977, ending December 31, 1977, the buyer will have to compensate the seller for the taxes attributable to the seller for the taxes attributable to the months that the buyer will be in possession of the property (April 30–December 31). This adjustment will be shown on lines 107 and 407 of the Uniform Settlement Statement. With settlement occuring on April 30, those lines will read as follows:

County taxes 4/30/77 to 12/31/77: $240.00.

This amount would be credited to the seller in the settlement.

Similar adjustments are made for insurance (if the policy is being kept in effect), special assessments, fuel and other utilities, although the billing periods for these may not always be on an annual basis. Be sure you work out these prorations with the seller prior to settlement. It is wise for you to notify utility companies of the change in ownership and ask for a special reading on the day of settlement, with the bill for pre-settlement charges to be mailed to the seller at his new address. This will eliminate much confusion that can result if you are billed for utilities which cover a period of time during which the seller occupied the unit.

SHOPPING FOR SERVICES

Shopping for settlement services can sometimes result in cost savings. In some instances the lender may require use of particular firms, but never assume that the costs first quoted are necessarily

those you must pay. Nor should you assume that the firms recomended to serve you are the ones you must use. Find firms that will provide services most compatible with your needs. Always ask questions of firms about settlement services they provide and their fees. Reputable business men will give you their best answer. If someone is unwilling to answer, ask the same question(s) of other providers of the same service.

You can also negotiate with the seller of the house about who pays various settlement fees. There are generally no fixed rules about which party pays which fees, although in many cases this is largely controlled by local custom.

Among the many factors that determine the amount you will pay for settlement costs are the location of your new home, the type of sales contract you negotiate, the arrangements made with the real estate broker, the lender you select, and your decisions in selecting the various firms that provide required settlement services. Property taxes and lending practices differ from area to area. If the chosen house is in a special flood hazard area, as designated by HUD, you may want to check flood insurance maps (prepared by the Federal Insurance Administration) available at city hall, as you may end up paying additional insurance as a prerequisite to obtaining mortgage financing.

ROLE OF THE BROKER

Although real estate brokers provide helpful advice on many aspects of home buying, and may in some areas supervise the settlement, they normally serve the interests of the seller, not the buyer. The broker's basic objectives are to obtain a signed contract of sale which properly expresses the agreement of the parties, and to complete the sale.

A broker may recommend that you deal with a particular lender, title company, attorney, or other provider of settlement services. Ask brokers why they recommend a particular company or firm over others. Advise them that while you welcome their suggestions (and, indeed, they probably have good contacts), you reserve the right to pick your own lawyer and title insurance company. It is up to you to review the documents carefully. Although the broker may offer helpful advice, keep in mind that you are the one who is spending the money to buy a home, and that you are entitled to a full understanding of the costs. The broker has a substantial interest at settlement to complete the transaction. Also, the obligation of the seller's broker is to represent the seller and in this connection, the seller may be interested primarily in closing the transaction as soon as possible.

NEGOTIATING A SALES CONTRACT

Most readers have probably already signed a sales contract. For those who have not, the following points are important. The sales agreement you and the seller sign determines which settlement costs you will pay and which will be paid by the seller. Buyers can and do negotiate with sellers as to which party is to pay for specific settlement costs. The success of such negotiations depends upon factors such a how eager the seller is to sell and you are to buy, the quality of the house itself, how long the house has been on the market, whether other potential buyers are interested, and how willing you are to negotiate for lower costs. There is no standard sales contract which you are required to sign. You are entitled to make any modifications in any standard form contract presented by the broker to which the seller will agree. You should consider including the following clauses:

A provision that the seller provide title, free and clear of all liens and encumbrances except those which you specifically agree to in the contract or approve when the results of the title search are reported to you. You may negotiate as to who will pay for the title search service to determine whether the title is "marketable."

A survey of the property to be included by the seller. A recent survey may suffice. This may save you money where the lender or title company requires a survey.

A refund of your deposit (earnest money) from the seller or escrow agent if you are unable to secure from a lending institution a first mortgage or deed-of-trust loan with an amount, interest rate, and length of term satisfactory to you.

A certificate stating that the house, at time of settlement, is free from termites or termite damage and that the plumbing, heating, electrical systems and appliances are in working order. Negotiate who pays for any necessary inspections; there is no uniform custom in most areas. Many buyers prefer to pay for these inspections because they want to know that the inspector is conducting the service for them, not for the seller.

An agreement on how taxes, water and sewer charges, premiums on existing transferable insurance policies, utility bills, interest on mortgages, and rent (if there are tenants) are to be divided between buyer and seller as of the date of the settlement.

Before you sign the sales contract, make sure that it correctly expresses your agreement with the seller on such important details as the sales price of the home, method of payment, the time set for your taking possession, the status of fixtures, appliances, and personal property in the home, and the other items described above.

Note that the above list is not intended to be complete, but does illustrate the importance of the sales agreement and its terms. Before you sign a sales contract you may want to ask an attorney to review the proposed agreement and determine if it protects your interests. If you do not know of an attorney you may wish to consult the local bar association referral service or neighborhood legal service office. After you sign the agreement, it is usually too late to make modifications. For most people a home is the most important and expensive purchase of a lifetime.

SELECTING AN ATTORNEY

If you seek the aid of an attorney, first ask what services will be performed for what fee. If the fee seems too high, shop for another lawyer. Is the attorney's specialty "real estate" or a nonrelated field? The answer to this question should have a bearing on the fee charged and on your selection of attorneys. The U.S. Supreme Court has said that bar association minimum fee schedules that fix attorneys' fees at a constant level are illegal, so do not be bashful about discussing and shopping for legal fees you can afford. Your Lawyer will understand.

Questions you might ask the attorney are: What is the charge for reading documents and giving advice concerning them? For being present at settlement? Will the attorney represent any other party in the transaction in addition to you? In some areas lawyers act as closing agents, handling the mechanical aspects of the settlement. A lawyer who does this does not necessarily represent you in a personal sense. You should have a clear understanding of this point.

SELECTING A LENDER

Your choice of lender will influence not only your settlement costs, but also the monthly cost of your loan. The lender's legitimate business interest is to make a loan on terms which will provide a good yield with little risk. In selecting a lending institution, ask about its requirements for settlement services and compare these requirements with those of other lenders. Some, for example, may require a new survey, an appraisal fee, or title insurance while others may not.

Many lenders deal regularly with certain title companies, attorneys, appraisers, surveyors, or others in whom they have confidence. They may want to arrange for provision of all settlement services through these parties as a convenience to the buyer and themselves. If this is the case, the lender is obligated to disclose certain types of information describing his relationship to these firms. More is said on this under "Good Faith Estimates". Federally insured savings and loan associates are not allowed to prohibit you from selecting your own providers for some of these services, although they may charge you for the fee of the association's lawyer.

Questions you may want to ask the lender should include these:

What fees or charges must you pay? (These may include charges for appraisal, credit report, photographs, various statesments or papers, or an origination fee or service charge.)

Are you required to carry property, life, or disability insurance? Must you obtain it from a particular company? (You may prefer no insurance or may wish to obtain it at a better premium rate elsewhere.)

Is there a late payment charge? How late may our payment be before the charge is imposed?

If you wish to pay off the loan (for example, if you move and sell the house), must you pay a prepayment penalty?

Will the lender allow you to be excused from liability for a deficiency judgement if the loan is assumed by someone else when you sell your house?

If you sell the house and the buyer assumes your loan, will the lender have the right to charge an assumption fee or raise the rate of interest?

If you have a financial emergency, will the terms of the loan include a future advances clause, permitting you to borrow additional money on the mortgage after you have paid off part of the original loan?

Will you be required to pay into a special escrow or impound account to cover taxes or insurance? If so, how large a deposit will be required at the closing of the sale? Will interest be paid on the account?

Carefully discuss with the lender the advantages and disadvantages of different financing approaches. The most typical approaches are conventional loans, conventionally insured loans, loans insured by the Federal Housing Administration and the Farmers' Home Administration, and loans guaranteed or insured by the Veterans' Administration. Compare the mortgage interest rates, downpayment requirements, and mortgage terms for all mortgage options open to you. If a lender is willing to reduce his fees for such things as loan origination, discount points and other one-time charges, he may gain it back if he charges a high mortgage interest rate.

There is a simple rule of thumb which will allow you to calculate how much the effective interest rate on your loan is increased by one-time charges such as "points." It is not perfectly accurate, but it is usually close enough for meaningful comparisons between lenders. The rule is that front end charges equaling one percent of the loan amount increases the interest charge by one-eighth (⅛) of one percent.

Here is an example of the rule: Consider only those charges that differ between lenders. Suppose you wish to borrow $30,000. Lender A will make the loan at 8.5 percent interest, but charges a 2 percent origination fee, a $150,00 appraisal fee, and requires that you use a lawyer selected by the lender at a fee of $300.00.

Lender B will make the loan at 9 percent interest, but has no additional requirements or charges. What are the actual charges for each case? Begin by relating all of Lender A's one-time charges to percentages of the $30,000 loan amount:

	Percent of loan amount
2 percent origination fee	2.0
$150 appraisal fee	0.5
$300 lawyer's fee	1.0
Total	3.5

Since each 1 percent of the loan amount in charges is the equivalent of ⅛ percent increase in interest, the effective interest rate from Lender A is the quoted or "contract" interest rate, 8.5 percent plus .44 percent (3.5 times ⅛), or a total of 8.94 percent interest. Since Lender B has offered a 9 percent interest rate, Lender A has made a more attractive offer. Of course, it is more attractive only if you have sufficient cash to pay Lender A's one-time charges and still cover your down payment, moving expenses, and other settlement costs.

You can use this method to compare the effective interest rates of any number of lenders as you shop for a loan. You must question lenders carefully to make sure you have learned of all of the charges they intend to make. The good faith estimate you receive when you make a loan application is a good checklist so you should ask the lender how the for this information, but it is not precise, charges and fees are computed.

You may wish to obtain a loan insured or guaranteed by FHA, VA, or Farmers Home Administration rather than a conventional loan. These Federal agencies impose certain limitations on charges which borrowers can be required to pay, as noted in discussions of specific charges under Section L. However, these charges may be claimed from the seller of the house, who may try to recover them from you in the form of a higher sales price. Nonetheless, you should consider whether these Federal limits on certain costs will be advantageous to you.

Check with several lenders as to the availability of different financing mechanisms, and ask them to describe the relative merits. Ask for both the total settlement costs and monthly carrying charges under each financing alternative.

Check with the lender as to whether the specific reserve requirements can be waived. If these requirements are waived you are responsible for paying the particular charges directly. The amount of reserve deposits required varies depending upon State laws, Federal regulatory restrictions and the lender. Where reserves are required as a condition of the loan, ask whether the reserve will be held in an interest-bearing account. Some recent State laws have required that these accounts bear interest for the benefit of the borrower (buyer).

Any other variations or lender requirements should be questioned in discussions with lenders in your area.

SECURING TITLE SERVICES

A title run down may take the form of an abstract, a compilation of pertinent legal documents which provides a condensed history of the property ownership and related matters. In many areas, title searches are performed by extracting information from the public record without assembling abstracts. In either situation, an expert examination is necessary to determine the status of title and this is normally made by attorneys or title company employees.

A few days or weeks prior to settlement the title insurance company will issue a binder or preliminary report, a summary of findings based on the search or abstract. It is usually sent to the lender for use until the title insurance policy is issued after the settlement. The binder lists all the defects in and liens against the title identified by the search. You should arrange to have a copy sent to you (or to an attorney who represents you) so that you can raise an objection if there are matters affecting the title which you did not agree to accept when you signed the contract of sale.

You and the lender have different concerns about the property you are buying, and there are many kinds of title defects that can trouble you without creating problems for the lender. For example, a restriction contained in a prior deed might limit the property to residential use only. The lender would find this unobjectionable, but if you wished to operate a beauty shop or an architect's office in your home, the use restriction might make the property unattractive to you. (Similarly restrictions imposed locally under zoning, subdivision or environmental regulations may influence your decision with respect to the property).

Title insurance is often required to protect the lender against loss if a flaw in title is not found by the title search made when the house is purchased. You may also get such a policy to protect yourself. In some states, attorneys provide Bar-Related title insurance as part of their services for transfer of title. In these States the attorney's fee may include the title insurance premium.

Bear in mind that a title insurance policy issued to the lender does not protect you. Similarly, a policy issued to a prior owner, such as the person from whom you are buying the house, does not protect you. To protect yourself from loss because of a mistake made by the title searcher, or because of a legal defect of a type which does not appear on the public records, you will need an owner's policy. Such a mistake rarely occurs but, when it does, it can be financially devastating to the uninsured.

To reduce title insurance costs, be sure to compare rates among various title insurance companies. Ask what services and limitations on coverage are provided by each policy so that you can decide whether a higher rate is consistent with your needs. Check the cost of Bar-Related title insurance if available in your locality.

There may be no need for a full historical title search each time title to a home is transferred. If you are buying a home which has changed hand within the last several years, inquire at the title company that issued the previous title insurance policy about a "reissue rate." If the title insurance policy of the previous owner is available, take it to the title insurer or lawyer whom you have selected to do your search. It may help you obtain a reissue rate, a lower charge for a new policy if the previous policy was issued by the same title insurer or by another reputable company within a recent period. You may buy an owner's policy any time you wish, but it is usually much less expensive if purchased simul-

taneously with a lender's policy at time of settlement.

SAVINGS ON SURVEY COSTS

A surveyor may be able to avoid the cost of a repetitive complete survey of the property if he has access to a recent survey which he can update. However, the requirements of investors who buy loans originated by your lender may limit the lender's discretion to negotiate this point. Check with the lender or title company on this.

HOMEBUYERS' RIGHTS

GOOD FAITH ESTIMATES

At the time of loan application, each lender is legally required to provide good faith estimates of the amount of each settlement service. A good faith estimate must be reasonable, based upon the best information available to the lender and the lender's experience in the locality in which your property is located. The lender, if unable to provide a good faith estimate of the amount for a particular service, must provide a good faith estimate of the range of charges for that service. The lender is required to provide, on a form which is clear and concise, good faith estimates for the following settlement services:

ITEM NO. ON UNIFORM SETTEMENT STATEMENT	
803	Appraisal fee.
904	Credit report.
1101	Settlement or closing services.
1102	Abstract or Title search.
1103	Title Examination.
1104	Title insurance binder.
1105	Document preparation.
1106	Notary.
1107	Attorney.
1109	Lender's title insurance.
1201	Recording fees.
1202	City/County's tax/stamps.
1203	State tax/stamps.
1303	Survey.
1302	Pest inspections.

Other settlement services required by the lender: Lenders are not obligated to list on the same form all other settlement fees and charges, but they are encouraged to disclose estimates at time of the loan application.

If lenders restrict your choice for any specific settlement service to three or fewer firms, they are required to provide you as part of this booklet a statement: "Statement of the Lender's Requirements Restricting Selection of Providers of Settlement Services." This Section will reflect final regulatory requirements. In the proposed regulations of March 29, 1976, this statement would include: (1) the precise requirements of the lender for limiting your selection, including the name, address, and telephone number of each firm involved and a statement of specific services each firm is to provide; (2) a statement as to whether each firm identified has a business relationship with the lender apart from referral of settlement business; and, (3) to the extent known by the lender, a clear statement as to whether other firms providing the same services charge fees in amounts lower than those charged by firms on the required lists.

Once you have obtained these estimates from the lender be aware that they are only estimates: the final costs will not be exactly the same. Estimates are subject to changing market conditions. Fees may change. Changes in the date of settlement may result in changes in escrow and proration requirements. In certain cases, it may not be possible for the lender to anticipate exactly the pricing policies of settlement firms. Moreover, your own careful choice of settlement firms might result in lower costs, just as hasty decisions might result in higher costs. Remember that the lender is giving you his best estimate at the time of loan application, not a guarantee. Check with your lender as you approach the date of settlement to see if any costs have changed, particularly if the date of settlement has been changed.

Lenders offer a variety of services and charges. Therefore, do not assume that the good faith estimates quoted by the first lender hold for all lenders. Lender competition will depend in large measure upon the market for mortgage funds in your locality. Even in a tight mortgage environment, ask several lenders before making a final decision.

A form listing various settlement service charges is provided in Appendix B for use as a work sheet. You are encouraged to use this form, or one of your own choosing, as you shop for settlement services.

EARLY DISCLOSURE OF COSTS

Under RESPA, you have the right to inspect your settlement statement one business day prior to date of settlement. The person conducting settlement might not have all costs available the day before, but is obligated to show you, upon request, what is available. The settlement agent can not deny you this inspection unless the agent has been specifically exempted by the Department of Housing and Urban Development from the one-day requirement. Exceptions are provided where a statement is not customarily provided by date of settlement or where it is impracticable to provide one.

TRUTH IN LENDING INFORMATION

The lender is required to provide you Truth-in-Lending statements by the time of loan consummation (usually the settlement date) which discloses the annual percentage rate or effective interest rate which you will pay on your mortgage loan. This rate may be higher than the contract interest rate because the latter includes only interest, while the annual percentage rate includes discount points, fees, and financing charges and certain other charges besides interest on the loan. The Truth-in-Lending statement will also disclose any additional charges for prepayment should you pay off the balance of the mortgage in full before it is due.

Lenders are not required to provide you a Truth in Lending disclosure at the time of loan application when the good faith estimate of settlement costs is given. It may be more convenient if the lender provides both together at the time of loan application. Ask!

PROTECTION AGAINST UNFAIR PRACTICES

A principal finding of Congress in the Real Estate Settlement Procedures Act of 1974 is that consumers need protection from "* * * unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country." The potential problems discussed below may not be applicable to most loan settlements, and the discussion is not intended to deter you from buying a home. Most professionals in the settlement business will give you good service. Nevertheless, you may save yourself money and worry by keeping the following considerations in mind.

Kickbacks. Kickbacks and referrals of business for gain most often are tied together. The law prohibits anyone from giving or taking a fee, kickback, or anything of value under an agreement that business will be referred to a specific person or organization. It is also illegal to charge or accept a fee or part of a fee where no service has actually been performed. This requirement does not prevent agents for lenders and title companies, attorneys, or others actually performing a service in connection with the mortgage loan or settlement transactions, from receiving compensation for their work. It does not prohibit commissions or sharing of fees by real estate agents under a multiple listing service or similar arrangement.

The prohibition is aimed primarily at eliminating the kind of arrangement in which one party agrees to return part of his fee in order to obtain business from the referring party. The danger is that some settlement fees can be inflated to cover payments to this additional party, resulting in a higher total cost to you.

There are criminal penalties of both fine and imprisonment for any violation of these provisions of law. There are also provisions for you to recover three times the amount of the kickback, rebate, or referral fee involved, through a private lawsuit. In any successful action to en-

force your right, the court may award you court costs together with a fee for your attorney.

Title Companies. Under the law, sellers may not require, as a condition of sale, that title insurance be purchased by the buyer from any particular title company. A violation of this would make the seller liable to you in an amount equal to three times all charges made for the title insurance.

Fair Credit Reporting. If you believe that an erroneous credit report used by the lender has adversely affected your ability to secure the loan on favorable terms, you may proceed under the Fair Credit Reporting Act to secure corrections. There are credit reporting agencies which compile a file that shows how you pay your bills, if you have been sued, arrested, or filed for bankruptcy, etc. This file may include your neighbors' and friends' views of your character, general reputation, or manner of living. This latter information is referred to as an "investigative consumer report."

The Fair Credit Reporting Act does not give you the right to request a report on yourself from the Consumer Reporting Agency or to receive a copy of or to physically handle your file, but you are entitled to know the nature, substance, and sources of the information contained therein.

To secure more detailed information on your credit report, contact the Federal Trade Commission (FTC) in Washington, D.C. or the nearest FTC regional office. The FTC Buyer's Guide No. 7: Fair Credit Reporting Act is a good summary of the Act.

THE RIGHT TO FILE COMPLAINTS

If you think you have suffered damages through violations of the Real Estate Settlement Procedures Act of 1974, as amended, you are entitled to bring a civil action in the United States District Court for the District in which the property involved is located, or in any other court of competent jurisdiction. This is a matter best determined by your lawyer. Any suit you file must be brought within one year from the date of the occurrence of the alleged violation. You may have legal remedies under other State or Federal laws in addition to RESPA.

You should note that RESPA provides for specific legal sanctions only for the provisions which prohibits kickbacks and unearned fees and which limit the seller's right to chose a particular title insurer. If you feel you should recover damages for violations of other provisions of RESPA, you should consult your lawyer concerning them.

Most settlement service providers, particularly lenders, are supervised by some governmental agency at the local, State and/or Federal level. Others are subject to the control of self-policing associations. If you feel a provider of settlement services has violated RESPA, you can address your complaint to the agency or association which has supervisory responsibility over the provider. The agency's name and address is provided on the back cover of this booklet. You are also encouraged to forward a copy of companies regarding RESPA violations to the HUD Office of Consumer Affairs and Regulatory Functions, which has the primary responsibility for administering the RESPA program. Your complaints can lay the foundation for future legislative or administrative action.

Send all complaints and inquiries to:

Assistant Secretary for Consumer Affairs and Regulatory Functions, Attention: RESPA Office, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 4100, Washington, D.C. 20410.

THE HOMEBUYERS' OBLIGATIONS (REPAYMENT OF LOAN AND MAINTENANCE OF HOME)

At settlement you become legally obligated to repay the mortgage loan financing purchase of your home. You must pay according to the terms of the loan—interest rate, amount and due date of each monthly payment, repayment period—specified in the documents signed by you. You will sign at settlement a note or bond which is your promise to repay the loan for the unpaid balance of the purchase price. You also sign a mortgage or deed of trust which pledges your home as security for repayment of the loan. Failure to make monthly mortgage payments on time may lead to a late payment charge, as provided in the documents. If you default on the loan by missing payments altogether and not making them up, the documents also specify certain actions which the lender may take to recover the amount owed. A default could lead ultimately, after required notice to you, to foreclosure and sale of the home which secures your loan.

You should also be careful to maintain your home, both for your own satisfaction and comfort as the occupant and because the home is security for your loan. The mortgage or deed of trust may in fact specifically obligate you to keep the property in good repair and not permit deterioration. It may also permit the lender to make inspections of your home for reasonable cause.

Read the documents carefully at or before settlement and be aware of your obligations as a homeowner.

A Sample Worksheet Appendix A

This page is a sample worksheet for a family purchasing a $35,000 house and getting a new $30,000 loan. Line 103 assumes that their total settlement charges are $1000. (This figure is the sum of all the individual settlement charges, which will be listed in detail in section L of their Uniform Settlement Statement.) The $1000 figure is merely illustrative; it would be much higher in some areas and for some types of transactions, and much lower for others.

J. SUMMARY OF BORROWER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:	
101. Contract sales price	35,000.00
102. Personal property (refrigerator)	200.00
103. Settlement charges to borrower *(from line 1400, Section L)*	1,000.00
104.	
105.	
Adjustments for items paid by seller in advance:	
106. City/town taxes to	
107. County taxes to	
108. Assessments 6-31 to 7-31 (owners assn)	20.00
109. Fuel oil 25 togal.@ .50/gal	12.50
110. to	
111. to	
112. to	
120. GROSS AMOUNT DUE FROM BORROWER:	36,232.50
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:	
201. Deposit or earnest money	1,000.00
202. Principal amount of new loan(s)	30,000.00
203. Existing loan(s) taken subject to (none)	
204.	
205.	
206.	
Credits to borrower for items unpaid by seller:	
207. City/town taxes to	
208. County taxes 1-1 to 6-31 @ $600/yr	300.00
209. Assessments 1-1 to 6-31 @ $100/yr	50.00
210. to	
211. to	
212. to	
213. to	
220. TOTAL AMOUNTS PAID BY OR IN BEHALF OF BORROWER:	31,350.00
300. CASH AT SETTLEMENT REQUIRED FROM OR PAYABLE TO BORROWER	
301. Gross amount due from borrower *(from line 120)*	36,232.50
302. Less amounts paid by or in behalf of borrower *(from line 220)*	(31,350.00)
303. CASH (☒ REQUIRED FROM) OR (☐ PAYABLE TO) BORROWER:	4,882.50

Your Financial Worksheet

Appendix B

Once you have decided which providers you wish to use for your settlement services and have selected the lender who will make your loan, you can calculate the total estimated cash you will need to complete the purchase. The form below, which is a part of the Uniform Settlement Statement, can be used as a worksheet for this purpose.

J. SUMMARY OF BORROWER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:	
101. Contract sales price	
102. Personal property	
103. Settlement charges to borrower *(from line 1400, Section L)*	
104.	
105.	
Adjustments for items paid by seller in advance:	
106. City/town taxes to	
107. County taxes to	
108. Assessments to	
109. to	
110. to	
111. to	
112. to	
120. GROSS AMOUNT DUE FROM BORROWER:	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:	
201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
Credits to borrower for items unpaid by seller:	
207. City/town taxes to	
208. County taxes to	
209. Assessments to	
210. to	
211. to	
212. to	
213. to	
220. TOTAL AMOUNTS PAID BY OR IN BEHALF OF BORROWER:	
300. CASH AT SETTLEMENT REQUIRED FROM OR PAYABLE TO BORROWER	
301. Gross amount due from borrower *(from line 120)*	
302. Less amounts paid by or in behalf of borrower *(from line 220)*	( )
303. CASH (☐ REQUIRED FROM) OR (☐ PAYABLE TO) BORROWER:	

APPENDIX C

CONSUMER LITERATURE ON HOME PURCHASING, MAINTENANCE, PROTECTION, AND OTHER TOPICS

U.S. Department of Housing and Urban Affairs

Appraisals

Questions and Answers to Home Property Appraisals: HUD-38-F(4).

Condominiums

Financing Condominiums Housing: HUD-77-F-(4).

HUD/FHA Non-Assisted Program For Condominium Housing: Fact Sheet HUD-227-F(4).

Questions About Condominiums: HUD-365-F(2).

HUD/FHA Comparison of Condominium and Cooperative Housing: HUD-321-F(4).

Cooperatives

Let's Consider Cooperatives: HUD-17-F(6).

HUD/FHA Program For Unsubsidized Housing: HUD-256-F(3).

Home Mortgage Insurance

Home Mortgage Insurance: HUD-43-F(5).

Programs For Home Mortgage Insurance: HUD-97-F(7).

Home Ownership

The Home Buying Serviceman: HUD-121-F(3).

HUD's Home Ownership Subsidy Program: HUD-419-HPMC.

Miscellaneous

Protecting Your Home Against Theft: HUD-315-F(4).

Termites: HUD-323-F(3).

Be An Energy Miser in Your Home: HUD-324-PA.

Mobile Homes

Buying and Financing a Mobile Home: HUD-243-F(5).

Mobile Home Financing through HUD: HUD-265-F(5).

Settlement Costs

Buying a Home? Don't Forget Those Closing Costs Real Estate Settlement Procedures Act: HUD-342-F(3) Reprint of Article in HUD Magazine HUD-420-ASI.

General Interest

Wise Home Buying: HUD-267-F(5).

Should You Buy or Rent a Home: HUD-328-F(2).

Protecting Your Housing Investment: HUD-346-PA(2).

Home Owners Glossary of Building Terms: HUD-369-F(3).

Home Buyers Vocabulary: HUD-383-HM (3).

Your Housing Rihgts: HUD-177-EO(3).

Contact: U.S. Department of Housing & Urban Affairs, 451 Seventh Street SW., Washington, D.C. 20410, Room B-258 or HUD Regional Area and Insuring Offices throughout the country.

U.S. Veterans Administration

Pointers for the Veteran Homeowner.

Questions and Answers on Guaranteed and Direct Loans for Veterans.

To the Home-Buying Veteran.

Contact: Your Nearest VA Regional Office.

U.S. Department of Agriculture

Selecting and Financing a Home.

Contact: Office of Communications, U.S. Department of Agriculture Washington, D.C. 20250.

U.S. Department of Labor

Rent or Buy? (No. 178D, 80¢)

Contact: Consumer Affairs, Public Documents Distribution Center, Pueblo, Colorado 81009.

U.S. Government Printing Office

Consumer Information: An Index of selected Federal Publications (GPO No.——).

Contact: Consumer Information, Public Documents Distribution Center, Pueblo, Colorado 81009.

The Equal Credit Opportunity Act requires that the following notice be provided:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of sex or marital status. The Federal agency which administers compliance with this law concerning this (insert appropriate name of lender) is (name and address of appropriate agency).

NOTE: Title VIII of the Civil Rights Act of 1968, Fair Housing; likewise prohibits discrimination on the basis of race, color, religion, sex, or national origin. Effective March 23, 1977, the law will prohibit creditors from discriminating on the basis of race, color, religion, national origin, sex, marital status or source of income (if all or part of income derives from any public assistance program).

CONSTANCE B. NEWMAN,
Assistant Secretary for Consumer Affairs and Regulatory Functions, U.S. Department of Housing and Urban Development.

[FR Doc.76-14112 Filed 5-14-76;8:45 am]

federal register

MONDAY, MAY 17, 1976



PART V:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

■

HANDICAPPED PERSONS

Nondiscrimination

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[45 CFR Part 84]

NONDISCRIMINATION ON THE BASIS OF HANDICAP

Programs and Activities Receiving or Benefiting From Federal Financial Assistance

On September 26, 1973, the Rehabilitation Act of 1973 became law. Section 504 of that Act reads as follows:

> No otherwise qualified handicapped individual in the United States, as defined in section 7(6), shall, solely by reason of his handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

This section breaks new legislative ground in that it is the first major statutory civil rights enactment that protects the rights of handicapped persons. The language of section 504 is almost identical to the nondiscrimination provisions of section 601 of title VI of the Civil Rights Act of 1964 and section 901 of title IX of the Education Amendments of 1972 and, like those statutes, establishes a governmentwide policy against discrimination in federally assisted programs and activities—in this case, on the basis of handicap.

Section 504, however, differs conceptually from both titles VI and IX. The premise of both title VI and title IX is that there are no inherent differences or inequalities between the general public and the persons protected by these statutes and, therefore, there should be no differential treatment in the administration of Federal programs. The concept of section 504, on the other hand, is far more complex. Handicapped persons may require different treatment in order to be afforded equal access to federally assisted programs and activities, and identical treatment may, in fact, constitute discrimination. The problem of establishing general rules as to when different treatment is prohibited or required is compounded by the diversity of existing handicaps and the differing degree to which particular persons may be affected. Thus, under section 504, questions arise as to when different treatment of handicapped persons should be considered improper and when it should be required.

Because the concepts underlying section 504 were new and complex and few judicial precedents existed in the area, the very general language of the statute creates serious problems of interpretation. There is almost no substantive legislative history surrounding the development and enactment of section 504. There were, for example, no public hearings accompanying the original bills, and there was almost no substantive floor debate. Only in December 1974, during passage of the Rehabilitation Act Amendments, did Congress attempt to clarify its intent in enacting section 504 and to articulate this intent in a manner which could be used by the Department as guidance in its efforts to administer the Act.

In particular, the 1974 amendments yielded a new definition of the term "handicapped person," the original definition having been so narrow as to exclude from coverage many persons intended to be protected.

As amended, the statute provides that, for the purpose of section 504, a handicapped individual is:

> any person who (A) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (B) has a record of such an impairment, or (C) is regarded as having such an impairment.

This new definition, which became law on December 7, 1974, makes it clear that section 504 was enacted to prevent discrimination against all handicapped individuals, regardless of their need for or ability to benefit from vocational rehabilitation services. Therefore, not only employable disabled persons, but also persons whose employability is nonexistent or marginal, such as persons with severe handicaps, are included within the protective reach of section 504.

There is no legislatively directed scheme of enforcement such as those provided in sections 602 of title VI of the Civil Rights Act of 1964 and 902 of title IX of the Educational Amendments of 1972. To fill the legislative void, Executive Order 11914 was issued which, among other things, supplies the directive for specific enforcement procedures and sanctions for noncompliance, all of which are based on precedents from these other statutes. In addition, it provides for a general enforcement scheme under which the Secretary of Health, Education, and Welfare is assigned responsibility to coordinate the Federal government's implementation of section 504. In the absence of legislative mandate as to the form of administration of section 504 and prior to the issuance of E.O. 11914, it fell to this Department, as a granting agency, to develop a means of assuring compliance with the prohibitions of the provision.

The most important problem which has hindered the development of the regulation is the constant need to weigh competing equities while resolving complex issues. Thus, while we recognize that the statute creates individual rights, the statute is ambiguous as to the specific scope of these rights. Implicit in this situation is the need to assess carefully the overall impact of a particular requirement both on the persons protected by the statute and those regulated by it.

Since it appears to be the case that the implications of this legislation have not been elaborated before the general public in sufficient detail, it seems appropriate, before issuing a Notice of Proposed Rulemaking, to solicit public comment on certain key issues which any proposed regulation would, in all likelihood, address. The Office for Civil Rights has prepared a draft regulation and preamble which sets forth a possible means of interpreting the provision. I have reviewed that draft and have attached it at Appendix A to this notice. Pursuant to Executive Order 11821 and OMB Circular A–107, the Office for Civil Rights has also prepared a draft inflationary impact statement to accompany the draft regulation. It is attached to this notice at Appendix B.

In this context, the Department invites public comment for the next 30 days on the issues that will be identified below as well as on any additional issues which members of the public believe are important to a clear understanding of the provision and whose resolution would contribute to effective administration and enforcement.

ISSUES

GENERAL

Interpretation and application of the definition of "handicapped person." Among the problems here are what disabilities are included and the meaning of the term "regarded as." (A specific question, for example, is whether drug and alcohol addicts or homosexuals are to be included within the definition.);

The degree of specificity needed to provide adequate and accurate guidance to the public but, at the same time, to allow sufficient flexibility to foster prompt cooperation and compliance (i.e., whether a regulation should be developed similar to the title VI regulation, the title IX regulation, or neither);

What time period, if any, should be allowed for recipients to achieve full compliance with any requirements imposed by the regulation, and whether adjustment periods should differ depending on the nature of the program or services in question;

EMPLOYMENT

The practical meaning of the term "qualified handicapped person" in the employment context and the wisdom of incorporating in the § 504 scheme the related concepts of "reasonable accommodation" to the handicapped person and "undue hardship" to the employer, both of which have been included in the Department of Labor's regulation implementing section 503 of the Rehabilitation Act (section 503 requires certain Federal contractors to take affirmative action to employ and advance in employment qualified handicapped persons);

To what extent other provisions of the section 503 regulation should be included in the section 504 regulation;

Whether to include provisions, patterned on other nondiscrimination regulations, which would require that employment tests and other selection and promotion criteria accurately measure job-related skills, that fringe benefits are equitably provided, and that other aspects of employment are equitable.

ARCHITECTURAL BARRIERS

Whether § 504 prohibitions extend to architectural barriers, and, if so, whether the nondiscrimination requirements apply to both new and existing buildings used in connection with federally assisted programs or activities;

ELEMENTARY AND SECONDARY EDUCATION

In what respects, if any, a regulation's provisions regarding elementary and secondary education should differ from the standards established by P.L. 94–142 (Education of All Handicapped Children Act of 1975) and Federal court decisions in this area;

In what way, if at all, cost or difficulty in complying (e.g., lack of adequately trained teachers or nondiscriminatory testing devices) affect recipients' obligations to comply with requirements in this area;

HIGHER EDUCATION

Whether federally assisted colleges and universities should be required to adjust certain academic requirements because of the limitations of otherwise qualified handicapped applicants and students (e.g., whether a medical school should be required to waive surgery course requirements for a blind student who wishes to be a psychiatrist, assuming a conditional medical degree would be awarded);

Whether federally assisted colleges and universities should be required to supply auxiliary academic aids, such as taped texts, readers, and interpreters, if such aids are not provided by the appropriate vocational rehabilitation agency;

What the responsibilities of federally assisted colleges and universities should be with respect to nonacademic and extracurricular activities and services, such as physical education, athletics, health services, and physical therapy;

In what way, if at all, cost or difficulty in complying should affect recipients' obligations to comply with requirements in this area;

HEALTH AND SOCIAL SERVICES

Whether a regulation should contain provisions concerning patients' rights to receive or refuse treatment and fair compensation for work done by patients;

The extent, if any, to which the size or resources of the provider of health or welfare services should be allowed to affect the provider's obligations (e.g., whether, by placing primary compliance responsibility on state or intermediary agencies, a concept of regional or collective compliance might be applied to providers such as doctors or small day care centers so that not every such provider would be required to be physically accessible if equivalent and accessible services were available within a convenient geographic area).

INVITATION TO COMMENT

Persons or organizations wishing to submit comments or suggestions on the matters raised in this Notice of Intent should write to the Director, Office for Civil Rights, Department of Health, Education, and Welfare, P.O. Box 1909, Washington, D.C. 20013.

Written comments and information may be submitted in any form, such as by means of letters, position papers, or memoranda. There are no special rules concerning format. However, to assure full consideration, all written comments should be submitted on or before June 16, 1976. Comments received in response to this Notice will be available for public inspection in Room 3231, 330 Independence Avenue, SW., Washington, D.C. 20201.

To enable the Department to benefit fully from the public's views on the various questions raised in this notice, the Office for Civil Rights will also seek to hold meetings with interested persons and organizations. Such meetings will focus on a broad discussion of the various ideas, comments, and recommendations presented to the Department for consideration. In addition, at those meetings, the Department representatives will be prepared to answer or discuss questions concerning the draft preamble, regulation, and inflationary impact statement, attached to this noice. Persons and organizations desiring to participate in such meetings should so advise the Office of Public Affairs, Office for Civil Rights, (202) 245–6700, as promptly as possible.

This 30-day period will not provide the sole opportunity for members of the public to comment on the issues raised by the statute and further set forth in this notice and its appendices. A Notice of Proposed Rulemaking will be published within 30 days of the close of the comment period on this notice. The Notice of Proposed Rulemaking will invite public comment for a least another 60 days during which period additional meetings and briefings will be held if necessary.

The purpose in issuing this notice is to anticipate the danger that the government might raise barriers to assisting, or might otherwise limit the opportunities of, the very people the statute is intended to protect. And an adverse public reaction to this effort, whether because of what is perceived to be a regulation that frustrates the statutory purpose, or for any other reason, would not serve the interests of handicapped Americans. Their interests and the need of this country for their productive capacity are too important for us not to be as diligent as possible.

I am most anxious to expedite the administration and enforcement of section 504, and I hope that issuance of this notice will both elicit guidance and promote understanding of the issues.

Dated: May 11, 1976.

DAVID MATHEWS,
Secretary.

APPENDIX A

PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE; NONDISCRIMINATION ON THE BASIS OF HANDICAP

The Office for Civil Rights of the Department of Health, Education, and Welfare proposes to add Part 84 to the Departmental regulation to effectuate section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended by section 111(a) of the Rehabilitation Act Amendments of 1974 (29 U.S.C. 706), with regard to Federal financial assistance administered by this Department. Section 504 provides that "no otherwise qualified handicapped individual in the United States * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Section 504 is similar to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*). It differs, however, from both these civil rights statutes in that it applies to discrimination based on handicap, from title IX in that it applies to all programs and activities receiving Federal financial assistance, and from title VI in the extent to which it applies to employment practices.

This proposed regulation contains no provisions concerning the Department's procedures for administering the statute because the Department intends to publish a consolidated procedural regulation which will apply to the enforcement of section 504. The proposed procedural regulation, which was published on June 4, 1975, at 40 FR 24148, and which would have applied to the enforcement of section 504, has been withdrawn. On May 3, 1976, the Department published, at 41 FR 18394, a notice of intent to issue a new proposed procedural regulation in order to seek public comment on a number of critical questions concerning the manner in which the Office for Civil Rights enforces various civil rights laws and authorities, including section 504. After the public comments have been evaluated, a new proposed consolidated procedural regulation will be issued.

If the consolidated procedural regulation is not in effect when the regulation implementing section 504 is published in final form, the procedural provisions of the title VI regulation, which may be found at 45 CFR Part 80, will be incorporated by reference into the section 504 regulation for use during the interim.

Subparts A (General Provisions), B (Employment Practices), and C (Program Accessibility) of this proposed regulation apply to all recipients of assistance from the Department of Health, Education, and Welfare. Because handicaps differ widely in nature and in degree of severity, discrimination against handicapped persons includes a wide range of practices with varying effect in different service areas. In order to emphasize the most common manifestations of discrimination which occur in the various programs and activities to which this Department provides assistance, additional subparts of the proposed regulation contain more specific requirements and prohibitions applicable to three major types of programs: Subpart D is concerned wih preschool, elementary, secondary, and adult education programs; Subpart E, with postsecondary education programs; and Subpart F, with health and social service programs. The practices of other recipients of Departmental funds, such as public broadcasters, are subject to the general nondiscrimination provisions of § 84.4 as well as to the provisions of Subpart B and C.

A discussion of selected sections in each of the subparts of the proposed regulation is set forth in the following paragraphs. In certain instances, major

issues and the reasons for the proposed decision are discussed. Where appropriate, the various sections of the proposed regulation for section 504 have been patterned after the Departmental regulations effectuating title VI of the Civil Rights Act and title IX of the Education Amendments of 1972, found at 45 CFR Parts 80 and 86; such sections are noted in the following analysis.

Subpart A. Under § 84.2, the proposed regulation is applicable to all recipients of financial assistance from the Department of Health, Education, and Welfare and to each program or activity which receives or benefits from such assistance. All of the requirements of Part 84 apply to all recipients of Federal funds from the Department of Health, Education, and Welfare. The Secretary recognizes that recipients of Department funds vary considerably in size, complexity, and resources and that some of the requirements of this part may appear to exceed the resources of very small recipients. However, section 504 of the Rehabilitation Act of 1973 provides no exemption for recipients from its general prohibition against discrimination on the bass of amount of Federal funds received or on any other basis. The basic requirements of Part 84, therefore, apply to every recipient.

Section 84.3 contains definitions. Of particular note are paragraphs (f) and (j). Paragraph (f) defines the term "recipient" and provides that, for purposes of the regulation, the term will not apply to providers of health services (or vendors as they are often called) under title XIX of the Social Security Act (Medicaid) that do not receive other forms of Federal financial assistance. Nor will it apply to agencies used by the State to make payments to such providers under that title. This approach is identical to that followed by the Department under title VI of the Civil Rights Act of 1964.

Providers of Medicaid services include doctors, dentists, and other individual practitioners, hospials, extended care facilities (ECFs), and other similar entities. Hospitals, ECFs, and other entities of that nature, however, unlike doctors, dentists, and other individual practitioners, also receive Federal financial assistance under Part A of title XVIII of the Social Security Act (Medicare) and may receive funds under the Hill-Burton Act as well. (Part B of title XVIII, which goes to individual practitioners, is provided by way of a contract of insurance and is therefore exempt from this regulation. See § 84.3(h).)

Medicaid providers are reimbursed for their services with funds which are partially Federal and partially State. Payment of these funds to providers are made in one of three ways: (1) Directly by the State Medicaid agency, (2) indirectly through a so-called fiscal agent which in return for a payment performs the function on behalf of the State, or (3) indirectly through a "health insuring organization" which undertakes to pay in return for a premium from the State established under a contract of insurance. Under all of these arrangements, the State agency is a recipient within the terms of the regulation because it receives Federal financial assistance to enable it to offer health services. The intermediary agencies and individual providers in States using the direct payment or fiscal agent methods of administration operate health programs "receiving Federal financial assistance" as that phrase is used in the statute. "Health insuring organizations" and vendors in States using that method of administration are not recipients under the regulation because of the contract of insurance which intervenes between the State and the lower agencies. The Department does not intend to treat as recipients individual practitioners or intermediary agencies in other States whose *only* Federal connection is Medicaid funds. Rather, the Department will look to the State agency as the recipient under Medicaid and will hold that agency responsible for compliance both as to its own activities and as to the performance of its intermediary agencies and of the individual providers of federally assisted services. The Secretary expects by this means to increase the Department's efficiency in obtaining overall compliance with the provisions of this Part.

Paragraph (j) of § 84.3 defines the class of persons protected under the proposed regulation. The definition of handicapped persons in paragraph (j)(1) conforms to the statutory definition of handicapped person that is applicable to section 504, as set forth in section 111(a) of the Rehabilitation Act Amendment of 1974, Pub. L. 93-516.

The first of the three parts of the statutory and regulatory definition includes any person who has a physical or mental impairment which substantially limits one or more major life activities. The proposed regulation further defines physical or mental impairment and major life activities.

Physical or mental impairments are not, in general, defined by listing specific diseases and conditions because of the difficulty of ensuring the comprehensiveness of any such list. The term includes such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, muscular dystrophy, multiple sclerosis, cancer, diabetes, mental retardation, emotional illness, and drug and alcohol addiction. It should be noted that, under this part of the definition, a physical or mental impairment does not constitute a handicap unless its severity is such that it results in a substantial limitation of one or more major life activities.

The Department intends to interpret this first of the three parts of the definition so as to ensure that only physical and mental handicaps are included. Thus, environmental, cultural, and economic disadvantage are not in themselves covered by this part of the definition, nor are prison records, agedness, or homosexuality. If, however, a person who has any of these characteristics also has a physical or mental handicap, the person is included within the definition of handicapped persons, whether the handicap is the cause or the result of, or is unrelated to such characteristics.

In paragraph (j)(2)(i), physical or mental impairment is defined to include, among other impairments, specific learning disabilities. The Department will interpret the term as it is used in section 602 of the Education of the Handicapped Act, Pub. L. 91-230, as amended by Pub. L. 94-142. Paragraph (15) of section 602 uses the term "specific learning disabilities" to describe such conditions as perceptual handicaps, brain injury, minimal brain, dysfunction, dyslexia, and developmental aphasia; it explicitly excludes learning problems which are primarily the result of environmental, cultural, or economic disadvantage. It should be noted that section 5(b) of Pub. L. 94-192 requires the Commissioner of Education to prescribe regulations concerning the definition of specific learning disabilities and, if he or she finds that changes in the statutory definition are necessary, to submit recommendations for legislation in that regard. The Office for Civil Rights will conform its interpretation of this term to that of the Office of Education and to any amended statutory definition under the Education of the Handicapped Act.

The second of the three parts of the statutory and regulatory definition of handicapped person includes any person who has a record of a physical or mental impairment which substantially limits major life activities. "Record" is further defined in the proposed regulation so as to include both prior history of, and inappropriate classification as having, a handicap. Thus, persons who have a history of a handicapping condition but no longer have the condition, as well as persons who have been incorrectly classified as having such a condition, are protected from discrimination under section 504. Frequently occurring examples of the first group are persons with histories of mental or emotional illness, heart disease, or cancer; of the second group, persons who have been misclassified as mentally retarded.

The third of the three parts of the statutory and regulatory definition of handicapped person includes any person who is regarded as having a physical or mental impairment which substantially limits one or more major life activities. Paragraph (j)(3) of the proposed regulation limits this part of the definition to three groups of people. The first two groups are described in (j)(3)(i) and (ii) and include, primarily, persons who are ordinarily considered to be handicapped but who do not technically fall within the first two parts of the statutory definition. Thus, a person whose physical or mental impairment has a less than substantial effect upon major life activities or has a substantial effect only upon minor life activities, such as a person with a limp, is considered handicapped for the purpose of section 504 if a recipient treats the impairment as constituting a handicap. The second group of persons who fall within this category, described at (j)(3)(ii), are those who have overcome their impairment to the point that any substantial limitation to major life activities is the result of the attitudes of other persons toward their impairment;

this paragraph also includes some persons who might not ordinarily be considered handicapped, such as persons with disfiguring scars. Any limitations which such persons experience as a result of the impairment are not, in fact, caused by the disability but by the actions of other persons predicated on a view that the impairment constitutes a limitation.

Paragraph (j) (3) (iii) includes persons who have no physical or mental impairment but are treated by a recipient as if they were handicapped. If, for example, a nonhandicapped employee were to have a convulsion as a result of an a typical reaction to medication, any discriminatory employment practice based upon the conclusion that the person is epileptic would be prohibited by the proposed regulation.

Although it could be argued that homosexuals fall within the class protected by section 504 by virtue of this third part of the statutory definition, it is the view of the Department that they are not so included. Comment is solicited with respect to this determination.

Paragraph (k) of § 84.3 defines the term "qualified handicapped person." Throughout the proposed regulation, this term is used instead of the statutory term "otherwise qualified handicapped person." The Department believes that the omission of the word "otherwise" is necessary in order to comport with the intent of the statute because, read literally, "otherwise" qualified handicapped persons include persons who are qualified except for their handicap, rather than in spite of their handicap. Thus, a blind person might possess all of the qualifications for driving a bus except sight and could therefore be said to be an otherwise qualified handicapped person for the job of bus driving. In all other respects, the terms "qualified" and "otherwise qualified" are intended to be interchangeable.

With respect to preschool, elementary, and secondary educational services, a qualified handicapped person is defined, in paragraph (k) (3), in terms of age. As of the date of the passage of section 504 (September 26, 1973), a handicapped person is qualified for preschool, elementary, or secondary services if the person is of an age at which nonhandicapped persons are eligible for such services. In addition, the extended age ranges for which recipients must provide full educational opportunity to all handicapped persons in order to be eligible for assistance under the Education of All Handicapped Children Act, Pub. L. 94–142, are incorporated by reference in paragraph (k) (3). Thus, handicapped persons who are between the ages of three and eighteen will be considered qualified in terms of these services as of September 1, 1978, and those who are between the ages of three and twenty-one will be considered qualified as of September 1, 1980. With respect to persons aged three to five and aged eighteen to twenty-one, however, an exception exists where inconsistency with State law or practice or with court order would result from application of this requirement. This approach was chosen for the sake of consistency with the eligibility conditions imposed by the aforementioned statute and because use of a specific age range eliminates the interpretive problems inherent in other standards considered.

One alternative approach considered by the Department is based upon a standard of substantial benefit. Under this standard, a person who, because of handicap, requires educational services over a longer period of time than do nonhandicapped persons in order to acquire a comparable level of skills would be deemed qualified for as long as the person could benefit substantially from the services. The same standard was considered with respect to persons who, on the basis of handicap, have been excluded from a suitable education since the date of the passage of section 504. This standard could be consistent with the Department's general interpretation of nondiscrimination on the basis of handicap—that services must be delivered in such manner as is necessary to provide handicapped persons equal opportunity for comparable benefits. The Secretary is, however, concerned that this standard would impose undue administrative and financial hardship upon the affected education programs and therefore seeks comment on the feasibility and desirability of each alternative.

Section 84.4 contains general prohibitions against discrimination applicable to all recipients of assistance from this Department and to the programs and activities operated by such recipients. Of particular note in paragraph (b) (1) of this section are the prohibitions against providing services to handicapped persons which are not comparable to those provided to nonhandicapped persons. The term "comparable" is intended to encompass the concept of equivalent, as opposed to identical, services and to emphasize the fact that the individual needs of handicapped persons must be met to the same extent that the corresponding needs of nonhandicapped persons are met in order to avoid discrimination on the basis of handicap. This standard parallels that established under title VI of the Civil Rights Act of 1964 with respect to the provision of educational services to students whose primary language is not English. See *Lau* v. *Nichols*, 414 U.S. 563 (1974). The provision in paragraph (b) (2) of section 84.4 that restricts the meaning of the word "comparable" should be particularly noted. That provision states, "[A]id, benefits, and services, to be comparable, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result or to reach the same level of achievement, taking into account the nature of a particular person's handicap."

Paragraph (b) (2), in addition, emphasizes that, when necessary to the provision of comparable services, a recipient is obligated to provide services to handicapped persons in a manner different from that in which they are provided to others. For example, a welfare office which uses the telephone for communicating with its clients must provide alternative modes of communicating with its deaf clients.

Paragraph 84.4(b) (1) (iii) is adopted from the title IX regulation and prohibits a recipient from assisting another entity or person which subjects participants or employees in the recipient's program to discrimination on the basis of handicap. This section might apply, for example, to financial support by a recipient to a community recreational group or to a recipient's sanctioning of a professional or a social organization. Among the criteria to be considered in each case are the substantiality of the relationship between the recipient and the other entity involved, including financial support by the recipient, and whether the other entity's activities relate so closely to the recipient's program or activity that they fairly should be considered activities of the recipient itself.

The provisions of § 84.4(b) (3) and (4) that prohibit the utilization of criteria or methods of administration or site selection which have the effect of discriminating on the basis of handicap or which have the effect of defeating or substantially impairing the accomplishment of the objectives of the program with respect to handicapped persons are patterned after the title VI regulation. Paragraph (b) (3) also prohibits the utilization of criteria or methods of administration which perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state; this provision is new.

Section 84.4(b) (3) is particularly significant with respect to the obligations of State Medicaid agencies and the intermediary agencies and vendors through which they provide health services under title XIX of the Social Security Act (Medicaid). As explained in the discussion of the definition of the term "recipient", the nondiscrimination requirements of the regulation will, by virtue of the obligations imposed upon State Medicaid agencies, apply to intermediary agencies and to vendors despite the fact that, for purposes of the regulation, they are not recipients. It is through § 84.4(a) (3)'s prohibition of discriminatory methods of administration that this imposition of obligations is accomplished.

There is one major exception to the rule that each Medicaid vendor with no other Federal connection must meet the substantive, nondiscrimination requirements of the regulation. That exception is the requirement of Subpart C involving program accessibility. The State agency's nondiscrimination obligation under Subpart C is to ensure that handicapped persons are not denied the benefits of the health services provided under the Medicaid program because of the physical inaccessibility of those services. It is, however, the cumulative effect of the agency's administration of Medicaid which must be nondiscriminatory. Thus, it is not required that the services of every Medicaid vendor be physically accessible.

The State agency must ensure, however, that the inaccessibility of a partic-

ular vendor does not result in the exclusion of handicapped persons from the services that vendor provides. The State agency could require that individual vendors either fulfill the accessibility obligation themselves (by having accessible buildings, making house calls, arranging to provide services in accessible facilities at certain times, and the like) or arrange to refer handicapped persons to other vendors who are accessible.

It is important to note that this flexibility with respect to accessibility does not apply to other nondiscrimination requirements. The issue of accessibility is further discussed in the portion of the preamble that discusses the provisions of the subpart of the regulation which applies specifically to health and social services (Subpart F).

Although the regulation's substantive requirements are applicable to nonrecipient vendors and intermediate agencies through the obligations imposed on State agencies by paragraph (b)(3), its procedural requirements, such as self-evaluation and filing of assurances, are not. State agencies, which are themselves subject to these requirements, may find that requiring these procedures of Medicaid participants will assist in fulfilling their own nondiscrimination obligations and may, of course, make such demands of vendors if they wish. The Department is considering including uniform requirement as to these matters in its cosolidated civil rights procedural regulation, discussed above, when a new proposal for that regulation is published.

Further, on the question of State Medicaid agency responsibilities under this paragraph, it should be stressed that although the primary obligation lies with the State agency, the Department has the authority to review the conduct of intermediary agencies and vendors with no Federal connection other than Medicaid as part of its obligation to ensure that the State agencies are in compliance. Therefore, while the prime target of compliance reviews and enforcement action will be the State agencies, the Department may examine the practices of intermediary agencies and vendors as well.

Finally, it should be noted that vendors which provide health services under Medicaid and which, in addition, receive Federal financial assistance under Medicare A, Hill-Burton, or other authorities are recipients under this regulation and must comply with all of its provisions.

Section 84.5, except for paragraphs (a)(2) and (3), is adopted from the title VI and title IX regulations. Paragraph (a)(1) requires a recipient who has been found to have discriminated on the basis of handicap to take remedial action to overcome the effects of that discrimination. Paragraph (a)(2) extends the responsibility for taking remedial action to a recipient which exercises control over a noncomplying recipient; paragraph (a)(3) also makes clear that handicapped persons who are not in the program at the time that remedial action is required to be taken may also be the subject of such remedial action.

Section 84.5(b) permits, but does not require, affirmative action to overcome the effect of conditions which have resulted in limited participation by handicapped persons. It should be noted that this paragraph does not affect the required actions delineated elsewhere throughout the proposed regulation.

Section 84.6 requires, as do both the title VI and IX regulations, a recipient to submit to the Director an assurance that each of its programs and activities receiving or benefiting from Federal financial assistance from this Department will be conducted in compliance with this regulation. Because such an assurance is, in effect, a contract between the Department and the recipient, it has the effect of giving aggrieved persons who are beneficiaries of federally assisted programs or activities the right to seek judicial enforcement of the regulation, under the third party beneficiary principle of contract law. See *Lemon v. Bossier Parish*, 240 F. Supp. 790 (W.D.La. 1965), aff'd 370 F. 2d 847 (5th Cir. 1967), *cert. denied*, 388 U.S. 911 (1967).

Paragraph (b) of § 84.8 requires recipients to adopt and publish grievance procedures. The Department solicits comment as to whether the final regulation should contain a procedure for the waiver of this requirement with respect to individual medical practitioners and to other small service providers.

The provisions of § 84.9, which set forth requirements concerning dissemination of policy, are in general self-explanatory. The Department's interpretation of paragraph (b)(2) of that section, which prohibits use or distribution of publications that indicate that the recipient engages in discriminatory practices in violation of section 504, may, however, be worth noting. That paragraph is identical to the corresponding provision of the title IX regulation and will be interpreted similarly. It will not, for example, be deemed by the Department to preclude the use in a college catalog of a picture of a campus building with stairs but no ramp. It will be interpreted to require that such a catalog provide countervailing evidence, such as a picture which includes a ramp or students in wheelchairs, that handicapped students attend the institution and are not treated in a discriminatory manner.

Subpart B. Subpart B prescribes requirements for nondiscrimination in the employment practices of recipients of Federal financial assistance administered by the Department. This subpart generally follows the employment provisions of the Department's regulation implementing title IX of the Education Amendments of 1972, which, in turn, generally follow the Sex Discrimination Guidelines (29 CFR Part 1604) of the Equal Employment Opportunity Commission (EEOC), implementing title VII of the Civil Rights Act of 1964, and the regulation of the Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor (41 CFR Part 60), implementing Executive Order 11246. It is also, insofar as is possible, consistent with the provisions of the interim regulation issued by the Department of Labor on June 11, 1974 at 39 FR 20566 and of the proposed regulation issued by that Department on August 29, 1975 at 40 FR 39887, effectuating section 503 of the Rehabilitation Act of 1973, as amended, which requires certain Federal contractors to take affirmative action in the employment and advancement in employment of qualified handicapped persons. Almost all recipients who are subject to this Part 84 are also subject to title VII or title IX and many are also subject to the Executive Order and to section 503.

Section 84.11 is patterned after the title IX regulation and sets forth general provisions with respect to discrimination in the area of employment. Section 84.12 provides that a recipient shall make reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Where a handicapped person is not qualified to perform a particular job or where reasonable accommodation will not suffice to neutralize the effects of a person's handicap or will cause undue hardship, failure to employ or advance the handicapped person will not be considered discrimination since the failure is due to objective and necessary criteria rather than to the fact that the applicant is handicapped. A recipient may not deny an employment opportunity to a person on the ground that reasonable accommodation will be necessary to enable that person to perform adequately on the job.

Reasonable accommodation includes such actions as job restructuring to shift duties and activities in a manner which will enable the handicapped person to perform the duties essential to the job without having to perform other duties which could as easily be done by someone else without undue hardship to the employer. Part-time employment is also included. Reasonable accommodation with respect to employment also includes actions to make facilities used by employees readily accessible to and usable by handicapped persons. Such action may take the form of architectural modifications such as the addition of elevators, or it may take the form of location or relocation of particular offices or jobs so that they are in areas of the employer's facilities that are already accessible to and usable by handicapped persons. If such modifications or relocations would cause undue hardship, they need not be made.

Paragraph (c) of this section sets forth the factors which the Director will consider in determining whether an accommodation necessary to enable an applicant or employee to perform the duties of a job would impose an undue hardship. Each of these factors (the size and type of the recipient's program and the nature and cost of the accommodation) will be given weight in the determination and will be measured in relative terms. Thus, a small day care center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by

an otherwise qualified deaf applicant for a secretarial position, but a large school district might be required to provide a teacher's aide to a blind applicant for a teaching job. The Department solicits comment as to any additional or alternative factors which should be considered in the determination of the existence of undue hardship.

The requirements of this regulation concerning reasonable accommodation are believed by the Secretary to constitute an interpretation of the term "otherwise qualified" as used in section 504 itself. The concept of reasonable accommodation represents an attempt to draw the line between persons who, but for their inability to perform certain job related tasks in the normal manner because of their handicap, would be fully qualified to perform the job in question, and persons who, despite reasonable accommodation, are unable to perform a necessary element of the job in question. A similar obligation is imposed upon Federal contractors in the proposed and interim regulations implementing section 503 of the Rehabilitation Act, administered by the Department of Labor, as noted above. That Department reports that it has experienced no difficulty in administering the requirement of reasonable accommodation or the limitation of undue hardship. The Secretary is aware that some difficulties may be inherent in implementing this concept, however, and solicits public comment on the section as a whole.

Section 84.13(a), which is almost identical to the parallel section of the title IX regulation and to the EEOC and OFCCP regulations, provides that no test or criterion of employment which has a disproportionate, adverse effect on the employment of handicapped persons or any class of handicapped persons may be used unless it has been validated as a predictor of performance in the position in question and alternative tests which do not have such a disproportionate, adverse effect are unavailable. This standard is based upon the one established under title VII of the Civil Rights Acts of 1964 in *Griggs* v. *Duke Power Company*, 401 U.S. 424 (1971).

Section 84.13(b) requires that a recipient take into account that some tests and criteria depend upon sensory, manual, or speaking skills which may not themselves be necessary to the job in question but which may make the handicapped person unable to pass the test. The recipient must select and administer tests for any employment opportunity in such manner as is necessary to ensure that the test will measure ability to perform on the job rather than the handicapped person's ability to see, hear, speak, or perform manual tasks, except, of course, where such skills are the factors which the test purports to measure. For example, a person with a speech impediment or a handicap which affects the ability to write may be perfectly qualified for jobs which do not or need not, with reasonable accommodation, require those particular skills. Yet, if given an oral or written test, respectively, the handicapped person will be unable to perform in a satisfactory manner. The test results will not, therefore, predict job performance but, instead, will reflect impaired speech or writing skills.

Section 84.14 prohibits preemployment inquiry of an applicant as to whether the applicant is handicapped unless (1) the results are not used in connection with discrimination; (2) the inquiry is directed to determining whether the person has a handicap which would present a hazard to the person or to other employees on the particular job or would require accommodation; (3) the inquiry is accompanied by a statement assuring the nondiscriminatory use of its results; and (4) information concerning the medical condition or history of the applicant is obtained on a separate form which will be afforded confidentiality as medical records. This provision is expected to be particularly helpful in eliminating discrimination against persons with nonvisible handicaps. The Department is aware that many persons with nonvisible handicaps advocate prohibition of any mandatory preemployment inquiry by employers concerning the presence of a handicap. This prohibition has not been incorporated into the proposed regulation, however, because the Department does not consider it to be within the mandate of the statute.

Section 84.15 prohibits employers from adopting or applying any policy or practice which results in discrimination on the basis of handicap in compensation for similar work on jobs whose performance requires similar skill and responsibility. Where, as a result of reasonable accommodation to a handicapped person's limitations, the person's duties are significantly different from those performed by others in the same job classification, different compensation may be provided, but the employer must be able to show that the difference in compensation is directly related to a significant difference in duties and responsibilities.

Subpart C. In general, Subpart C prohibits the exclusion of qualified handicapped persons from programs or activities by reason of the inaccessibility or unusability of a recipient's facilities. Section 84.22 establishes the standard for nondiscrimination in regard to existing facilities. It states that a recipient's program or activity, when viewed in its entirety, must be readily accessible to handicapped persons. Paragraph (a) makes clear that a recipient is not required to make each of its existing facilities accessible to and usable by handicapped persons if accessibility to the recipient's program or activity can be achieved by other means, such as by reassignment of classes to accessible buildings, by the assignment of aides to employees or beneficiaries, or by making alterations to only some of the recipient's existing facilities. Thus, for example, a university would not have to make all of its classroom buildings accessible to handicapped students. It would, however, have to undertake enough alterations, or, if some buildings were already accessible, reschedule enough classes so that it could offer all required courses and an adequate selection of elective courses in accessible buildings. For the university to exclude a handicapped student from a specifically requested course because it is not offered in an accessible building would constitute discrimination unless an equivalent course were made available.

Similar alternative methods of complying with § 84.22 can be used by providers of health and welfare services. Because there are many small providers in the health and welfare service areas, however, some approaches which they might use to achieve accessibility are of less general applicability and are therefore discussed further in the portion of the preamble concerned with these providers.

In addition to establishing a flexible standard for compliance, this subpart, through § 84.22, permits recipients which develop and implement a transition plan to take up to three years to reach full compliance with its provisions.

Under the provisions of § 84.23, a recipient is required to conform new design and construction to the American National Standards Institute (ANSI) accessibility standards, as such standards are periodically and officially revised. The Department is aware that the ANSI standards are considered insufficient by many handicapped persons, but believes that the fact that many states and Federal agencies have adopted the ANSI standards necessitates their adoption in this regulation. An official revision of the standards is taking place at the present time and is expected to incorporate many of the recommendations of handicapped persons who are dissatisfied with the present standards.

Paragraph (b) of § 84.23 requires certain alterations to conform to the ANSI standards. If an alteration is undertaken to any portion of a building whose accessibility could be improved by the manner in which the alteration is carried out, then the alteration must be made in that manner. Thus, as minor an alteration as the installation of new carpeting is subject to the provisions of this section, since carpeting is available which enhances the ease of moving a wheelchair. Similarly, if a doorway or wall is being altered, the door or other wall opening must be made wide enough to accommodate wheelchairs. On the other hand, if the alteration consists of painting walls or altering ceilings, the provisions of this section are not applicable because neither of these alterations can be done in a way which affects the accessibility of that portion of the building.

Subpart D. Subpart D sets forth requirements for nondiscrimination in preschool, elementary, secondary, and adult education programs and activities, including secondary vocational education programs. The provisions of Subpart D apply to private education programs and activities as well as to public education programs and activities, with the exception of § 84.33, and to State as well as to local educational agencies.

Sections 84.33 through 84.36 generally conform to the standards established for

the education of handicapped persons in *Mills* v. *Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972), *Pennsylvania Association for Retarded Children* v. *Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. 1971), 343 F. Supp. 279 (E.D. Pa. 1972), and *Lebanks* v. *Spears*, 60 F.R.D. 135 (E.D. La. 1973), as well as in the Education of the Handicapped Act, 20 U.S.C. 601 *et seq.*

Sections 84.34, 84.35, and 84.36 require, in general, that handicapped persons, regardless of the nature or severity of their handicap, be provided, in the most normal setting feasible, as suitable, adequate, and free an education as is provided to nonhandicapped persons. The requirements imposed in these sections are designed to ensure that no handicapped child is excluded from school on the basis of handicap and, if a recipient demonstrates that placement in a regular instructional setting is not in the best interests of a handicapped student, that the student is provided with adequate alternative educational services suited to the student's needs without additional cost to the student's parents or guardian. For example, a recipient which operates a public school must either educate handicapped children in its regular program or provide such children with an appropriate alternative education at public expense, despite any resulting additional financial burden.

The recipient's duty under these sections extends to each qualified handicapped person who resides in the recipient's jurisdiction. The phrase "resides in" is intended to encompass the concepts both of legal residence and actual presence in the recipient's jurisdiction. Thus, the recipient is responsible for ensuring that the requirements of these sections are met with respect to all students to whom it provides services, including those referred from other school districts, as well as those students whom it refers to other public or private schools or institutions for services. The primary responsibility, however, lies with the recipient in whose jurisdiction the handicapped person has legal residence.

Section 84.34 sets forth the financial obligations of a recipient toward those handicapped persons for whom it has primary responsibility. If the recipient does not itself provide such persons with the requisite services, it must assume the cost of any alternative placement. If, however, a recipient offers adequate services and if alternative placement is chosen by a student's parent or guardian, then the recipient need not assume the cost of the outside services. If the parent or guardian believes that his or her child cannot be suitably educated in the recipient's program, he or she may, of course, make use of the procedural process incorporated in § 84.36(e).

It should be noted that this section extends the recipient's obligation beyond the provision of tuition payments: If a student is placed in a program which necessitates his or her being away from home, the payments must also cover room and board, transportation, and nonmedical care. Transportation must also be provided, through services or payments, if a nonresidential placement imposes transportation expenses upon a child's parents or guardian.

Section 84.35 provides that handicapped children shall be educated in the most normal setting feasible and may not be removed from the regular educational environment except when such removal is demonstrated by the recipient to be in the best interests of the handicapped student. Education in the most normal setting feasible is the education of handicapped persons, including those in public or private institutions or other care facilities, with persons who are not handicapped to the maximum extent consistent with the best interests of the handicapped person. To meet the requirement of this section, a recipient must show that the needs of the individual handicapped person in question would, on balance, be furthered by placement outside the regular educational environment.

The term "most normal setting feasible" is intended to encompass the same concept as the more commonly used "least restrictive alternative setting." It was chosen in preference to the latter term because placement alternatives cannot, in many instances, be compared on the basis of relative restrictiveness; *i.e.*, while institutional education is indeed more restrictive than noninstitutional instruction, placement in special education classes is not necessarily more restrictive than instruction in regular classes.

Section 84.36 concerns the provision of suitable educational services to handicapped persons and requires that such persons' individual educational needs be meet to the same extent as are those of nonhandicapped persons. A suitable education could consist of education in regular classes, education in regular classes with the use of supplimentary services, education in special instructional settings, separate education in private or public residential or nonresidential institutions or at home, or any combination thereof, so long as the placement is consistent with the requirements of § 84.35 and is the one best suited to the individual educational needs of the handicapped person in question. In addition, the quality of the educational services provided to handicapped students must be equal to those provided to nonhandicapped students; thus, handicapped students' teachers must be trained in the instruction of persons with the handicap in question and appropriate materials and equipment must be available. The Department is aware that the supply of adequately trained teachers may, at least at the outset of the imposition of this requirement, be insufficient to meet the demand of all recipients. This factor will be considered in determining the appropriateness of the remedy for noncompliance with this section.

Because the failure to provide handicapped persons with a suitable education is so frequently the result of misclassification or misplacement, paragraph (a) of § 85.36 makes compliance with its provisions contingent upon adherence to certain procedures designed to ensure appropriate classification and placement. These procedures are delineated in paragraphs (b) through (e) of § 84.36 and are concerned with testing and other evaluation methods and with procedural due process rights.

Paragraph (c) of § 84.36 establishes procedures designed to ensure that children are not misclassified or unnecessarily labeled as being handicapped because of inappropriate selection, administration, or interpretation of evaluation materials. This problem has been extensively documented in *Issues in the Classification of Children*, a report by the Project on Classification of Exceptional Children, in which the HEW Interagency Task Force participated. The provisions of this paragraph are aimed primarily at abuses in the placement process which result from misuse of, or undue or misplaced reliance on, standardized scholastic aptitude tests. Subparagraph one requires recipients to provide and administer evaluation materials in the primary language of the student. Subparagraphs two through four are, in general, intended to prevent misinterpretation and similar misuse of test scores. Subparagraph five requires a recipient to administer tests to a student with impaired sensory, manual, or speaking skills in whatever manner is necessary to avoid distortion of the test results by the impairment.

Subparagraphs six through eight require a recipient to draw upon a variety of sources in the evaluation process so that the possibility of error in classification is minimized. In particular, subparagraph seven requires that all significant factors relating to the learning process, including adaptive behavior, be considered. (Adaptive behavior is the effectiveness with which the individual meets the standards of personal independence and social responsibility expected of her or his age and cultural group.) In addition, subparagraph eight requires that a student not be placed outside the regular instructional setting if the information derived either from testing or from other sources results in a showing that the student does not need to be so placed.

Paragraph (e) of § 84.36 incorporates from the Education of the Handicapped Act, 20 U.S.C. 1415, as amended by Pub. L. 94–142, certain due process procedures which a recipient must afford to parents or guardians before taking any action regarding the educational placement, denial of placement, or transfer of placement of a person who, because of handicap, needs or is believed to need special instruction or related services. The safeguards thereby incorporated include the rights to prior notice, to examine relevant records and to obtain an independent evaluation of the person, to present complaints, and to obtain an impartial due process hearing. A recipient must also establish procedures for the protection of handicapped students who are wards of the state or whose parents or guardian are unknown or unavailable.

Section 84.37 requires a recipient to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for comparable participation in such services and activities. Because these services and activities are part of a recipient's education program, they must, in accordance with the provisions of § 84.35, be provided in the most normal setting feasible. Paragraph (c)(2) does permit separation or differentiation with respect to the provision of physical education and athletics activities, but any such action must be necessitated by considerations of health and safety or by the interests of the students. It is expected that little separation or differentiation will be necessary since most handicapped students are able to participate in one or more regular physical education and athletics activities. For example, a student in a wheelchair can participate in regular archery courses, as can a deaf student in wrestling.

Similar participation by handicapped students in the other services and activities enumerated in § 84.39 will, in most cases, be feasible. Where, however, a student's handicap is such that participation in regularly offered activities and services is not possible, the recipient must provide comparable activities and services in which the student can participate. For that reason, a recipient is allowed one year from the effective date of the final regulation to comply with the requirements of the section. Comment is solicited as to the advisability of including this one year period in the final regulation.

Comment is also solicited on the question of whether to include in the final regulation a provision allowing recipients until September 1, 1978 to reach full compliance with the requirements concerning free and suitable education for all handicapped children. Such a provision has been considered for the sake of consistency with the Education of All Handicapped Children Act, Pub. L. 94–142, but has been rejected because of the difference in statutory authority (section 504 itself contains no authority for delaying enforcement, whereas Pub. L. 94–142 does) and because of the fundamental nature of the rights involved.

Subpart E. Subpart E generally follows the Department's title IX regulation and prescribes requirements for nondiscrimination in recruitment and admission of students to postsecondary education programs and activities, including vocational education programs and activities, as well as for the nondiscriminatory treatment of students in such programs and activities. In addition to a general prohibition of discrimination on the basis of handicap in § 84.42(a), the regulation delineates, in § 84.42(b), specific prohibitions relating to the establishment or use of quotas, the use of tests or selection criteria, and preadmission inquiry.

The standard established in § 84.42 (b)(2) for admissions tests and other similar criteria parallels that used in the employment provisions of the regulations. This provision prescribes overall success in the education program in question as the relevant criterion against which to validate any questionable selection device. Success in this context is to be measured in terms of students' entire scholastic record in the program in question and not just against first year grades. The decision to require that a test be validated as a predictor of success throughout the entire period of study in the program, rather than as a predictor of success in the first year of study, was based upon the fact that many handicapped persons, as a result of the discriminatory practices of recipients which operate elementary and secondary education programs, are not as thoroughly prepared for college as are non-handicapped persons and therefore may take longer to demonstrate their capabilities in regard to college work. Because admissions tests are commonly validated against first year grades, this requirement may be difficult for educational institutions to comply with, and the Department therefore seeks comment on this provision.

Section 84.42(b) also requires a recipient to assure itself that admissions tests are selected and administered to applicants with impaired sensory, manual or speaking skills in such manner as is necessary to avoid unfair distortion of test results. Methods have been developed for testing the abilities and achievement of persons who lack the ability to take written tests or even to make the marks required for mechanically scored objective tests; in addition, methods for testing persons with visual or hearing impairments are available. A recipient, under this paragraph, must assure itself that such methods are used with respect to the selection and administration of any admissions tests of which it makes use.

Section 84.43 is the same as the corresponding section in the title IX regulation and contains general provisions prohibiting the discriminatory treatment of qualified handicapped students. Paragraph (b) of this section requires a recipient to develop and implement a procedure to ensure that the operator or sponsor of an education program or activity not operated wholly by the recipient, but in which the recipient requires the participation of its students or employees, takes no action which the regulation would prohibit the recipient from taking. This requirement would apply, for example, to a college's responsibility to ensure that discrimination on the basis of handicap does not occur in connection with the teaching assignments of student teachers in schools not operated by the college. If the recipient finds that such discrimination is taking place and is unable to secure its prompt correction, it is required to terminate its connection with the operating or sponsoring entity.

Paragraph (c) of this section prohibits a recipient from excluding qualified handicapped students from any course, course of study, or other part of its education program or activity. This paragraph is designed to eliminate the practice of excluding qualified handicaped persons from specific courses and from areas of concentration because of factors such as ambulatory difficulties of the student or the assumption that no jobs would be available in the area in question for a person with that handicap.

Section 84.44 requires the recipient to make certain adjustments to academic practices which discriminate or have the effect of discriminating on the basis of handicap. Paragraph (a) prohibits the imposition upon handicapped students of academic requirements which have such discriminatory effect. For example, the failure to permit an otherwise qualified handicapped student who is deaf to substitute an art appreciation course for a music appreciation course would be considered a discriminatory practice unless such an action could be demonstrated by the recipient to violate interests which are essential to the recipient's program.

Paragraph (d) provides that a recipient must take steps to ensure that no handicapped student is subjected to discrimination under the recipient's postsecondary education program or activity because of the absence of necessary auxiliary educational aids for students with impaired sensory, manual, or speaking skills. Such aids might include braille texts, readers, equipment adopted for use by students with manual impairments, equipment for making orally delivered materials available to students with hearing impairments, and other similar devices and services. The intent of this section is that aids such as those described be made available in libraries or other source centers operated by the recipient rather than that every classroom or laboratory be fully equipped with aids. Moreover, a recipient would not be required to furnish individually prescribed aids and devices for general use, such as wheelchairs, hearing aids, eyeglasses, and orthopedic devices. It should be noted that in most cases this provision will not impose any additional burden on a recipient because auxiliary aids are usually provided to handicapped students by vocational rehabilitation agencies.

Paragraph (a) of § 84.47 prohibits discrimination against qualified handicapped persons in the provision of financial assistance to students. It provides that recipients may not provide less assistance to or limit the eligibility of qualified handicapped persons for such assistance, whether the assistance is provided directly by the recipient or by another entity through the recipient's sponsorship. If, however, the recipient administers wills, trusts, or similar legal instruments that require awards to be made in a discriminatory manner, such awards are permissible only if the overall effect of the recipient's provision of financial assistance is not discriminatory on the basis of handicap.

The awarding of athletic scholarships is not prohibited by these provisions. Moreover, it will not be considered discriminatory to deny, on the basis of

handicap, an athletic scholarship to a handicapped person if the handicap renders the person unqualified for the award. For example, a student who has cerebral palsy and is in a wheelchair could be denied a varsity football scholarship on the basis of handicap, but a deaf person could not, solely on the basis of handicap, be denied a scholarship for the school's diving team. The deaf person could, however, be denied the scholarship on the basis of comparative diving ability.

Paragraph (a) of § 84.48 establishes the same standards concerning nondiscrimination in the provision of physical education courses and athletic programs as does § 84.37(c) of Subpart D, discussed above, and will be interpreted in a similar fashion.

Subpart F. Subpart F applies to health, welfare, and social service programs and to recipients which operate such programs. The Departmental regulation implementing title VI of the Civil Rights Act of 1964, which applies to the same recipients as does section 504, does not contain special provisions in this area. However, the Secretary believes that the particular characteristics inherent in discrimination on the basis of handicap warrant their inclusion here.

Under §§ 84.52 and 84.53, recipients operating health, welfare, and social service programs are expressly prohibited from denying these services to qualified handicapped persons. As noted in the above discussions concerning the provisions of Subparts A and C, providers of services whose sole Federal connection is through the Medicaid program will not be treated as recipients under this regulation but their nondiscrimination will be ensured, pursuant to § 84.4 (b)(3), by the State Medicaid agencies. Other health providers receiving Federal assistance through provisions such as Medicare and Hill-Burton, however, will continue to be treated as recipients.

The Secretary realizes that it may be impossible for every private practitioner under Medicaid to make his or her services totally accessible to handicapped patients, just as it may be for some school districts to make every classroom or every building accessible. Thus, for example, as provided in Subpart C, for the State agency to be in compliance, a single doctor whose only Federal connection is under Medicaid might simply be required to make house calls or make arrangements for referrals, rather than to make architectural modifications to ensure his or her accessibility. The basic intention of the statute and the regulation, however, remains that no handicapped person should be denied the benefits of federally assisted programs, including health services reimbursed under Medicaid. Therefore, the State Medicaid agency must ensure that these services, when viewed in their entirety, are readily accessible.

In terms of "program" size and administrative structure, there is no equivalent to the local school district in the health services delivery system. The Medicaid program is administered through geographic areas much larger than the customary school district program area, and the phrase "readily accessible" implies clear limits on the distance a handicapped person should be required to travel in order to find a physically accessible service. In terms of distance traveled, the concept of "catchment area," as used in the National Health Planning and Resources Act of 1974, Pub. L. 93-641, may be the most reasonable approach to a "program" area within which comparable services could be made readily accessible to handicapped persons. If so, one method of compliance for local physicians and the State Medicaid program administrators would be to ensure that handicapped persons have ready access, within the health service area, to a range of Medicaid reimbursed services comparable to that available for the nonhandicapped.

For example, if there were three neurologists accepting Medicaid patients within the health service area, the State Medicaid agency must ensure that at least one of them is readily accessible to handicapped patients. Therefore, the responsibility for any Medicaid provider whose office is not accessible would be to refer handicapped patients to an accessible physician offering comparable services within the area. Alternatively, the provider could arrange to make his or her services accessible to handicapped patients by scheduling a few hours each week in an accessible setting, such as a local clinic or hospital, or by calling at the home of such patients. Although these alternative methods of meeting the nondiscrimination obligation are recognized, the responsibility for nondiscrimination rests first with the State Medicaid agency but also with each individual practitioner who accepts Medicaid reimbursement.

The Secretary seeks comments especially upon the enforcement approach proposed above with respect to providers which receive Federal assistance solely under Medicaid. Additionally, it has been proposed that the Health Service Agency which receives Federal funds for comprehensive health planning for each health service area be required to include in its annual plan a description of the specific arrangements which ensure compliance with this regulation within its health service area.

Under § 84.54, a recipient which operates or supervises a residential or day care program or activity for persons who are institutionalized because of handicap must ensure that any such persons who are qualified for educational services are provided with a suitable education in accordance with the requirements of Subpart D. The proposed regulation does not, however, contain any provisions concerning adequate and appropriate psychiatric care or safe and humane living conditions for persons institutionalized because of handicap. The Secretary is of the opinion that to promulgate rules on this subject would exceed his authority under the nondiscrimination provisions of section 504.

It is hereby certified that the economic and inflationary impacts of this proposed regulation have been carefully evaluated in accordance with OMB Circular A-107.

PART 84—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS

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AUTHORITY: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706).

Subpart A—General Provisions

§ 84.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of

handicap in any program or activity receiving Federal financial assistance.

§ 84.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Health, Education, and Welfare and to each program or activity assistance.

§ 84.3 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516.

(b) "Section 504" means section 504 of the Act.

(c) "Department" means the Department of Health, Education, and Welfare.

(d) "Secretary" means the Secretary of the Department of Health, Education, and Welfare.

(e) "Director" means the Director of the Office for Civil Rights of the Department.

(f) "Recipient" means any State or political subdivision thereof, any instrumentality of a State or political subdivision thereof, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. For the purpose of this part, the term does not include providers of health services whose sole source of Federal financial assistance is that provided under title XIX of the Social Security Act, 42 U.S.C. 1901 et seq., (Medicaid) and agencies used by the State to make payments to such providers under that title.

(g) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) "Federal financial assistance" means any grant, loan, contract, or any other arrangement, except contracts of insurance or guaranty, by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Property (both real and personal) or any interest therein or use thereof, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interests therein.

(j) "Handicapped person." (1) "Handicapped person" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the term:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; and (C) any medically recognizable disorder or condition that has not been definitely characterized as physical, rather than mental, or as mental, rather than physical, or that is characterized as both physical and mental.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, communicating, seeing, breathing, learning, and working.

(iii) "Record" means any documentation of a history of a mental or physical impairment which substantially limits one or more major life activities, whether or not that documentation is accurate or appropriate.

(3) As used in paragraph (j)(1) of this section, the phrase "is regarded as having an impairment" means (i) has a physical or mental impairment which does not substantially limit major life activities but which is treated by a recipient (or other person or entity acting for or in cooperation with the recipient) as constituting such a limitation, (ii) has a physical or mental impairment which substantially limits major life activities only as a result of the attitudes of others toward such impairment, or (iii) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient (or other person or entity acting for or in cooperation with the recipient) as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who can perform the essential functions of the job in question;

(2) With respect to postsecondary and vocational education services, a handicapped person who meets the academic or technical standards requisite to admission or participation in the recipient's education program or activity;

(3) With respect to preschool, elementary, secondary, or adult educational services, a handicapped person (i) of any age during which nonhandicapped persons are eligible for such services and (ii) to whom a State is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act, 20 U.S.C. 1412, as amended by section 5(a) of Pub. L. 94–142; and

(4) With respect to other services, a handicapped person who meets the eligibility requirements for the receipt of such services.

(l) "Handicap" means any condition or characteristic which renders a person a handicapped person as defined in paragraph (j) of this section.

(m) "Student" means a person who has gained admission to an education program or activity.

§ 84.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance, except as provided in §§ 84.22 and 84.37.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service or afford him or her an opportunity to do so which is not comparable to that afforded others;

(ii) Provide a qualified handicapped person with an aid, benefit, or service which is not comparable to that provided to others;

(iii) Aid or perpetuate discrimination against a qualified handicapped person by providing assistance to any agency, organization, or person which discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program; or

(iv) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) A recipient shall provide aid, benefits, and services to handicapped persons in a manner different from that in which they are provided to others when such action is necessary to provide qualified handicapped persons with aid, benefits, or services which are comparable to those provided to others. For purposes of this part, aids, benefits, and services, to be comparable, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result or to reach the same level of achievement, taking into account the nature of a particular person's handicap.

(3) In determining the types of aid, benefits, services, or facilities which will be provided, the class of persons to whom or the situation in which aid, benefits, services, or facilities will be provided, or the class of persons to be afforded an opportunity to participate in any program or activity, a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) which have the effect of subjecting qualified handicapped persons to discrimination on the basis of handi-

cap, (ii) which have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) which perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(4) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) which have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity which receives or benefits from Federal financial assistance or (ii) which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(5) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance shall include any aid, benefit, or service provided in or through a facility which has been constructed, expanded, altered, or acquired, in whole or in part, with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal law to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal law to a different class of handicapped persons is not prohibited by this part.

§ 84.5 Remedial action, affirmative action, and self-evaluation.

(a) *Remedial action.* (1) If the Director finds that a recipient has discriminated against persons on the basis of handicap in violation on this part, the recipient shall take such remedial action, consistent with judicial standards, as the Director finds adequate to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of this part and where another recipient exercises control over the recipient which has so discriminated, the Director, where appropriate, may require either or both recipients to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination, require a recipient to take remedial action with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred.

(b) *Affirmative action.* In the absence of a finding of discrimination in violation of this part, a recipient may take steps, in addition to any action which is required by this part, to overcome the effects of conditions which resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate its current policies and practices and the effects thereof, in terms of the requirements of this part;

(ii) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(iii) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(2) For at least three years following completion of the evaluation required under paragraph (c) (1) of this section, recipients shall maintain on file and shall provide to the Director upon request a description of any modifications made pursuant to paragraph (c) (1) (ii) of this section and of any remedial steps taken pursuant to paragraph (c) (1) (iii) of this section.

§ 84.6 Assurances required.

An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Director, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

§ 84.7 Duration of obligation and covenants.

(a) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, the assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(b) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest therein from the Federal Government, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to incude the covenant described in paragraph (b) (2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest therein from the Federal Government, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financial construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Director may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 84.8 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient shall designate at least one person to coordinate its efforts to comply with and carry out its responsibilities under this part.

(b) *Adoption of grievance procedures.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action prohibited by this part.

§ 84.9 Dissemination of policy.

(a) *Notification of policy.* (1) A recipient shall implement specific and continuing steps to notify all participants, beneficiaries, applicants, employees, other interested persons, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in the programs which it operates and that it is required by section 504 and this part not to discriminate in such manner. The notification shall contain such information and be made in such manner as is necessary to apprise interested persons of the protections against discrimination assured them by section 504 and this part. It shall, where appropriate, state that the requirement not to discriminate in programs extends to admission or access thereto and to treatment and employment therein and shall also state that inquiries concerning the application of section 504 and this part to the recipient may be referred to a person designated by the recipient or by the Director.

(2) A recipient shall make the initial notification required by paragraph (a) (1) of this section within 90 days of the effective date of this part. Notification shall include publication in local newspapers and in newspapers and magazines operated by or on behalf of the recipient.

(b) *Publications.* (1) A recipient shall include a statement of the policy de-

scribed in paragraph (a) of this section in a prominent place in those publications containing general information which it makes available to a participant, beneficiary, applicant, employee, or other interested person.

(2) A recipient may not use or distribute a publication of the type described in paragraph (b)(1) of this section which indicates, by text or illustration, that the recipient treats participants, beneficiaries, applicants, or employees in a manner prohibited by section 504 and this part.

§ 84.10 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any State or local law or other requirement which, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B—Employment Practices

§ 84.11 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment, or in the recruitment, consideration or selection therefor, under any programs or activity to which this part applies.

(2) A recipient shall make all decisions concerning employment under any program or activty to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not segregate or classify applicants or employes in any way which could adversely affect an applicant's or employee's opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship which has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationship referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structure, position descriptions, lines of progression, and seniority lists;

(5) Departure and return from leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient shall comply with this subpart regardless of the terms of any collective bargaining agreement to which it is a party.

§ 84.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation includes (1) making facilities used by employees readily accessible to and usable by handicapped persons and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant or determine a handicapped employee or applicant to be unqualified if the basis for the denial or determination is the necessity for reasonable accommodation to the physical or mental limitations of the employee or applicant as required in this section.

§ 84.13 Employment criteria.

(a) A recipient may not make use of any test or criterion which has a disproportionate, adverse effect on the employment opportunities of handicapped persons or any class of handicapped persons unless (1) the test or criterion, as used by the recipient, has been validated as a predictor of performance for the position in question and (2) alternative tests or criteria for such purpose which have a less disproportionate, adverse effect are shown to be unavailable.

(b) A recipient shall select and administer tests concerning employment in such manner as is necessary to ensure that, when administered to an applicant or employee who has a handicap which impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where such skills are the factors which the test purports to measure).

§ 84.14 Preemployment inquiries.

(a) A recipient may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap in a manner which results in discrimination prohibited by this subpart.

(b) Preemployment inquiries shall be limited to those necessary to determine whether the person has a handicap which would constitute a hazard to that person or to other employees or which would require accommodation under section 84.12.

(c) Preemployment inquiries shall be accompanied by a statement that the recipient is subject to this subpart and assuring that information obtained from the inquiries will not be used in a manner which would result in discrimination prohibited by this subpart.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected only through use of separate forms which shall be accorded confidentiality as medical records. Supervisors may, however, be given information and instructions necessary to the person's health and safety and may be informed of work restrictions and necessary accommodations.

§ 84.15 Compensation.

A recipient may not adopt or apply any policy or practice which, on the basis of handicap, result in the payment of wages or other compensation to handicapped employees at a rate less than that paid to nonhandicapped employees for similar work on jobs whose performance requires similar skill and responsibility.

§ 84.16 Fringe benefits.

(a) In making fringe benefits available to employees, a recipient may not:

(1) Administer, operate, offer, or participate in a fringe benefit plan which does not provide for equal benefits to handicapped and nonhandicapped persons and equal contributions to the plan by handicapped and nonhandicapped persons unless any difference in benefits or contributions is justified by verifiable actuarial figures and an actual, substantial increase in cost to the recipient; or

(2) Otherwise discriminate on the basis of handicap.

(b) Fringe benefits include any medical, hospital, disability, accident, life insurance, or retirement benefit, service, policy, or plan, any profit sharing or bonus plan, leave, or any similar employment benefit or service.

Subpart C—Program Accessibility

§ 84.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefit of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 84.22 Existing facilities.

(a) *Program accessibility.* A recipient shall, through the elimination of physical obstacles or through other methods, operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph shall not necessarily be interpreted to require a recipient to make each of its existing facilities accessible to and usable by handicapped persons.

(b) *Methods.* In order to comply with paragraph (a) of this section, a recipient may employ such means as alteration of existing facilities, construction of new facilities, redesign of equipment, reassignment of classes to accessible buildings, assignment of aides to employees or beneficiaries, home visits by health and welfare agencies and providers, or any other methods which result in making its program or activity accessible to handicapped persons.

(c) *Time period.* A recipient shall achieve program accessibility as expeditiously as possible but in no event later than three years from the effective date of this part.

(d) *Transition plan.* A recipient which is not in compliance with paragraph (a) of this section on the effective date of this part shall develop, within six months of such date, a transition plan to achieve program accessibility. The transition plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities which limit the accessibility of its program or activity to handicapped persons;

(2) Establish priorities for achieving program accessibility on the basis of those activities which are most essential to beneficiaries of the recipient's program;

(3) Describe in detail the methods which will be used to make the recipient's program accessible;

(4) Specify the schedule for taking the steps necessary to achieve program accessibility and, if the time period of the transition plan is longer than one year, identify steps which will be taken during each year of the transition period in accordance with the priorities established under paragraph (d)(2) of this section; and

(5) Indicate the person responsible for implementation of the plan.

(e) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons are informed (1) of the existence and location of accessible services and activities, (2) of facilities which are accessible to and usable by handicapped persons, and (3) of any transition plan developed pursuant to paragraph (d) of this section and the schedule established therein.

§ 84.23 New construction.

(a) *Design and construction.* Each facility or part of a facility designed or constructed by, on behalf of, or for the use of a recipient after the effective date of this part shall be designed or constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner which affects or could affect the usability of the facility or part of the facility shall be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *American National Standards Institute accessibility standards.* To meet the requirement of paragraphs (a) and (b) of this section, a recipient shall conform the design, construction, and alteration of its facilities to the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc., as such standards are periodically and officially revised.

(d) *Architectural and Transportation Barriers Compliance Board.* If a facility of a recipient is subject to the requirements of this part and section 504 as well as to the requirements of section 502 of the Act and any applicable regulation promulgated by the Architectural and Transportation Barriers Compliance Board, the Department will, for a reasonable period of time not to exceed sixty days, defer action pending review by the Board.

Subpart D—Preschool, Elementary, and Secondary Education

§ 84.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities which receive or benefit from Federal financial assistance and to recipients which operate, or which receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 84.32 Preschool and adult education programs.

(a) A recipient which operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, deny access to such program or activity to qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under such program or activity.

(b) A recipient which operates or sponsors a preschool compensatory education program or activity for children who are deemed disadvantaged because of cultural, economic, or linguistic conditions may not, on the basis of handicap, exclude any qualified handicapped person from its program or activity.

§ 84.33 Location and notification.

A recipient which operates a public education program shall:

(a) Annually undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education;

(b) Notify handicapped persons and their parents or guardians of the recipient's duty under this subpart; and

(c) Publicize generally such duty.

§ 84.34 Free education.

(a) A recipient to which this subpart applies shall provide a free education to each qualified handicapped person who resides in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) For the purpose of this section, the provision of a free education is the provision of educational services without cost to the handicapped person or to his or her parents or guardians, except for those fees which are imposed on nonhandicapped persons or their parents or guardians. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this part, of grants in the amount of the cost of the services to the handicapped person or to his or her parents or guardians. If the program is residential, the provision of a free education also includes the provision of nonmedical care, room and board, and transportation.

§ 84.35 Most normal setting feasible.

A recipient shall provide educational services to each qualified handicapped person who resides in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap, in the most normal setting feasible and may not remove a handicapped person from, or place such person in a setting other than, the regular educational environment except when the nature or severity of the person's handicap is such that education in regular classes with the use of supplementary aids and services is demonstrated by the recipient not to be in the best interest of such person.

§ 84.36 Suitable education.

(a) A recipient to which this subpart applies shall provide as suitable an education to each qualified handicapped person who resides in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap, as the recipient provides to nonhandicapped persons. For this purpose, the provision

of a suitable education is the provision of educational services which adequately meet the individual educational needs of the person in question, as determined by the recipient using criteria consistent with this part. In order to be suitable, the education of persons who, because of handicap, need or are believed to need special instruction or related services must be based upon adherence to procedures which satisfy the requirements delineated in paragraphs (b), (c), (d), and (e) of this section.

(b) *Preplacement evaluation.* A recipient may not take any action regarding the educational placement, denial of placement, or transfer of placement of a person who, because of handicap, needs or is believed to need special instruction or related services without fully and individually evaluating such person's educational needs.

(c) *Evaluation procedures.* A recipient shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special instruction or related services which ensure, at a minimum, that:

(1) Tests and similar evaluation materials are provided and administered in the primary language of the student;

(2) Tests and similar evaluation materials have been properly and professionally validated for the specific purpose for which the recipient proposes to use them;

(3) Tests and similar evaluation materials are recommended by their producer for the specific purpose for which the recipient proposes to use them, are administered in conformance with the instructions provided by their producer, and are administered by trained personnel;

(4) Tests and similar evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(5) Test selection and administration is such that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors which the test purports to measure);

(6) No one test or type of test or other means of evaluation is used as the sole criterion for placement;

(7) Information from sources other than ability or achievement tests, including information concerning physical condition, sociocultural background, and adaptive behavior in home and school, is gathered and considered; and

(8) If the information derived either from ability and achievement tests or from other sources results in a showing that the student does not, because of handicap, need instruction in a special setting, the student will not be placed outside the regular instructional setting.

(d) *Reevaluation.* A recipient shall provide to each student who has been placed in a special instructional setting an annual reevaluation of his or her educational needs and progress in accordance with the procedures established in paragraph (c) of this section and shall inform the student's parents or guardian of the results of the evaluation. The adequacy of the special instruction provided to each student shall be examined and shall be a factor in determining whether a change in the student's placement is to occur.

(e) *Procedural safeguards.* A recipient shall establish and implement, with respect to actions regarding the placement, denial of placement, or transfer of placement of a person who, because of handicap, needs or is believed to need special instruction or related services, the procedural safeguards delineated in paragraphs (b) and (e)(3) of section 615 of the Education of the Handicapped Act, 20 U.S.C. 1415, as amended by section 5(a) of Pub. L. 94-142.

§ 84.37 Nonacademic services.

(a) *General.* (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for comparable participation in such services and activities.

(2) Nonacademic and extracurricular services and activities include, but are not limited to, counseling services, physical education, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(3) A recipient shall comply with the provisions of this section as expeditiously as possible but in no event later than one year from the effective date of this part.

(b) *Counseling services.* A recipient to which this subpart applies which provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that handicapped students are not counseled toward more restrictive participation in available services or more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient which offers physical education courses or which operates or sponsors interscholastic, club, or intramural athletics shall provide to handicapped students equal opportunities for comparable participation in these activities.

(2) Physical education and athletic activities offered to handicapped students may be separate or different from those offered to nonhandicapped students to the extent that separation or differentiation is consistent with the requirements of section 84.35 and is necessary to ensure the health and safety of the students or to take into account their interests.

§ 84.38 Comparable services.

If a recipient, notwithstanding its compliance with this part, operates a facility which is identifiable as being for handicapped students, the facility and the educational services provided therein shall be comparable to the facilities and services of the recipient which are not so identifiable.

Subpart E—Higher Education

§ 84.41 Application of this subpart.

Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, which receive or benefit from Federal financial assistance and to recipients which operate, or which receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 84.42 Admissions and recruitment.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In determining whether a person satisfies any policy or criterion for admission or in making any offer of admission, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission which has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of overall success in the education program or activity in question and (ii) alternative tests or criteria which have a less disproportionate, adverse effect are shown to be unavailable;

(3) Shall assure itself that the selection and administration of admissions tests is such that, when an admissions test is administered to an applicant who has a handicap which impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where such skills are the factors which the test purports to measure); shall assure itself that admissions tests which are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and shall assure itself that admissions tests that it administers are administered in facilities which are

readily accessible to handicapped persons; and

(4) May make preadmission inquiry as to whether an applicant for admission is a handicapped person in order to comply with this part but may not use the results of the inquiry in a manner which results in discrimination on the basis of handicap.

(c) *Different admissions criteria.* A recipient may, if necessary to the furtherance of equal educational opportunity for qualified handicapped persons and if such action does not constitute the giving of a preference on the basis of handicap, apply criteria for the admission of handicapped persons which differ from the criteria applied to nonhandicapped persons, where such criteria are useful as predictors of completion of the education program or activity in question or of success in the occupation or profession for which the education program is designed to prepare students.

(d) *Recruitment.* (1) If a recipient to which this subpart applies recruits nonhandicapped applicants, it shall make comparable efforts to recruit handicapped applicants, except that the recipient may be required to undertake additional efforts to recruit handicapped applicants as remedial action pursuant to § 84.5(a) and may choose to undertake such efforts as affirmative action pursuant to § 84.5 (b).

(2) A recipient shall include in its recruitment efforts schools which are primarily or exclusively for handicapped persons and shall make known to other schools from which it recruits applicants that it is subject to the provisions of this part.

§ 84.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health, counseling financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity which receives or benefits from Federal financial assistance.

(b) A recipient to which this subpart applies which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by the recipient or which facilitates, permits, or considers such participation as part of, or equivalent to, an education program or activity operated by the recipient, including participation in educational consortia and cooperative employment and student teaching assignments, (1) shall develop and implement a procedure designed to assure itself that the operator or sponsor of the other education program or activity takes no action affecting any applicant, student, or employee of the recipient which this subpart would prohibit the recipient from taking; and (2) may not facilitate, require, permit, or consider such participation if such action occurs.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

§ 84.44 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies may not impose upon a qualified handicapped applicant or student academic requirements, including length of time permitted and specific courses required for the completion of degree requirements, that discriminate or have the effect of discriminating on the basis of handicap.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap which impairs sensory, manual, or speaking skills as are necessary to ensure that the results of the evaluation represent the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors which the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of auxiliary aids for students with impaired sensory, manual, or speaking skills. A recipient need not provide auxiliary aids in every classroom so long as they are centrally available.

(2) Auxiliary aids include braille texts and the availability of readers for students with visual impairments, equipment adapted for use by students with manual impairments, methods of making orally delivered materials available to students with hearing impairments, and other similar services and actions, but shall not include individually prescribed devices for the general use of a particular student such as eyeglasses, hearing aids, wheelchairs, and orthopedic devices.

§ 84.45 Housing.

(a) *Housing provided by the recipient.* A recipient which provides housing to its nonhandicapped students shall provide comparable and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient which assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner which does not result in discrimination on the basis of handicap.

§ 84.46 Health and insurance.

(a) *Health services.* In providing a health, medical, or hospital aid, benefit, or service to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap and shall provide handicapped students with health and similar services which are comparable to those provided to other students.

(b) *Insurance benefits.* In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient may not discriminate on the basis of handicap or provide such insurance benefit, service, policy, or plan in manner which would violate Subpart B if it were provided to employees of the recipient.

§ 84.47 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not (i) on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate; or (ii) through solicitation, listing, approval, or provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of the recipient's students in a manner which discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may not administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments which require awards to be made on the basis of factors which discriminate or have the effect of discriminating on the basis of handicap unless the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not, on the basis of handicap, discriminatory.

(b) *Assistance in making available outside employment.* A recipient which assists any agency, organization, or person in making employment available to any of its students (1) shall assure itself that such employment is made available in a manner which would not violate Subpart B if it were provided by the recipient; and (2) may not render such assistance to any agency, organization, or person which discriminates on the basis of handicap in its employment practices.

(c) *Employment of students by recipients.* A recipient which employs any of its students may not do so in a manner which violates Subpart B.

§ 84.48 Other prohibited discrimination.

(a) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient which offers physical education courses or which operates or sponsors intercollegiate, club, or intramural athletics shall provide to hadicapped students equal opportunities for comparable participation in these activities.

(2) Physical education and athletic activities offered to handicapped students may be separate or different from those offered to nonhandicapped students to the extent that separation or differentiation is necessary to ensure the health and safety of the students or to take into account their interests.

(b) *Counseling and placement services.* A recipient to which this subpart applies which provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall, at a minimum, ensure that handicapped students are not counseled toward more restrictive participation in available services or more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Social organizations.* A recipient which provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

Subpart F—Health, Welfare, and Social Services

§ 84.51 Application of this subpart.

Subpart F applies to health, welfare, and other social service programs and activities which receive or benefit from Federal financial assistance and to recipients which operate, or which receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 84.52 Health services.

(a) *Availability of services.* (1) A recipient which provides health benefits or services may not, on the basis of handicap, deny these benefits or services to qualified handicapped persons.

(2) A recipient which provides health benefits or services may not deny these benefits or services through discriminatory application of policies regarding deposits, extension of credit, or other financial matters.

(b) *Level of services.* (1) All health services shall be provided to handicapped persons to the same extent that they are provided to nonhandicapped persons and in such manner as is necessary to afford handicapped persons equal opportunities for comparable benefits from these services.

(2) A recipient shall develop and implement procedures to assure itself that handicapped persons are not subjected to discrimination by reason of the recipient's referrals of such persons to other entities or persons providing health benefits or services.

§ 84.53 Welfare and other social services.

In providing welfare or other social services or benefits, a recipient may not, on the basis of handicap:

(a) Deny a qualified handicapped person these benefits or services;

(b) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(c) Subject a handicapped person to different standards of eligibility for the benefits or services.

§ 84.54 Education of institutionalized persons.

A recipient to which this subpart applies and which operates or supervises a residential or day care program or activity for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person in its program or activity is proveded a suitable education, as defined in § 84.36.

Appendix B

PRI 239-76

DISCRIMINATION AGAINST HANDICAPPED PERSONS

The Costs, Benefits and Inflationary Impact of Implementing Section 504 of the Rehabilitation Act of 1973 Covering Recipients of HEW Financial Assistance

Dave M. O'Neill

FEBRUARY 1976

PUBLIC RESEARCH INSTITUTE
a division of the Center for Naval Analyses

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197-75 *Earning Losses of Workers Displaced from the Steel Industry by Imports of Steel,* Louis Jacobson; August 1975.

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239-76 *Discrimination Against the Handicapped: The Costs, Benefits and Inflationary Impact of Implementing Section 504 of the Rehabilitation Act of 1973 Covering Recipients of HEW Grants,* Dave M. O'Neill; February 1976.

DISCRIMINATION AGAINST HANDICAPPED PERSONS
The Costs, Benefits and Inflationary
Impact of Implementing Section 504
of the Rehabilitation Act of 1973
Covering Recipients of HEW
Financial Assistance

Dave M. O'Neill

18 February 1976

This work was prepared for the Office for Civil Rights (HEW) under Order # SA-4141-76. The ideas expressed herein do not necessarily reflect the official positions of the Office for Civil Rights.

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ACKNOWLEDGEMENTS

A large number of people contributed very generously of their time and effort in helping prepare this report. Comments were solicited from agencies throughout the department and in other agencies and private organizations. Special thanks are due to Jack Jones and John Davis of the Department of Health, Education and Welfare (HEW), Pat Wald and Robert Plotkin of the Center for Law and Social Policy, Lucile Anderson, James Keim and Gary Mackuch of the Virginia, Maryland and Pennsylvania State Departments of Education respectively, Patrician Thoben of the Civil Service Commission, and Howard Bennet of HEW. Mr. George Majors of HEW and Mr. Dave Brigham of the Department of Labor provided valuable data sources as well as detailed and informative interviews about their experiences with the employment problems of blind individuals and with the administration of Section 503 respectively. Ed Lynch of HEW provided extensive comments, ideas, and suggestions on early versions of the report. Walt Francis of HEW provided extensive comments, ideas and suggestions on all draft versions. At several points he noted serious omissions in the analysis. Finally, Anne Beckman of HEW provided invaluable oversight and guidance as well as extensive comments, ideas and suggestions on all draft versions.

I. INTRODUCTION

The proposed regulation will implement section 504 of the Rehabilitation Act of 1973, as amended, which reads as follows:

> No otherwise qualified handicapped individual in the United States... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Under HEW's guidelines any proposal which will have an impact exceeding $100 million in any one year is subject to the requirements of Executive Order 11821. Under the guidelines relating to Inflationary Impact Statements, any such regulation must be carefully evaluated in terms of benefits as well as costs. In addition alternatives to the proposed action must be reviewed.*

Preliminary analysis indicated the likelihood that the $100 million threshold would be crossed and an analysis required. The following analysis, although generally conforming to the stated guidelines, has some special features and limitations that should be made explicit at the outset.

Although the analysis attempts to measure cost impacts, it does not link them to effects on inflation. This regulation affects services provided primarily by the public sector, and the link between increased cost and inflationary pressure is not as direct as with regulations that increase unit costs in the private sector. For example, state and local governments may choose to cover the increased cost of special education by increasing tax revenues, or by reallocating available resources, thus precluding the inflationary pressure associated with deficit financing.

Another special feature is that some of the regulation's requirements duplicate the provisions of pre-existing federal or state law or court decree. In such instances, the effect of the section 504 regulation is to impose an additional sanction in order to hasten and to help enforce compliance. The policy decision in these cases is not whether to incur a set of costs and benefits, but whether or not to increase the rapidity with which they materialize. Thus where the regulations requirements duplicate or strengthen existing

*OMB has stressed that the statement should document all significant costs and benefits even if they do not have any direct links to the prices of goods and services that enter into the Consumer or Wholesale Price Index. In these situations the Inflationary Impact Statement becomes equivalent to the more traditional cost/benefit analysis framework in which the focus is much broader than inflation impact -- all effects that impact on resource allocation efficiency and the distribution of income, if they are large enough, are documented and evaluated in terms of benefits and costs.

mandates, it will not be possible to distinguish separately the costs and benefits of 504 as opposed to existing regulations and laws. However some part of any projected increases in costs (and benefits) should be attributed to these other provisions. Indeed for some of the sub-parts perhaps even the major part should be attributed to them.

The analysis attempts, for each of the major subparts, to present data and information on the magnitude of identifiable costs and benefits. The material is presented in a way that will help the reader evaluate the validity and reliability of the estimates. Wherever possible, ranges of estimates are presented that represent extremes of assumptions about parameters (e.g., special education costs per pupil) that we cannot measure reliably. In some cases (e.g., employment discrimination) the available evidence on costs and benefits is very indirect and impressionistic while in others (e.g., facility accessibility), measurement is more precise.

In all cases the evidence on the magnitude of benefits is, at best, based on scattered data sources and studies. Some of the numbers presented are no more than reasoned guesses. Two remarks are in order here. First, the fact that certain kinds of benefits are difficult to measure (e.g., psychic benefits) does not make them any less important. Second, we have attempted, wherever possible, to identify sub-groups of recipients based on their neediness, e.g., severely and profoundly handicapped children vs. mildly handicapped. This will help the reader in striking his own balance on the magnitude of psychic benefits.

The evaluation is divided into six sections, five of which correspond to the subparts of the proposed regulation: Subpart B, Employment Practices; Subpart C, Program Accessibility; Subpart D, Elementary and Secondary Education; Subpart E, Higher Education; and Subpart F, Health and Social Services. A final section summarizes the findings of the analyses of the various subparts.

The conclusion of the analysis is that the benefits forthcoming (psychic as well as pecuniary) provide a substantial offset to the costs that will be incurred. The costs involved will not be as great as is widely thought and the compelling situation of some of the handicapped persons involved tips the balance in favor of proceeding with immediate implementation of the regulation.

The details of the regulation, such as wording of key phrases, precise extent of population coverage, etc, are discussed at various points in the analyses. The major issues are: alternative ways of wording the "reasonable accommodation" provision; determining the proper incidence rate for the handicapping condition. "Learning Disabled;" determining who should bear the non-educational costs associated with severely handicapped children who require a residential setting; and alternative timing and phase in strategies.

II. EMPLOYMENT PRACTICES (Subpart B)

Subpart B prohibits discrimination in employment against handicapped individuals. The principles developed under the Civil Rights Act of 1964 and the Education Amendments of 1972 were used as a basis for this subpart. Its provisions are consistent with those of section 503 of the Rehabilitation Act which requires federal contractors* to take affirmative action in the employment of qualified handicapped persons.

Although all the provisions of this subpart are aimed at the same objective--assuring nondiscriminatory treatment of handicapped workers--they differ in one important way. One group relate to the employer's recruitment, selection and promotion procedures and practices, while the other relates to the structure of the work situation and requires that employers make "...reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship to the operation of the recipient's program." Reasonable accommodation includes adjustments like making facilities readily accessible, job restructuring, part-time and modified work schedules, acquisition or modification of equipment and devices, and other similar actions. The determination of whether an accommodation will be required (i.e., whether undue hardship exists) will be based on such factors as the size and type of the recipients operation and the nature and cost of the needed accommodation.

The provisions dealing with recruitment, selection and promotion procedures are designed to eliminate discriminatory practices without imposing any added cost (with the possible exception of minor administrative costs) upon recipients. For example, many firms and agencies make routine pre-employment inquiries about the mental and physical condition of the applicant. The proposed regulation would require that all employment application forms state that any handicap-related information requested will not in itself be used as a basis for denying employment. Also any such inquiry must be confined to job related matters and information must be kept confidential.

These provisions will especially aid those with the less visible handicapping conditions (e.g. epilepsy, diabetes, emotional problems). Many of these individuals are seriously inhibited in their job search because of the fear that they will be summarily rejected if they reveal their handicapping condition. For example, a person with epilepsy who could qualify for a better job may not apply because a minor accommodation would be required and

*The proposed regulation will apply to the recipients of HEW grants (as opposed to contracts) who are for the most part public or non-profit organizations (as opposed to proprietary firms). However there is an area of overlap with 503 since many universities receive both grants and contracts from the federal government.

he is afraid to reveal his condition. In this situation the individual's earnings capacity is reduced even though the employer might have been willing to make the required accommodation. Thus, the procedural provisions by themselves, even without additional reasonable accommodations, will produce benefits in the form of increased earnings for handicapped workers. Since the cost imposed on employers by these procedural requirements will be negligible, this part of the subpart is clearly highly cost effective.

The reasonable accommodation provision also seeks to provide benefits by breaking down the employment barriers due to ignorance and stereotyped thinking. It differs from the procedural provisions, however, in that it will require employers in some situations to incur additional costs at the outset in order for the handicapped worker to be equally productive. The phrases "in some situations" and "at the outset" are underlined to stress that for most combinations of types of handicapping condition and job category "reasonable accommodation" will require either no or only minor outlays.

For example, it might involve no more than abandoning a misconception such as thinking that hiring a person with epilepsy will raise accident insurance rates. And in situations where outlays are required it will usually involve only a minor initial investment rather than a major on-going outlay. For example, this might mean recognizing that the traditional job specifications are either outmoded or can be easily adapted to the particular type of handicap in question.

Of course there are some situations where the types of accommodations that would be required can become a source of controversy. These situations are of two kinds. One involves disease entities that may or may not be in a stabilized condition. Diabetes and cancer are the two important types that occur in practice.* Dispute can arise over what the actual probabilities of re-occurrence are and we will review the experience under section 503 in connection with this issue.

The other class of situations involves the various kinds of emotional handicaps -- psychotic reaction, depression, anxiety reaction, etc. The emotional handicaps differ sharply from the physical in how much they can be overcome by simple job restructuring and other kinds of minor accommodations. As shown below (appendix A, table 5), the effect of emotional handicaps on earnings is much greater than for many severe types of physical disabilities. It is not clear whether discrimination by employers is as major a factor in lowering earnings for the emotionally disturbed group as for the other group. In any case,

*Interview with David Brigham, Office of Federal Contract Compliance and Programs. Mr. Brigham provided information from his experience with administering section 503. (It should be noted that the Office for Civil Rights does not view this problem in terms of reasonable accommodation, but in terms of whether such a person is qualified for the job in question. The discussion of the problem is retained here and on page 11, however, because it conforms to the author's analysis of the issue.)

the applicability of most of the known types of "reasonable accommodation" would appear to be limited for those with emotional handicaps. As experience evolves, the program should be closely monitored for guidance on this issue.

The reasonable accommodation provision is likely to generate concern about possible significant cost increases. Therefore the rest of this section is primarily devoted to presenting data and survey results on the probable costs of reasonable accommodation. First, however, evidence on pecuniary benefits (attributable to the entire subpart) is also presented.

It is important to note that the cost of making buildings accessible, which is one important type of reasonable accommodation, will be covered below in the analysis of subpart C. In balancing costs and benefits for the entire regulation the reader should be careful not to double count the costs of making buildings accessible. The cost of building accessibility should be added to the non-accessibility costs of all the other subparts and then this total cost should be compared to the sum of the benefits flowing from each of the subparts (again being sure not to double count any benefits).

.Benefits*

There will be both psychic and pecuniary benefits from eliminating job discrimination. Both society in general and the handicapped worker in particular will obtain some psychic benefits from the elimination of employment discrimination. The fact that psychic benefits cannot be easily measured objectively does not make them any less significant and they should be considered when the overall balance is struck between costs and benefits.

Pecuniary benefits accrue in the form of increased earnings and employment stability for the disabled workers which reflects their greater contribution to the Gross National Product.

How great are these pecuniary benefits likely to be? Given the state of existing knowledge, there is no basis for anything more than an informed guess. We estimated (see appendix A) that the regulation might affect about one million disabled workers. We also estimated that the annual earnings of partially work disabled males might be as much as 18% lower on account of employment discrimination. Combining these two estimates yields an estimate of approximately $1 billion per year in benefits via the higher earnings capacity of handicapped workers. If we halve the estimate of the effect of discrimination on earnings (to 9%) then the estimate of annual benefits is halved, etc.

*The benefit estimates are based on estimates of certain parameters that were derived from a brief analysis of available data on disability status and earnings. See appendix A for the details of this survey.

Costs Associated with Reasonable Accommodations

This part of the subpart requires covered agencies and firms to make reasonable outlays on whatever special resources are needed for full utilization of handicapped applicants. As noted above, probably the major source of cost increase associated with reasonable accommodation in employment--that of making buildings physically accessible--is covered below as a separate subpart. For most cases the only other types of accommodations that are envisaged are those that involve little more than discarding stereotypes about what impact employing handicapped workers will have on the agency or firm. One of the most widespread of these myths is that employing handicapped workers will decrease safety performance and increase disability and life insurance rates. A number of studies have shown that this is not the case.*

If an agency or firm has never employed a handicapped worker then the chances are it has not done any systematic thinking about the task content of its various job categories.** It always appears at first that someone with a dramatic physical handicap (e.g. a totally blind person) could not perform the work at the productivity level of a non-handicapped person. However many modern jobs involve primarily mental tasks and once the percent of sub-tasks that require the missing physical ability (sight, use of both hands, etc.) falls below a certain percentage, it is possible, and often simple, to restructure the job situation so that the handicapped worker can perform equally well.

Experts in the area of vocational rehabilitation stress a general principal that explains some of the surprising patterns in the data on earnings by type and severity of disability.*** The basic idea is that the variety of job situations in a modern economy combined with the great variety of forms that physical disabilities take, assures that there will be at least a few rewarding and renumerative jobs that can be very easily restructured for any physically handicapped individual. Data in appendix A on the employment of veterans show that there is relatively high earnings and employment participation among even very severely handicapped veterans. This is some indirect evidence for the general principal. More direct evidence will now be presented. There have been

*The results of several surveys are summarized in Sandra Kalenik, "Myths About Hiring the Physically Handicapped" Job Safety and Health, Vol. 2 #9, Sep 1974: and in J. Wolfe, "Disability is No Handicap for DuPont", The Alliance Review, National Alliance of Businessmen, Winter 73-74. A detailed study of the relationship between job safety insurance and hiring workers with epilepsy is Eilers and Melone, The Underwriting and Rating of Workmen's Compensation Insurance With Particular Reference to the Coverage of Employees Afflicted With Epilepsy, published by the Epilepsy Foundation, Wash., D.C.

**This was found by Wilson, et. al., in their survey study. Wilson, Richards and Berceni; Disabled Veterans of the Vietnam Era: Employment Problems and Prospects, HumRRo Technical Report 75-1, Alexandria, Va. Jan 1975.

***At least four individuals made this observation to the author: Mr. Dave Brigham, Mr. George Majors, Ms. Anne Beckman, and Mr. Edward Lynch.

a number of surveys that document what firms have done to accommodate handicapped workers. The initial experience of the Office of Federal Contract Compliance and Programs (OFCCP) with enforcing section 503 is also reviewed. Finally we present a detailed documentation of the types of jobs that have been successfully adapted to accommodate totally blind individuals.

(1) Survey Studies

We present the findings of three surveys, one by the Civil Service Commission, one by the DuPont Company and the one cited above that was undertaken to help disabled Vietnam veterans with their employment problems.*

The Office of Selective Placement of the Civil Service Commission completed a survey in August, 1970, of their placement of severely handicapped individuals in the federal government. The group studied did not include mildly or moderately handicapped persons but only those persons whose handicap was sufficiently severe to preclude their placement through regular competitive service procedures. The following description of the surveyed employees reveals that they constitute the group which is traditionally the hardest to place in employment and the one which would be expected to create the most severe problems in terms of the cost of accommodation:

> More than one-third of the appointees were deaf or had severe hearing losses. Most of the deaf were also mute. Other disabilities commonly noted were blindness, upper and lower body impairments, and amputations. More than half of the appointees had multiple impairments.

Nevertheless, very little job restructuring or work-site modification was necessary to accommodate the limitations of these employees. In terms of job restructuring, 317 of the 397 persons placed required no accommodation, 62 required some (described by the respondents as "incidental"), and 18 did not respond. Thus, of the 379 who did respond, 80.5% or 4 out of 5 required no job restructuring at all.

In terms of modification of work sites, 336 persons required no modification, 44 required some (primarily minor changes, such as adjustment of work benches), and 17 did not respond. Thus of the 380 who did respond, 86.9% or 7 out of 8 required no work site modification. The CSC report based on the survey concludes that "contrary to the general assumption, the severely handicapped do not usually, or even often, require major alterations in a job situation. When changes are made, they were such incidental things as installing a wheelchair ramp at a building entrance, rearranging desks and file cabinets to improve mobility and accessibility, etc."

*The reader is cautioned that these studies may not be representative of the universe of employers that will be covered by the proposed regulation and hence only moderate confidence in their resources is warranted. Note also that these studies deal primarily with physically handicapped persons.

Another study was conducted at E.I. DuPont de Nemours and Company. The occupations of the employees studied and the range of their handicaps, as well as the results of the study, are described in an article* published in the Alliance Review. Table 1 shows the distribution of handicapped workers by type of occupation and disabling condition. The relevant findings were that there was no increase in insurance costs and that the physical adjustments required were minimal, with most of the handicapped workers requiring no special work arrangements at all. In terms of safety, job performance measures, job stability and attendance record, the handicapped workers as a group scored higher than non-handicapped workers.

In the survey of disabled Vietnam era veterans (which included a large fraction of severely disabled veterans) a question was asked each veteran about what special accommodations (if any) were made by their employer. Only 11% of the veterans who had held a job in 1973 reported that any special accommodation was made at all.** Table 2 presents a distribution of the accommodations reported by type of special arrangement. The authors of the study based on this survey conducted extensive content analysis of all the responses they received. They concluded that:

> "As the tables show, most of the special arrangements make minimal demands on, or entail minimal costs to the employer...even in cases where the employer provided special equipment the cost seemed to be minimal....."***

(2) OFCCP Experience with Section 503

OFCCP has the responsibility for enforcing non-discriminatory employment of handicapped individuals by all employers who receive contracts from the federal government. The 503 regulation is similar to subpart B of the proposed regulation except that it also requires that affirmative action be taken. It is generally agreedthat affirmative action can

*Wolfe, "Disability Is No Handicap for DuPont," Op. Cit.

**This low percentage may not neccessarily be a good sign overall. It might reflect lack of effort on the part of some employers as well as lack of necessity. This data set also contains a question on perceived discrimination (see appendix A, table A-9) but the authors did not present any tabulations which crossed the response on the accommodation question with the perceived discrimination response. If they were uncorrelated then the low overall percentage who reported receiving any special accommodation would be unambiguously a good thing.

***Wilson, Richards and Bercini, Op. Cit., p. 156.

TABLE 1

HANDICAPPED EMPLOYEES OF DUPONT CO. BY OCCUPATION AND TYPE OF DISABILITY (PERCENT DISTRIBUTIONS)

OCCUPATION

(Total number.	1,452)
Professional, Tech. & Mgr.	23.0%
Craftsmen	38.7
Operatives	16.0
Clerical & Kindred	15.4
Laborers and Service Wks	6.8
	100.0

TYPE OF DISABILITY

(Total number.	1,459*)
Nonparalytic Ortheopedic	28.4%
Heart Disease	26.0
Vision Impairment	19.0
Amputation	11.2
Paralysis	7.3
Epilepsy	3.8
Hearing Impairment	2.9
Total Deafness	.9
Total Blindness	.3
	100.0

*Some employees have more than one handicap.

Source: Wolfe, "Disability Is No Handicap for DuPont," Op. Cit.

imply a significantly higher level of extra effort than implied by the concept of reasonable accommodation. Thus the use of the 503 experience as a guide to what will happen under 504 is clearly conservative in that 503 will, because of its affirmative action provision, lead to larger costs than will be necessary under 504.

Mr. David Brigham of OFCCP provided detailed information on what the early experience under 503 has been. Their procedures recommend a sixty day "cooling off" period during which a potential complaint is discussed between only the employer and the handicapped worker. Mr. Brigham reported that the large majority of complaints have been disposed of during this cooling off period without having required any hearings before federal officials. A total of 331 complaints have thus far not been resolved during the cooling off period and have reached the level of arbitration before OFCCP officials. It follows therefore that these 331 complaints represent predominantly serious situations. The average situation over all workers who initiate complaints will be much less serious and costly.

TABLE 2

CATEGORIES OF SPECIAL JOB ARRANGEMENTS MADE BY EMPLOYERS, AND PERCENT OF VETERANS REPORTING ARRANGEMENTS IN EACH CATEGORY*

Special Job Arrangements	Percent	N
Flexibility of hours	18	56
Extra rest breaks	16	49
Assigned to appropriate job in the first place	16	49
Regular duties but no lifting	13	40
Change of duties or transfer of job	10	31
Special equipment	8	24
Work at own pace	7	22
Special parking	5	16
Help from supervisor or others	4	12
Miscellaneous	2	5

*Based on a content analysis of 304 randomly selected job arrangements reported by disabled veterans in response to the question, "Did your employer make arrangements so that you could work with your disability? (For example, extra rest periods, special parking, special equipment for doing the work, change of job duties, help from supervisor)."

Source: Taken from Wilson, Richards and Bercini, Op. Cit. p. 155, table V-11.

Mr. Brigham said that almost all of the difficult cases to date fall into two categories. One involves disabilities caused by disease entities that have not obviously stabilized--cancer, diabetes, etc. Here the position of OFCCP has been that if the person is qualified at the present time then the burden of proof is on the employer to show that the costs of the unexpected recurrence of the disease entity (e.g. costs of providing a new worker with break-in training) are so high as to make the accommodation unreasonable. Mr. Brigham noted that the crucial factor in determining whether the cost imposed would be unreasonable is the size of the firm and the proportion of total employment cost that the extra cost would constitute.

The other problem area are cases associated with emotional handicaps. How to define reasonable accommodation in these situations requires difficult judgments. A related issue is that of determining whether the complaining person really considered himself a handicapped person of if he is just using the handicap as a way of saving a job that he (she) is being dismissed from on other grounds.

(3) Jobs and Accommodations for Blind Individuals*

Since World War II there have been a number of very detailed surveys of the employment situations of totally blind veterans. Many studies of job restructuring aimed at opening up jobs for blind people are readily available. The most well known judicial decision on what constitutes reasonable accommodation also involves a blind individual. Thus, the information about adjustments required for people who are totally blind, which is a very severe disability, can be used to illustrate in detail what reasonable accommodation might entail in practice.

The court case involved a blind teacher in upstate New York. The New York State education law contains a regulation that specifically forbids school administrators from laying off a teacher who goes blind as long as the handicap does not interfere with his ability to teach. In his argument** the judge reasoned that blindness in and of itself does not impair the faculties required to be an effective teacher (i.e., ability to organize material for presentation, present it orally before the class, etc.) so that the law required that the school system supply the teacher with whatever special resources were necessary to carry out the ancillary functions of paper grading, calling on students who raise their hands, etc.

*Mr. George Majors, Office for the Blind and Visually Handicapped (HEW), was interviewed in connection with this section. He and his staff provided the references cited herein.

**Bevan vs. N.Y. State Teachers Retirement System, 345 N.Y.S. 2d. 921.

What does the extra cost of employing a blind teacher actually amount to in practice? In the school year 1968-69 there were 334 blind teachers working in elementary and secondary schools in the United States.* Dr. Edward Huntington did a study based on questionnaire and personal interviews with some of these teachers and with the school administrators in the systems where they worked.** He questioned administrators on eight potential problem areas: lunchroom supervision; administering tests; study hall supervision; chaperoning student activities; use of visual aids; fire drills; keeping written records; and discipline. For all the categories Dr. Huntington found that either the blind teacher could do what appeared at first to require sight (e.g., lead children out of the building at fire drills), or that compensating substitutions could be made between the different categories (e.g. taking on more monitoring duties like study hall and dances instead of lunchroom supervision). Discipline turned out not be the problem that had been expected. However, Dr. Huntington does mention the caveat that there is still some disagreement about the feasibility of blind teachers in elementary schools. The amounts of extra resources that the average blind teacher requires were very minor -- a braille typewriter and a cassette tape recorder for keeping written records and the occasional use of an honor student to help proctor examinations and then read the answers into a tape recorder.

In sum, Dr. Huntington's analysis suggests that the only area of controversy in deciding what constitutes reasonable accommodations for blind teachers is the question of the age of the students. Clearly the issues of discipline and effective pedagogy (is it important educationally for the teacher to be able to see the young child's reaction?) could be important at the lower elementary grade levels. However, Dr. Huntington's analysis also shows that there will be no problems in enforcing reasonable accommodation for blind teachers at the secondary and college level.

Table 3 shows how a sample of totally blind veterans were distributed by types of job.*** The very uneven distribution of the totally blind by type of work suggests that the enforcement of reasonable accommodation will have to be very flexible -- not all jobs can be easily adapted to lack of sight although the range of possibilities that turns up in practice is truly surprising.

*Employment of Qualified Blind Teachers in Teaching Positions in the Public School Systems at Both the Elementary and the Secondary Grade Levels, Report Presented by The New York Association for the Blind, 111 East 59th Street, New York, New York 10022, March 1969. Tables I and II, pp. 50-55.

**Dr. Huntington presents a summary of his findings in Employment of Qualified Blind...., Ibid, pp 42-45.

***Occupations of Totally Blinded Veterans of World War II and Korea, prepared by the Dept. of Veterans Benefits, VA pamphlet 7-10, Va., Washington, D.C., 1956.

TABLE 3

DISTRIBUTION OF JOBS OF 338 TOTALLY BLIND VETERANS AMONG DOD PART IV CLASSIFICATIONS
(Percent distribution)

	Percent	
Professional, Technical, and Managerial Work (147)		37.9%
Musical work (4)	2.7%	
Literary work (7)	4.7	
Public service work (27)	18.3	
Technical work (17)	11.5	
Managerial work (92)	62.5	
	100.0	
Clerical and Sales Work (54)		13.9
Recording work (4)	7.4%	
General clerical work (3)	5.5	
Public contact work (47)	87.0	
General public contact (15)	100.0	
Selling (32)		
Service Work (6)		1.5
Farming (48)		12.3
General farming (18)	37.5%	
Animal care (28)	58.3	
Fruit farming and gardening (2)	4.1	
	100.0	
Mechanical Work (37)		9.5
Machine trades (8)	21.6%	
Stone or glass machining (1)		
Mechanical repairing (7)		
Crafts (29)	78.3	
Electrical repairing (8)	100.0	
Bench work (11)		
Inspecting and testing (2)		
Phtographic work (8)		
Manual work (96)		24.7
Observational work (5)	5.2%	
Manipulative work (70)	72.9	
Benchwork (Assembled and related) (45)		
Machine Operating, manipulative (25)		
Elemental work (21)	21.8	
	100.0	100.0

Source: Occupations of Totally Blinded..., Ibid., p. 6.

The study based on this survey lists in detail the arrangements and accommodations surrounding each of the 388 job situations. It is difficult to summarize this material in that the specific types of minor devices, task restructuring and use of sighted individuals is so diverse. In the professional public service and managerial areas the part time assistance of a graduate student (or other secondary worker--wife, elderly part time worker, etc.) is usually the only extra resource required (when any are required at all). In the employment and clerical field the accommodation usually involves only minor job restructuring to allow the blind clerk or secretary to specialize in those parts of the office information network that do not require immediate sight -- e.g., handling information received over the phone and stored in dictaphones as opposed to processing written information left in in-boxes that require immediate response.

Recent developments in job restructuring technology suggest that the clerical area is going to become a more important source of employment for blind individuals. The general area is called "Information Service Processing" and includes such jobs as social security service representative, vehicle dispatchers and starters, estimators and investigators, etc.*

Precise Wording of the Reasonable Accommodation Provision.

Our analysis strongly suggests that in the large majority of cases enforcement of reasonable accommodation will not result in any significant cost increase for employers. However, some of the material covered indicated that there are situations in which accommodation would, except for very large agencies and firms, require significant financial outlays, and/or risks and disruptions. This suggests that thought should be given to alternative ways of wording the provision. One approach possible would be to define reasonable accommodation as a percent of some economic factor such as the total wage bill or per employee costs. No completely satisfactory solution has yet, however, been devised.

*Louis Vieceli, Guidelines for the Selection, Training, and Placement of Blind Persons in Information Service Expediting, Rehabilitation Institute, Southern Illinois University, Carbondale, Illinois, June 1975.

III. PROGRAM ACCESSIBILITY (Subpart C)

Subpart C prohibits the exclusion of qualified handicapped persons by reason of the inaccessibility of a recipient's facilities; it applies to all programs and recipients covered by the proposed regulation. Two standards are established for program accessibility -- one for new construction and alteration (84.23), the other for existing buildings (84.22).

Under section 84.23, new construction and design must, at a minimum, meet the standards for barrier free construction established by the American National Standards Institute (ANSI). Any alteration of existing buildings which is undertaken must also conform to the ANSI standards if the alteration involves work on a portion of the facility which is covered by the ANSI standards, such as toilets, elevators, stairs, and curbs. All federal and federally assisted construction is subject to virtually identical requirements under the Architectural Barriers Act, P.L. 90-480; public buildings are subject to similar requirements imposed by state law in forty-eight states.

Under section 84.22 (existing facilities) each program or activity, when viewed in its entirety, must, within three years of the effective date of the regulation, be physically accessible to handicapped persons. Because of the flexibility allowed by the regulation, it is expected that most recipients will be able to achieve compliance by altering, at the very most, only one-third of their existing buildings.

The following presents a range of estimates of the cost of compliance for existing facilities. Although the estimates lack precision, they do give some idea of the magnitude of the costs which will be incurred. After presenting cost estimates, the sources of benefits are indicated and alternatives are considered.

Cost Estimates

New Construction

The Office of Facilities, Engineering and Property Management (OFEPM), HEW, recommends that for budget purposes the cost of barrier-free construction should be estimated at one-half of one percent of the total project cost. Other estimates vary from one-tenth to one percent. The most commonly accepted figure is, however, the one recommended by OFEPM. This low percentage increase, together with the existence of partially duplicative state and federal requirements, renders the economic impact of this provision insignificant.

Existing Facilities

The total estimated cost of altering enough existing facilities to meet the standard of program accessibility is between $216 - $475 million, or an annualized cost of $50 million.* The method of arriving at these figures follows.

Elementary and Secondary Schools. If all buildings were required to be completely accessible, we estimate that $458 - $1,000 million would be needed (see table 4). However, because of the flexibility allowed in attaining compliance it appears reasonable to assume that, at most, only one-third of this total would be needed -- $151 - $333 million.

Only about 10% of all elementary and secondary school children are handicapped** and a much smaller percentage (probably not exceeding 1%) have those kinds of physical handicaps that require special modifications of buildings. Thus, most recipients should be able (by providing the required transportation) to assign all of their physically handicapped children to either new or already accessible existing facilities. For example, even a moderate size local system (say with only 5 - 10 separate buildings) with no new or already accessible buildings, should have to modify only one or two of its buildings. Similar percentage factors and reasoning apply also to the schools viewed as employees of adult handicapped individuals. Thus, the cost estimates based on our assumption of one-third appear to be very conservative - i.e. they are definitely upward biased.

Higher Education. If all buildings of institutions of higher education were required to be completely accessible, we estimate that $198-$432 million would be needed for that purpose (see table 4). Applying the same very conservative one-third assumption used for elementary and secondary schools, the costs would be in the range $65-$142 million.***

*The larger figures represent costs that are "one-time outlays" which must be "annualized" before they can be compared with perpetual benefit flows like the increase in annual earnings estimated in Section II. "Annualization" involves factors like annual maintenance outlays and the rate of return that could be earned if the funds were invested elsewhere.

**An analysis of special education proposed by Mr. Howard Bennett (Office of Civil Rights) suggests that the proportion may even be lower than 10%. See Special Education, Office of Civil Rights, March 17, 1975.

***This does not cover non-degree granting post-secondary schools. These consist primarily of proprietory vocational schools, and hard data on numbers of students enrolled, etc., is hard to come by. This ommission will add a source of downward bias to our estimates but it is unlikely to be larger than the offsetting upward bias caused by our one-third assumption.

TABLE 4

CALCULATIONS OF ESTIMATED COSTS OF REMOVING ARCHITECTURAL BARRIERS IF ALL BUILDINGS WERE REQUIRED TO BE ALTERED

Elementary and Secondary Schools		
1. Estimated value of school property (71-72)[a]		$88.5 Billion
2. Low-side estimated percentage cost to remove barriers by alteration[b]		.517%
3. High-side estimated percentage cost to remove barriers by alteration[c]		1.13%
4. Estimated cost of removing barriers by alteration if all buildings needed alteration	--- (2) x (1)	$ .485 Billion
	--- (3) x (1)	$ 1.000 Billion
Institutions of Higher Education		
5. Estimated value of school building property (71-72)[d]		$38.2 Billion
6. Estimated cost to remove barriers by alteration if all buildings needed alteration	--- (2) x (5)	$ .198 Billion
	--- (3) x (5)	$ .432 Billion

Notes and Sources:

[a] Obtained from data reported in National Center for Educational Statistics Survey 75-153, pp. 72, 38 and 40. The basis of the value reported by schools is the historical cost of the original construction plus any improvements made to date. Because of inflation, the actual current replacement cost of buildings (and presumably the current cost of modifying them) will exceed their book value with the excess being greater the older the building and the greater the average rate of inflation since its construction. This will be another source of downward bias in our cost estimates. Although it is not possible to determine the magnitude of the bias, it also appears likely that it will be outweighed by the upward bias contained in the one-third assumption.

[b] Based on the average of two HEW accessibility projects that were surveyed by GAO. See p. 89 of "Further Action Needed to Make All Public Buildings Accessible to the Physically Handicapped," Comptroller General of the U.S. Based on GAO Report FPCD 76-166, July 1975.

[c] Same as (b) except that it is the figure reported for an average of seven governmental projects surveyed.

[d] NCES Survey 75-114, p. 102.

Hospitals and Nursing Facilities. Many of these facilities are already subject to the ANSI standards through Federal regulation and state laws dealing with access of disabled people to public facilities. Because recipients who provide health services are accustomed to handling clients whose mobility is impaired, it is assumed that their facilities are, for the most part, already accessible. The proposed regulation should not, therefore, impose significant additional costs on these recipients.*

Welfare and Rehabilitation Service Buildings. Various regulations (including 45 CFR 128, to be effective 10/76), as well as general policy, require case workers to give services or determine eligibility wherever necessary. Thus, if the client or potential client is unable to go to the building where the service is performed, the case worker must go to the client's home. Because this approach to creating program accessibility is permitted by the 504 regulation, no significant additional costs will be incurred by these recipients.

Table 5 presents a summary of our estimates of the range of possible cost increments.

TABLE 5

ESTIMATES OF COST INCREMENTS FOR MAKING ALL EXISTING FACILITIES ACCESSIBLE
(Millions of dollars)

Type of facility	Low side	High side
Elementary and Secondary School	151	333
Higher education	65	142
Hospital and nursing	0	0
Welfare and rehab service	0	0
Total	216	475

Source: See text discussion.

*It has not yet been decided whether individual doctors who are reimbursed under Medicare and/or Medicaid are considered recipients and thus covered by the proposed regulation. However, even if they are, it does not appear likely, given the flexibility allowed in attaining compliance, that significant costs will be imposed on individual participants. Many are located in already accessible medical buildings and others will be able to comply by making house calls, referring to doctors with accessible office facilities, scheduling physically handicapped patients in groups at accessible facilities, etc.

Benefits

Increased building accessibility will generate benefits in three areas: (1) reduced costs of providing elementary and secondary education to some handicapped children; (2) increased lifetime earning capacity of those additional handicapped youngsters who will now go on to college and (3) the increased earnings capacity of handicapped workers who can now find better employment of their skills in jobs located in newly accessible buildings.

Each of these areas is also the subject of its own subpart -- elementary and secondary education (subpart D); higher education (subpart E) and employment (subpart B). The total amount of benefits for each of these areas will be the sum of the benefits produced by both the physical accessibility provisions of this subpart and the other (non-accessibility) provisions of each specific subpart. Thus in subpart B above we estimated that the total amount of pecuniary benefits from all the provisions influencing employment discrimination (i.e. procedural provisions, non-accessibility accommodations and accessibility accommodations) might be as much as $1 billion per year. Similarly in our analyses of subparts D and E below we will include the effects of both the accessibility provisions of this subpart and the other non-accessibility provisions of each of those subparts. In the concluding section, the costs of this subpart are added to all the non-accessibility costs associated with the other subparts and this grand total is balanced against the sum of the benefits of all the other subparts.

Alternatives

Possible alternatives range from requiring the immediate modification of all of the recipients' existing facilities to limiting the regulations coverage to new construction. The approach finally decided upon, which allows recipients to keep costs minimal by using methods other than physical alteration of all building, was believed to constitute the most equitable balance between the interests of excluded handicapped persons and those of recipients. The cost estimates shown above, when combined with evidence presented elsewhere on the magnitude of the benefits that will be generated, lends support to this decision.

IV. ELEMENTARY AND SECONDARY EDUCATION (Subpart D)

Subpart D of the proposed regulation sets forth nondiscrimination requirements applicable to recipients which operate preschool, elementary, secondary, and adult education programs. Under its provisions no handicapped child may be denied a public education, nor may such a child be excluded from the regular education program unless suitable alternative education is provided at public expense. In the latter case, the burden of showing that placement outside the regular setting is in the best interests of the child is placed upon the recipient (sec. 84.35); the child and his or her parents or guardian may object to the placement and have the right to an impartial hearing if they do so (sec. 84.36(e)). If it is determined that the child's interests will be best served by placement in a program other than the one operated by the recipient, then the recipient must pay full tuition, and, if incurred, any room and board, and transportation costs of that placement (sec. 84.34).

It is expected that these provisions, together with the standards established in the regulation for preplacement evaluation (sec. 84.36(c)), will result in a greater proportion of handicapped students being placed in the regular school setting. Whether placement is made to regular classes, special classes, or outside the recipient's program, the regulation requires that the education provided be as adequate, in terms of meeting the needs of the handicapped child, as is provided to non-handicapped children (sec. 84.36(a)).

Other provisions of Subpart D require public schools to locate handicapped children who are not presently in school (sec. 84.33) and, within one year of the effective date of the regulation, to provide nonacademic and extracurricular services without discrimination on the basis of handicap (sec. 84.37). Where applicable, the subpart applies to private as well as public schools.

In order to analyze the effects of this subpart, it is important to understand the context of judicial and legislative developments in which it will operate.

Background and Plan of Analysis

Table 6 presents data that indicate the broad outline of trends in special education in the United States. Since the end of World War II there has been a steady up-trend in various indicators of the coverage and effectiveness of special education, such as in the proportion of all handicapped childred served, amounts of resources spent per student, and proportions served in the less restrictive type settings. These broad trends in amounts and types or resources both reflect, and have themselves influenced, developments in the courts and the State legislatures regarding the legal status of the handicapped child's right to an equal education.

Recent landmark decisions* have made it clear that handicapped children have a constitutional right to public educational resources regardless of their degree of handicap (so

*The two most often cited cases are: Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971) and 343 F. Supp. 279 (E.D. Pa. 1972); and Mills v. Board of Education of District of Columbia, 348. R. Supp. 866 (D.D.C. 1972).

TABLE 6

TRENDS IN SPECIAL EDUCATION: NUMBERS OF HANDICAPPED CHILDREN SERVED AND THE PERCENT OF ALL HANDICAPPED CHILDREN BEING SERVED** IN SELECTED* CATEGORIES: 1966-1975

Type of Handicap	1966		1972-73		1974-75***	
	Number of children	Percent of total	Number of children	Percent of total	Number of children	Percent of total
Speech impairment	989,500	56.3	1,383,000	76.7	1,729,750	81.0
Mentally retarded	540,100	46.8	900,000	80.5	1,168,750	83.0
Emotionally disturbed	87,900	12.0	199,000	19.3	215,050	18.0
Crippled or other health	69,400	18.4	233,000	86.7	219,725	72.0
Deaf	23,500	47.0	28,000	71.6	32,725	71.0
Hard of hearing	27,800	11.1	55,000	21.4	56,100	18.0
Visually handicapped	23,300	46.6	28,000	54.8	36,465	59.0
TOTAL	1,761,500	40.3	2,816,000	61.8	3,458,565	78.8

*Two legal handicapping conditions "Learning Disabilities" and "Multiply Handicapped" have been left out of the trend comparison. Learning disabled is a relatively recent and controversial category (it was not used by researchers or policy people in 1966) while comparable data for the multi-handicapped are just not available for 1966.

**The age groups covered differs slightly across the three time periods. In 74-75 it was 6-19; in 72-73 it was 5-17; and in 1966 it was probably 6-19.

***The figures for 74-75 are based on very preliminary data and are not as reliable as the figures for the other two years. Figures on the actual distribution of served children by handicapping category were not yet available so they were estimated by applying the 72-73 percentage distribution factors to the 74-75 total of served school age children 6-19.

Sources: 1966 figures from R. Mackie, Special Education in the United States: Statistics 1948-60, Teachers College Press (New York 1969). Numbers of served children were obtained by a direct mail survey

of all known public and private (day and residential) schools serving handicapped children. Estimates of total incidence that were used were obtained by combining information from a variety of sources including State Education Agencies, National Organizations, etc. Estimated incidence rates used were: SI=3.5%, MR=2.3%, ED=2.0%, Cr·H=1.5%, D=.1%, HH=.5%, VH=.1%.

1972-73 figures were reported in Kakalik, et. al., Services for Handicapped Youth: A Program Overview, RAND Corporation (Santa Monica 1973). Report #R-1220-HEW. Estimates of the total number served taken from SEA annual reports submitted to HEW. Estimates of total incidence based on data from a variety of sources. Incidence rates used were: SI=3.5%, MR=2.3%, ED=2.0%, Cr·H=.5%, D=.075%, HH=.5%, VH=.1%.

1974-75 figures are based on data supplied by the Bureau of Education of the Handicapped, HEW. Estimates of total numbers served obtained from SEAs annual reports. Estimates for the total served by handicapping condition were obtained by distributing the total served (age 6-19) according to the percent distribution that existed in 72-73. Estimates of total incidence were obtained by combining data from various sources. Incidence rates used were: SI=3.5%, MR=2.3%, ED=2.0%, Cr·H=.5%, D=.075%, HH=.5%, VH-.1%.

called "0 reject rule") and also that these resources shall be in an amount and delivered in a setting that will, in totality, provide the handicapped child with equal educational opportunity.

At the present time, most states have already passed legislation mandating that all the local school systems must provide sufficient educational resources to all the handicapped children in their districts. In addition, the Federal government has just enacted legislation that will, over the next few years, significantly increase the share of special education expenditures that the Federal government will pay for. This legislation (Public Law 94-142), also requires, as a condition for receipt of Federal aid, that the State provide free and adequate education to all handicapped children.

Thus, the proposed regulation will not be the sole means of achieving the goal of equal educational opportunity for all handicapped children. Rather, it will be one of a number of powerful forces all advocating approximately the same objective.* The role of HEW in enforcing this subpart can, therefore, be viewed as one of hastening and helping to enforce full compliance with the goal of equal educational opportunity for all handicapped children.

This role of hastening compliance should not be considered a relatively unimportant one. Experience in the District of Columbia and other areas which have been subject to court orders suggests that local agencies may take very long periods of time to actually comply unless they are faced with strong incentives to do so. Moreover, State legislation mandating full coverage is one thing, while actually appropriating the needed funds at the State and Local level is quite another. Thus, the potential for the regulation to make a significant net contribution is very real.**

We will develop our analysis of the cost and benefits that the regulation will help to produce in terms of various sub-groups of children and situations. Benefits and costs associated with each of the sub-groups are of a different character and also differ in the degree to which there could be differences of opinion as to the balance of costs and benefits. After a summary that brings together all the costs and benefits a brief discussion of the costs of alternative phasing in strategies is presented.

*Sections of Public Law 94-142 cover most of the same ground as Subpart D of the proposed regulation. The only significant difference is in regard to the coverage of non-educational costs associated with residency situations. PL 94-142 does not explicitly state that non-educational costs associated with children in resident schools must be covered.

**Also it should be recognized that hastening of compliance itself has a cost vis a vis allowing a less rapid phase in. PL 94-142 allows states until September 1, 1978 to reach the goal of complete coverage of all children between the ages 3-18, and 1980 for children 3-21. The regulation follows the same schedule, except that there is no delay for children who are within the state's regular school age interval.

Sub-groups of Children

The children affected by this regulation vary along two crucial dimensions: (1) the degree and type of handicap they have and (2) the degree to which there exist effective advocates for them in the process of testing and screening, which in turn is often the determinative factor in whether or not they will be classified as handicapped and what type of special education setting they will end up in.

For children who have moderate and borderline degrees of handicap and whose families provide strong protection against mislabelling and misassignment, the main issue is that of obtaining (in a reasonable time frame) the appropriate amounts of additional special education resources from the public purse. Parents of handicapped children form a numerical minority in the political arena and even when educated and highly motivated to help their children cannot always bring the required political pressure to bear on State and Local legislatures to authorize the amount of funds required.

At the other extreme are children who have very severe or profound handicaps (e.g., a youngster who scores less than 30 on the IQ test) and who, for one reason or another, lacks the personal advocate necessary to insure that they will obtain appropriate residential care and educational services. For these children (a much smaller group than the first) the issue is much more basic -- absolutely assuring that this group always obtain decent and humane residential surroundings as well as access to meaningful educational experiences.

Finally, there is a third group of children who range in degree of handicap from being on the borderline of needing a residential setting to actually having no real handicap at all, and who lack strong parental advocates to protect them from mislabeling and misassignment abuse by the system. This group contains large numbers of de facto non-handicapped children from disadvantaged backgrounds who have difficulty performing on standardized tests and/or have frequent disciplinary episodes. This group shares with the first group the general problem of obtaining adequate amounts of special education resources. However for most of these children (especially those who do not really have handicapping conditions) the major issue is that of mislabeling and misassignment. For them the regulation's detailed due process and evaluation provisions (including the requirements of multiphasic testing and screening and periodic re-examination) and its emphasis on special education being delivered in the least restrictive setting possible can be vital. For example, it can mean the difference between an inappropriate assignment to a residential setting vs. obtaining special education in a regular school by spending part-time in a special class and part-time in a regular class. As shown below there is evidence that the negative impact of inappropriate institutionalization on a child's subsequent life chances (including lifetime earnings capacity) can be dramatic.

Cost-Benefit Analysis

The main source of pecuniary costs will be from extending special education services to handicapped children who are not now receiving any kind of special education. There will also be some shifts in the burden of the pecuniary costs of special education that will result from some parents shifting their handicapped children from private programs, where the parents pay part or all of the costs, into fully funded public programs.

There are a number of important sources of pecuniary benefits. One is the reduction in costs that will be generated by the requirement that handicapped children receive their education in the Least Restrictive Setting (LRS) possible. Another source of cost reduction will be in the non educational costs of maintaining severely and profundly handicapped individuals. The other important source of pecuniary benefits is the subsequent increase in the earnings capacity of both handicapped children and the non-handicapped children who escape mis-labeling. Sources of non-pecuniary benefits are the greater life satisfaction obtained by the children as a result of improved education and the general satisfaction obtained by us all from having helped to improve greatly the life situation of less fortunate individuals.

Details of these costs and benefits are now presented for our three sub-groups.

Severely and Profoundly Handicapped. The two important handicapping categories for which this issue is significant are mentally retarded and emotionally disturbed. Hobbs* reports that there currently are about 60,000 mentally retarded children of school age in residential institutions. The number of institutionalized emotionally disturbed youngsters is not easy to ascertain but it is likely to be significantly in excess of the number of institutionalized mentally retarded children. The latest estimates by the Bureau for the Education of the Handicapped indicate that as of FY 1974-75 there were about 1 million emotionally disturbed youngsters who were not receiving any special education resources. And it is probable that some significant proportion of these youngsters were in some kind of residential institution.

The thrust of the major recent court decisions on the right to education by the handicapped makes it clear that regardless of the nature or severity of handicap the State education authority is directly responsible for providing amounts of educational resources that are appropriate to the child's capacity. This is sometimes called the "zero based reject policy," and is one of the objectives that the proposed regulation will seek to promote by adding the weight of its enforcement potential to the enforcement power of the courts. The need for the additional enforcement power appears particularly urgent for this subgroup of children, and before presenting the cold facts and figures on costs it might be well to point out some of the reasons for this special concern.

*Nicholas Hobbs, The Futures of Children, (Jossey-Bass, Washington, D.C., 1975) p. 142

Students of social programs for the handicapped and other disadvantaged groups stress the importance of the personal incentives and attitudes of the administrators of institutions in determining the amounts of resources and the quality of treatment actually received by disadvantaged clients.* The reason that it is felt urgent to make State Education authorities directly responsible for educating the severely handicapped is that the traditional state administrators of the residential institutions that serve these children are not as strongly motivated toward delivering these types of resources. There still exists some debate over what benefits are actually obtained from education resources in the case of some very severely handicapped children. Thus, it is clearly in the best interests of the children to have an agency that believes in the efficacy of the treatment be the ones who are also responsible for struggling to obtain the funds, buy the resources, have them applied, etc.

The situations that existed before the court rulings in Pennsylvania and the District of Columbia, not two states that are noted for harsh treatment of the disadvantaged, also sharply demonstrate that the fate of these children cannot be left to the goodwill of just any administrator in the State bureaucracy. In Pennsylvania the officials who are overseeing the implementation of the Court order found that there were about 4,000 school age children in the nine State institutions for the mentally retarded in 1972. Of these about 2,500 were not being provided any kind of training or educational services at all. These were all children with IQ's in the severely and profoundly retarded range (IQ less than 30).** Previous to the court's decision the State welfare authority had responsibility for the education and other needs of all children placed in these institutions. Since the court decision, which placed the authority for the education of these children with the State Department of Education, all have been receiving some form of educational services with ever increasing percentages actually being taken to a classroom setting off-grounds.***

Assuming that we can expect that the key State administrators will be strongly motivated to deliver resources, the next issue is what amount of resources will be required? State specialists in education of the handicapped were queried as to the cost of providing

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*Hobbs, Ibid., Chapter 5.

**It was found that about 1500 children were being provided some form of educational services. However, it was also found that these children all had IQ's high enough to have benefited from special education in a non-institutional setting. This case is discussed again in connection with documenting the significance of the mislabeling problem.

***Telephone interview with Dr. Gary J. Makuch Assistant Commissioner for Special Education, Pennsylvania Department of Education, December 2, 1975.

educational services to the severely handicapped children in residential settings.* The consensus was a figure of about $5,000 per student per year. The word educational is underlined to stress that the $5,000 does not cover the cost of normal maintenance (food, clothing, shelter) and other non-educational activities that are required by the institutionalized child. This is a point that could develop into an important source of controversy.

The proposed regulation as now written states that a free education must be provided and will include provision by the State of non-medical care and maintenance (food, clothing, etc). It is not clear if it is meant that the State Education Agency must bear these non-education costs or that they can be allocated to any State agency's budget, just as long as they are provided to the child without any cost to his family.

From the point of view of the child and his family it makes little difference what State agency is made to absorb the cost as long as it does not have to pay them. However, from the point of view of insuring that educational services keep reaching the most helpless and deprived of the severely handicapped children (e.g., those with no family at all or very poor parents) it may be wise to require that the State education agency only be made to pay the special education costs associated with these children and have the State welfare office mandated to pay any non-educational costs incurred on account of their need for a residential setting. This is because the whole effort may run the danger of becoming very controversial if, because of the way it is administered, the State ends up paying the non-education costs of handicapped youngsters from non-poor families. If the State welfare agency is left with the responsibility for these non-education costs then it is likely that some special means tested formula will be set up under which a more equitable distribution of the burden by income class will develop.

On the benefit side there is the possibility for both psychic and pecuniary gains. The sources of the benefits are the increased capacity for enjoying life on the part of the youngster as well as the possibility of reducing the cost of supporting the youngster if he can learn to care for his bodily and personal needs such as dressing himself, feeding himself, shopping for himself, etc. Data presented by Conley** suggest that the annual cost of maintaining a severely retarded person, over and above the cost of his food, clothing and other normal consumption expenditure, was about $3,500 in 1970.

*Telephone interviews with Ms. Lucile Anderson (Virginia Department of Education), Mr. James Keim (Maryland State Department of Education) and Dr. Makuch.

**Ronald W. Conley, The Economics of Mental Retardation, (Johns Hopkins University Press, Baltimore and London, 1973) p. 297-298.

This primarily reflects the salaries of the many attendants that are required to assist the severely retarded person in taking care of all his basic bodily and personal needs. If educational/training services enable a severely retarded person to do without these attendants, then a cost/benefit ratio of 1 or greater is highly likely. Thus, if six years of education/training are required (at $5,000 per year) to produce this capability, and if the individual lives for more than 15 years after completing the training, then, the ratio of discounted benefits ($3,500 annually) to costs will start to exceed unity, if we use a reasonable range of discount rates.*

Can the severely and profoundly retarded be given this capability by receiving education/training type service as children? Given time limitations a search and survey of the child development literature was not feasible. Phone interviews with a number of State education department specialists elicited the opinion that they can produce this effect.

Children Vulnerable to Mis-Labeling. The major current concern of specialists in the area of education of handicapped children is the negative effect that the very process of labeling and assignment to identifiable special classes may be having on handicapped children.** This growing concern has resulted in an acceleration of the "Mainstreaming" movement -- i.e., the placing of handicapped children in the absolutely least restrictive setting possible. Another effect of this concern has been to focus even greater attention on the issue of mistaken diagnosis and the resulting compounding negative effect on the child's life chances.

Most of the major court decisions have spelled out in detail the type of testing, screening and mandatory re-examination procedures that must be followed by state school administrators in determining whether a child is handicapped or not and if so what type and degree of severity. The proposed regulation seeks to hasten the achievement of this objective in all states and thus decrease the total amount of mis-diagnosis and mis-assignment generated by the system.

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*The formula for the present value of a perpetuity of $(a) per year is

$$\text{Present Value} = \$(a)/i$$

where i is the discount rate. For streams of benefits that continue for more than 15 years this simple formula gives a good approximation to the exact value which is given by

$$\text{Present Value} = \$(a) \sum_{t=1}^{n} 1/(1+i)^t$$

when n is large. n is the actual number of years that the benefit continues.

**Hobbs, Op. Cit., Almost the entire book is devoted to this issue.

Reductions in mis-diagnosis and misassignment will yield benefits in the form of increased lifetime earnings capacity and increased life satisfaction of the children involved. There will also be benefits in the form of savings in the cost of special education from the increased amount of mainstreaming. Positive costs will be generated by the greater amount and quality of testing and screening procedures that will be required. No attempt is made to estimate these costs. They do not appear to be of any magnitude that would become oppressive to a school system. We do attempt however to get some idea of the order of magnitude of the benefits (including the reduction in special education costs). They appear to be potentially significant and they constitute one important offset to the costs generated by other parts of this sub-part and other sub-parts of the regulation.

A number of facts suggest the widespread existence of mis-diagnosis and misassignment. One striking example is provided by the facts uncovered in the landmark Pennsylvania case discussed above. It was found that approximately 37 percent of the instutionalized population of mentally retarded school age children scored in the IQ range between 40-75. Children who score in this range (and do not have any other traits that make the diagnosis more complex like having additional types of handicapping conditions) are labeled "Trainable" or "Educable" and are usually assigned to a regular public school system for some form of special education treatment to be delivered in a non-residential day school setting. Some fraction of these children undoubtedly were institutionalized because they had, in addition to a very low IQ score, some compounding disability conditions (e.g., severe lack of control of physical movements) so that they were not mislabeled or misassigned. However, people charged with overseeing implementation of the court's order* report that this cannot explain all of the 37 percent; i.e., some of these children were inappropriately assigned to an institutional setting.

Other evidence comes from studies done by psychologists concerned with the problem of the cultural bias in the standard IQ test and the degree to which this leads to the mislabeling of non-handicapped minority group children. For example Hobbs reports on a study in which the rate at which persons were being mislabeled as retarded were reduced almost 50 percent when an adaptive behavior test, in addition to the IQ test, was required. Almost all of the children who changed over from handicapped to non-handicapped status were Blacks or Chicano.

There is also some striking indirect evidence in connection with the category "Emotionally Disturbed." Many authorities in the field feel that there is widespread abuse with regard to this category. Children with no emotional disturbance problem but who have serious

*Telephone interview with Dr. Makuch.
**Hobbs, Op. Cit., p. 29-30

disciplinary problems are likely to end up labeled as emotionally disturbed. Perhaps the most widely cited evidence on this phenomenon is the difference in incidence of this handicapping condition by sex and age. Chart 1 shows data obtained from the National Center for Health Statistics' periodic survey of health status. Note the significantly higher rate for boys in the early years of elementary school which tends to disappear at the latter high school grade. Some of the narrowing could be due to selection processes that take place with age as more and more of the emotionally disturbed either recover or become instutionalized so that by the senior year of high school only the non-emotionally disturbed are left in school. Although this could probably explain some of the observed narrowing between age cohorts, it is not likely to account for all of it. In part it reflects mislabeled "bad boys" being unlabeled as they learn with experience to become "good boys."

The indirect evidence suggests that mislabeling and misassignment could be a significantly widespread phenomenon. Is there anything more direct we can say on the magnitude of benefits? By exactly how much special education outlays will fall is difficult to say, but it appears that the savings could be substantial. For example, even if we assume that only 50,000 children will shift from residential institutions to programs in regular school systems, an expenditure saving of $150 million per year would result. This assumes that the differential in educational outlays between a typical residency situation and a typical special education program in a day school setting is three thousand dollars per student, per year. Other crude cost saving calculations will be made and incorporated in a summary analysis below.*

Empirical evidence on the earnings capacity effects of mislabeling and misassignment is scanty, but what exists is very interesting. There is one study reported on by Conley** in which a group of low IQ students from regular classes (i.e., they were not labeled MR) was followed up along with a group of labeled children from both residency and special day programs. The study reported the following findings. Among those who had been officially labeled MR, labor force participation increased steadily with IQ level except that among

*A detailed study of the cost saving effect of moving to less restrictive settings would also have to include an analysis of the possible sources of increases in expenditures per regular pupil that might take place when large numbers of handicapped children are mainstreamed. This effect would reduce somewhat the net expenditure savings but would not eliminate it. Also, some attention should be paid to the issue of possible non-pecuniary costs imposed on non-handicapped students due to mainstreaming handicapped children. Interviews with lawyers and others specializing in the area of handicapped children suggest that this is not an important issue. In practice the mainstreaming of handicapped children has not been observed to interfere with the education obtained by non-handicapped children.

**Conly, Op. Cit. p. 193

CHART 1

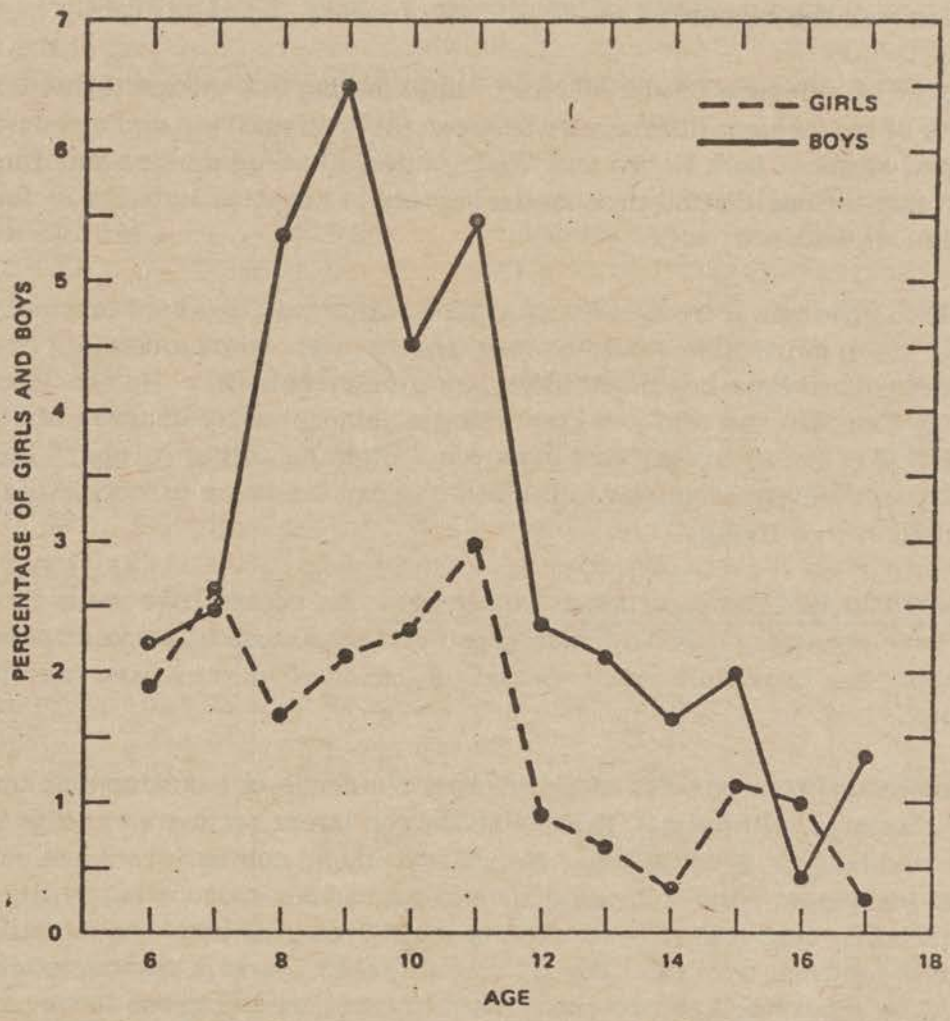


FIG. 4: COMPARISON BETWEEN GIRLS AND BOYS IDENTIFIED BY THE SCHOOL AS EMOTIONALLY DISTURBED, BY AGE

Source of Data: National Center for Health Statistics, Series 11. #139.

Chart is taken from Craig and McEachron, The Development and Analysis of Base Line Data for the Estimation of Incidence in the Handicapped School Age Population, Stanford Research Institute, California, 1975, Study prepared for the Assistant Secretary of Education, Office of Education HEW.

those with the highest IQ levels, participation fell below that of the members of the preceding IQ category. However, among those low IQ students who had not been labeled (and who had IQs about the same level as the highest IQ group among the labeled group) labor force participation was the highest of all.*

Another source of evidence on the effects of mislabeling and misassignment are the numerous studies of subsequent differences between institutionalized and non-institutionalized handicapped people. Both Hobbs and Conley cite follow-up studies that find that, ceteris paribus, institutionalization produces a variety of negative impacts -- low self esteem, excessive dependence, etc.

It is difficult to generalize from indirect evidence that was obtained in widely differing surveys etc. Much more time would be required in order to do a detailed critique of all existing studies and to even begin quantifying pecuniary benefits. Hobbs, who is a well-known authority in the field and who just completed a comprehensive survey of all aspects of this area, concluded very strongly that even what might be called "proper" labeling and categorizing can permanently stigmatize children and can lead to a reduction in their capacity to enjoy life and earn a living.

Handicapped Children in Need of More Resources. As noted above many States have already passed laws requiring that all handicapped children must be served and available data on trends show that over time more special education resources have been provided to the handicapped.

However, according to estimates of the overall incidence of handicapping conditions various gaps in coverage still exist. Table 7 shows the latest estimates of this gap both in the aggregate and by type of condition. We will use these numbers to make estimates of the gross cost increment from extending special educational resources to all uncovered children. The possible cost reducing effects via mainstreaming and less mislabeling, are brought together in the final section. The figures in Table 7 have a number of characteristics that should be understood before using them to estimate the gross increase in expenditures.

In each of the handicapping categories the figures for the total number of children (served plus unserved) are based on information obtained from a variety of sources including information from national agencies and organizations, plus state and local directors of special education. For most of the categories the overall incidence estimates

*It could be argued that much of the mislabeling effect is explained by the fact that mislabeled children usually are from very deprived family backgrounds and that it is this factor rather than mislabeling per se that produces the observed relation. No available study had tried to hold this factor constant and many investigators have found a strong correlation between parental apathy and mislabeling.

TABLE 7

ESTIMATED NUMBER OF HANDICAPPED CHILDREN SERVED AND UNSERVED BY TYPE OF HANDICAP 1974-75

Type of Handicap	Served	Unserved	Total	% Served
Total Age 0-19	3,947,000	3,939,000	7,886,000	50%
Total 6-19	3,687,000	3,012,000	6,699,000	55
Total 0-5	260,000	927,000	1,187,000	22
Speech Impaired	1,850,000	443,000	2,293,000	81
Mentally Retarded	1,250,000	257,000 (655,000)*	1,507,000 (890,000)*	83 (26)*
Learning Disabilities	235,000	1,731,000	1,966,000	12
Emotionally Disturbed	230,000	1,080,000	1,310,000	18
Crippled & Impaired	235,000	93,000	328,000	72
Deaf	35,000	14,000	49,000	71
Hard of Hearing	60,000	268,000	328,000	18
Visually Handicapped	39,000	27,000	66,000	59
Multi-Handicapped	13,000	27,000	40,000	33

Source: Same as for Table 6, 74-75 figures. The additional incidence factors are: LD=3.0%, Multi-H: .06%
Note: The same caveats in the note to Table 6 apply here

*Assumes a learing disabled incidence rate of 1.0% rather than 3%. See discussion in text.

from these sources has remained uncomfortably constant since around 1960; i.e., for visually handicapped, hard of hearing, speech-impared, emotionally disturbed and mentally retarded, the incidence percentages used in FY 75 are the same as those used in 1960.* This could lead to significant error especially for those categories (e.g., emotionally disturbed) that may have been influenced by developments in psychiatry and preschool intervention programs during the 60's.**

The category "learning disabilities" is a relatively new formal label for handicapped children. It is very controversial among students in the field. Many investigators assert that there is no objective way of ascertaining that a child has a "learning disability" other than to point to the results of the supposed handicap -- low grades in school relative to expectations, given the child's performance on IQ and other standardized tests. One skeptical researcher concludes that "children who fail in school but do not fit into other special education categories also may be labeled learning disabled.***

Another characteristic to note is that, for the most part, the numbers in the served category include children who are being served by private schools**** and the numbers for the unserved in most of the categories (emotionally disturbed however may be an important exception) represent children who are enrolled fulltime in regular public school classes. For the emotionally disturbed, however, they could represent large numbers of children in residential institutions who are not receiving any educational services at all. (Members of our first group above.)

In sum, it is likely that most of the estimated unserved children shown in Table 7 are moderately to borderline handicapped children, now enrolled in public schools, and spending their full time in regular classes. They are receiving no attention in a resource room, nor are they spending part or all of their day in special classes or buildings. Thus, the cost factors with which to multiply the unserved numbers in Table 7 should be ones that represent special education for a moderate to mildly handicapped child.

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*See the notes to Table 6.

**Ongoing research at the Stanford Research Institute is attempting to explore the usefulness of the National Center for Health Statistics survey for estimating the incidence of certain handicapping conditions (see the citation to Chart 1 above). However, there are still many unresolved problems with using this survey to guide educational policy (as opposed to medical care policy).

***Hobbs, Op. Cit. p. 80-81

****Most states now provide some form of partial reimbursement to parents who place their children in special private schools (or at least the state will keep records of all the hearings that were held in connection with parents' desires to go outside the public system). These generate records which each state searches when it is submitting its annual estimates of children being served.

The only available cost factors based on a systematic and identifiable sample of schools were those done by Rossmiller, Hale and Frohreich in their well known 1969 study for the National Education Finance Project.* They present excess cost estimates by type of handicapping category for a sample of "outstanding" school systems, i.e., ones which were selected on the basis of a panel of experts saying that they had exemplary special education programs. Unfortunately, they did not present any analysis of their cost factors by severity of handicap within a type category. However, they did present a detailed narrative discussion of the programs in each of the systems they served and there was variation in types of programs offered within a handicapping category. At any rate their published data allow for selecting excess cost factors along a range from high to low.

Table 8 contains various estimates of excess cost multipliers to apply to the numbers of unserved handicapped children in Table 7. Although these cost estimates are based on one of the better known studies in this field, they still suffer from a number of conceptual ambiguities that make them difficult for us to utilize.

For example, the authors make clear that they obtained all of the components of their per pupil cost factors on the basis of full-time equivalent average daily memberships. Thus, the school districts surveyed were asked to allocate a handicapped students' time to both regular classes and special classes if, in fact, he did not spend all his time in special classes. However, in their summary tables, the authors only report the figures that would be applicable for a "full-time" special education student. They do not report what fraction of his time a typical special education student (in the districts surveyed) actually spent in a special education setting. To use their reported excess cost factors as they are we would have to assume that our typical unserved handicapped child will require a program delivered entirely in a separate special education setting (either in a separate classroom in a regular school building or a separate building). We did assume this for our "high side" cost factors. For our "low-side" cost factors we assumed that the typical unserved student would spend 1/2 of his time in special educational settings and 1/2 in a regular setting. We computed a simple average of the per student cost of a full-time special education student and that of a regular student that were reported by Rossmiller et al.**

There are a few other serious problems with utilizing the factors reported in the Rossmiller study. The rather high figure they report for physically handicapped probably

*Rossmiller, Hale and Frohreich Educational Programs for Exceptional Children: Resource Configurations and Costs, National Education Finance Project Special Study #2 Department of Educational Administration University of Wisconsin, 1970. Tables showing the per pupil cost indices.

**This assumes, inter alia, that there are no diseconomies of scale involved as we move from a full-time special education mode to a part-time one.

TABLE 8

SPECIAL EDUCATION EXCESS COST FACTORS

BY HANDICAPPING CATEGORY

Type of Handicap	Cost Index*		Amount of Excess Cost per pupil. ($)**	
	High cost	Low cost	High cost	Low cost
Speech Impaired	1.2	1.1	$200	$100
Mentally Retarded	2.0	1.5	$1,000	$500
Learning Disabilities	2.1	1.5	$1,100	$500
Emotionally Disturbed	2.8	1.9	$1,800	$900
Crippled and Other Impaired	3.6	2.8	$2,600	$1,300
Deaf	3.5	2.2	$2,500	$1,200
Hard of Hearing	2.0	1.5	$1,000	$500
Visually handicapped	3.0	2.0	$2,000	$1,000
Deaf/Blind or other Multi Handicapped	2.7	1.8	$1,700	$800

*This is the ratio of the total cost (special education expenditure plus any regular education resources) used to educate a handicapped child to the total cost of educating a non-handicapped child.

**Derived by multiplying the quantity (cost index -1) by $1,000. $1,000 was used as an estimate of the countrywide average expenditure per pupil in regular instruction. The National Conference of State Legislatures reported that in 1975 this figure was $1,163. See their study of State Special Education Finance, p. 8.

Source: The cost index ratios are from Rossmiller, Hale and Frorich, Educational Programs for Exceptional Children: Resource Configuration and Costs. National Education Finance Project, (University of Wisconsin, 1970). The high side ratios are the median values of the ratio as across all the districts in their sample. This is considered "high" because of the probable less severe nature of the currently not served group. The low side estimates are explained in the text.

contains a structural building component that we have already accounted for in estimating the cost of the building accessibility subpart. Another problem is the relatively low cost factor for the multiple handicapped group. This probably reflects the particular mix of severity levels among the handicapped that existed in the surveyed school districts at the time of the study. In short, the reader must keep all these shortcomings in mind in assessing the validity of our cost estimates.

Table 9 contains estimates of the gross increase in expenditures required to reach all children currently classified as unserved. They range from high to low because of variation in the cost factors used, because of varying assumptions about the exact number of unserved children with learning disabilities, and because of the age range assumed to be covered.

At one extreme the gross cost increase may only be $1.3 billion dollars per year (or 48 percent of what we estimated was actually spent on special education resources for covered children in 1974-75).* This estimate assumes that the low side cost factors are relevant, that only school age children are covered and that a 1 percent incidence figure for Learning Disabled is used rather than the current official 3 percent figure. At the high extreme the gross cost increment is $4.8 billion dollars per year (or 155 percent of estimated current expenditures). This estimate assumes that the high side cost factors are relevant, that the target age range is 0-19 and that the official 3 percent incidence for Learning Disabled prevails.**

We have ignored the effect of shifts of already served children between partially reimbursed programs (under which a handicapped child attends a private school or institution) and ones that will be fully funded by public funds. At this time almost all states have some form of partial reimbursement scheme under which parents can obtain at least part of the cost of placing their child in a non-public special education school or institution. In some states the parent is free to choose between "free" public and partially reimbursed private (e.g., Maryland up until very recently), while in others the partial

*Whether or not the specialized resources being supplied to already covered children are adequate is also an issue. We have not addressed this because data on actual expenditures in 74-75 are not yet available. If we assume the figures we estimate are in fact adequate (which does not appear unreasonable; since we used our "high-side" cost factors to generate them) then we are underestimating gross cost increments if actual 74-75 expenditures are below them and overestimating if the reverse is true.

**The high side age range assumption is not consistent with the regulation as written. The regulation states that until 1978 the required age range coverage for handicapped children is the same as each state requires for its non-handicapped children. By 1978 the required range expands to 3-18 and by 1980 to 3-21. However this extension is only mandatory if the state does not have a specific law prohibiting extension beyond 6-18. Also the definition of the category Learning Disabled in the regulation is very narrow and it will probably preclude use of an incidence factor as large as 3%.

TABLE 9

ESTIMATES OF THE GROSS INCREASE IN EXPENDITURES FROM EXTENDING SPECIAL EDUCATION TO ALL UNSERVED CHILDREN (In Billions of Dollars per Year and as Percent of Existing Special Education Expenditures)

Age Range	Estimated cost for children already being served in 74-75*	High-side cost factors		Low-side cost factors	
		Learning Disability IR=3%	Learning Disability IR=1%	Learning Disability IR=3%	Learning Disability IR=1%
0-19	$3.1	$4.8/155%	$3.7/119%	$2.3/74%	$1.8/58%
6-19	$2.9	$3.7/127%	$2.8/97%	$1.8/62%	$1.3/48%
0-5	.2	$1.1/550%	$0.9/450%	$0.5/250%	$0.4/200%

SOURCE: Table 7 and 8 and see discussion in the text.

*These are not based on what schools actually spent on special education in FY 75. They were constructed by multiplying the number currently served in each category (Table 7) by the corresponding high side cost factor in Table 8.

reimbursement option is only allowed when there are no public facilities available (e.g., Virginia at the present time). In phone interviews with special education specialists in both Virginia and Maryland the latest data on the fraction of all special education that came under partial reimbursement was obtained. The fraction (for the non-residential sector) were very small -- 1.8 percent for Virginia and about 3 percent for Maryland.* (The reimbursement program in Maryland is slightly more generous than in Virginia.) Thus the net impact of this omission on our gross cost estimates will not be significant.

Before we turn to a consolidation of our cost analysis for the three groups we will briefly comment on the benefits that can be expected from the additional coverage. Up to this point we have considered the evidence on the earnings capacity effects of reducing mislabeling and misassignment. The same authors who stress the importance of this factor (e.g., Hobbs) also emphasize the importance of not going too far in the direction of avoiding all labeling. They stress that there are types of children and handicapping conditions that can benefit greatly from the thoughtful application of high quality special education programs.

Unfortunately for the two most important (in terms of numbers) categories of unserved children -- emotionally disturbed and learning disabled -- no hard evidence on earnings capacity effects could be located in a short time frame. Only for the mentally retarded are there readily available findings.

Conley** reports that shortly after termination from State vocational rehabilitation programs young, mentally retarded adults who have been recorded as "rehabilitated" (which means they have successfully completed the training course and have been placed in a job) were earning hourly rates of pay about equal to that observed among general samples of mentally retarded individuals of the same age and severity category. Further, Conley believes that "A-priori we would expect that the average lifetime productivity of retarded rehabilitants would be less than our estimate for retarded workers generally since the very fact of referall for vocational rehabilitation is a manifestation of some vocational difficulties." On this basis Conley*** concluded that vocational rehabilitation

*Ms. Lucile Anderson, Virginia State Department of Education and Mr. James Keim, Maryland State Department of Education

**Conley, Op. Cit., pp. 284-289

***It is important to note that the validity of the direction of the selectivity bias that Conley assumes is crucial to the credibility of his estimates. To a non-specialist in this area its validity is not intuitively obvious. Indeed a recent survey of all published benefit/cost studies of vocational rehabilitation concludes that it is not possible to conclude anything (either positive or negative) about the earnings effect of vocational rehabilitation training. (John Noble, "Economic Analysis of Rehabilitation Benefits: Can the 'State of the Art' Conclude Anything About Priorities," Paper Presented at the Annual Meeting of the American Association for the Advancement of Science, New York, Jan 26-31, 1975.) Overall time constraints precluded any additional work on this issue.

training had had an effect on the earnings capacity of the mentally retarded. Calling on his previous work relating to all rehabilitants (both mentally retarded and other disabling conditions) Conley comes to a "reasoned guess" that about 50 percent of the observed post program earnings of retarded rehabilitants can be attributed to the vocational rehabilitation training. On these assumptions Conley is able to show that the dollars spent on vocational rehabilitation training for mentally retarded young men are all recouped in the form of increased future earnings.

What is the significance of this finding? For the category Mentally Retarded (MR) alone it would appear highly relevant. The higher quality MR programs described by Rossmiller et. al., all consisted of very up-to-date vocational education training type situations. However, for the other two major sources of cost increase -- emotionally disturbed and learning disabled -- there is less certainty. The children involved in these categories may have a totally different set of ability/motivation problems than MR children do so that the apparent success of special education with the one group does not imply success with the other. However, the data we present in appendix A on the interaction between the earnings effect of disability and the level of education attained, suggests that rehabilitation type resources might have large effects on earnings capacity.

Summary and Alternative Phase-In Strategies

Our analysis has identified two sources of cost increase and one of cost decrease that will be associated with attaining the goal of free, adequate and appropriate education (in the least restrictive setting possible) for all handicapped children.

One source of cost increase involves extending the delivery of some form of education/training services to all severely and profoundly handicapped youngsters (primarily the mentally retarded and the emotionally disturbed), the so called "0-based reject policy." This cost will depend on how many are currently not being served and the educational cost per child of delivering the services in an institutional setting. Above we noted that expert opinion puts this per pupil cost at about $5,000 per year. The number of these children could range anywhere from 50,000 to 500,000 given the vagueness of existing data sources. We separated out this source of cost increase from the main body of our cost analysis because of the obvious compelling nature of the situation these children are in. Also, we showed that in addition to purely humanitarian benefits it was possible that pecuniary benefits (in the form of reduced maintenance costs) might be forthcoming if the training resulted in increased ability to cope with the simple tasks of everyday existence.

The other source of cost increase -- extension of free services to all the moderate and mildily handicapped not now being served -- was analyzed in terms of a few parameters and the results summarized in Table 9. The categories in the Table suggest a number of possible areas of policy options -- e.g., the costs of increasing the age range to cover younger and younger children should be balanced by increased benefits; considerable thought and study should be given to the estimation of prevalence rates for the Learning Disabled category; etc.

We stressed the "gross" aspect of these cost increments because the regulation is expected to have offsetting cost decreasing effects via the reduction of mislabeling and misassignment and the integration of physically handicapped children allowed by the greater building accessibility provided by subpart C. Precisely how large these offset factors will be cannot be determined without an elaborate study. Some crude calculations might be suggestive of possibilities. We noted above that a shift of 50,000 youngsters from residential to non-residential special educational setting could save around $150 million a year. If we also assume that 20 percent of all the mentally retarded, learning disabled and emotionally disturbed shift from special education day school programs to full-time regular settings then this could reduce costs by $235 million more. (This assumes the "low-side" cost factors in Table 8 are relevant.) The combined effect is to reduce the low-side gross increments in Table 6 by $385 million. If we assume that 50 percent of the MRs, LDs and EDs are shifted into full time regular settings then the low-side offset factor rises to $740 million. We also estimate an annual savings of $65 million from integrating physically handicapped children.*

In concluding this section of the analysis it is important to briefly note the implications of the dynamic dimension of the situation -- just how rapidly should the SEAs and LEAs be pushed toward the objective. PL 94-142 contains a definite time table, while the proposed regulation does not. In any event it should be recognized that increased rapidity of attainment is definitely not a free-good -- it will raise the overall cost associated with attaining the objective. The major source of bottlenecks would appear to be specially trained manpower. These bottlenecks can influence costs and benefits in two ways. First, the low quality of hurriedly put together programs (along with the bad feeling generated between federal and local officials) can hurt morale and possibly keep program quality below the optimum level long past the time at which a slower approach would have had the objective in place and at a much higher quality level. Second, it will simply cost more in terms of scarce resources used up to get to the objective faster -- e.g., teachers will have to work overtime to train special education teachers; people with related skills in other areas will have to be induced to enter special education as a career, etc.

On the other side it is also clear that increased total amounts of benefits are likely to flow from attaining the goal at an earlier date. What is important here is that the implementers of the policy be keenly aware of these trade-offs and remain as flexible as possible with regard to enforcing target dates while at the same time not letting school districts use this flexible stance to avoid compliance indefinitely.

*We estimated that there are about 250,000 physically handicapped youngsters receiving special education resources (Table 6). We also estimated that the excess cost incurred per student served is $2,600 (Table 8). If we assume that 50,000 of these children will be shifted to regular buildings for their regular education and that this reduces the annual cost of educating them by $1,300, then the annual savings would by $65 million.

V. HIGHER EDUCATION (Subpart E)

The major expense imposed on institutions of higher education by this regulation will be the cost of complying with the requirements of Subpart C on building accessibility. It is not expected that Subpart E,* which requires nondiscrimination in recruitment admissions and provision of courses and non-curricular services, will impose any significant additional costs.

The estimates of handicapped children in table 7 suggest that in any year no more than 200,000 college aged handicapped people are enrolled in degree granting institutions of higher education, and this amounts to less than 2% of their total enrollment.** After consultation with groups within the Department, it was concluded that none of the requirements of Subpart E will impost any substantial amount of costs on the recipients. And even if costs were to rise to a perceptible level, they would be balanced by benefits from the increased earnings capacity of those additional handicapped individuals who earn college degrees.

Non-Accessibility Provisions

Section 84.44(b) is concerned with course examination procedures for students with impaired sensory, manual, or speaking skills. It requires recipients to provide methods of assessing the academic achievement of such students which insure that the student's grades reflect his achievement, not his handicap. Thus, blind students must be allowed such alternatives to regular examination procedures as take-home examinations, the use of a reader, or, in the case of an essay examination, the opportunity to transcribe the questions into braille.

Paragraph (c) of section 84.44 provides that a recipient must ensure that no qualified handicapped student with impaired communicative skills be denied effective participation in its program because of lack of necessary auxiliary educational aids. (Individually prescribed or general purpose aids such as eyeglasses or wheel chairs are not, of course, included). In many cases, this provision will not impose any additional financial burden

*Subpart E generally follows the Department's Title IX regulation.

**Of the 6.6 million handicapped children (6-19) in table 7 we assume about 2.0 million will have both the potential for college attendance and require some accommodation. This assumes that all the mentally retarded will not be qualified and also that all those qualified among the speech impaired will not require any accommodation. Of the remainder, we assume that all persons in the physical disability categories will be qualified and that about 1.3 million of the learning disabled and emotionally disturbed will qualify. We then assume that 1/3 of the qualified will choose to go on to college. This means that an age cohort 6-19 will yield about 200,000 attendees aged 18-24 during any given year.

because the aids are provided by vocational rehabilitation agencies. Where such is not the case, however, the responsibility for providing auxiliary aids or their equivalent is borne by the recipient. For example, if a deaf student is unable to obtain the services of a classroom interpreter from the vocational rehabilitation agency, the recipient is responsible for providing an interpreter, a written version of class materials, or the opportunity to pursue independent study. Aids and services can often be provided at minimum expense by making them available in the recipient's library or other resource center. Comments from within the Department contained no estimate of the cost of this requirement. However, it is not believed it will be substantial as long as enforcement is done in a manner which allows flexibility in means of compliance.

Section 84.45 prohibits discrimination in the provision of student housing. Additional costs incurred in making a portion of the university's own housing accessible are included in the estimated costs of accessibility in section III of this statement. No additional costs, except insignificant administrative expenses, are anticipated from the requirement that recipients ensure that non-campus housing is, as a whole, offered in a nondiscriminatory manner.

The provision of health services without discrimination on the basis of handicap, required by section 84.46 (a), may, in some instances, impose minor additional costs. While this section does not require treatment for special handicapping conditions, some types of handicapping conditions do result in a greater than average need for routine health care. However, because the proportion of such students in any student body is quite low, any cost increase should be easily absorbed by the recipients; that is, the average per unit cost of providing health services to all students should not rise perceptibly.

Paragraph (a) of section 84.48 prohibits discrimination on the basis of handicap in the provision of physical education courses and athletics. A recipient who has an athletics program must operate the program so that handicapped students are afforded an opportunity to participate in comparable activities. Only minimal accommodation should be necessary for compliance. Because of the great variance in both types of handicapping conditions and in types of athletic activities, there is probably no handicapped person who cannot participate in at least one existing type of activity. At most, minor modifications of equipment would be necessary.

Thus, as stated in the introductory paragraph, increases in expenditures to institutions of higher education necessitated by this subpart are not expected to be significant. Those connected with modification of a sufficient number of existing buildings to comply with the requirement of program accessibility may be significant and these costs are covered in section III of this statement.

Benefits

In appendix A, evidence is presented on the very strong interaction between the level of formal education attained and the size of the effect of even severe disability on earnings capacity (see table A-8). Although these data refer to a group, disabled veterans, who obtained their disability after becoming young adults, the implications for the effect of education should also apply to physically disabled persons who are either born with the condition or have an accident very early in life. Again, one can only conjecture about the possible magnitude of the benefits from this source.

1970 Census data show that only 3.3% of persons aged 18-44 who reported that they were severely disabled* had attained a college degree or more. Other tables from this same source show very low reported labor force participation and annual earnings for this same subgroup of severely disabled persons. If we assume that the percentage of this group who finish college will increase to 6.0% and that college graduation increases the annual earnings of a severely disabled worker to that of the average partially disabled worker, then the annual flow of benefits from this source would eventually rise to about $100 million.** Enhanced educational opportunities can also be expected to increase the annual earnings of moderately and mildly handicapped persons, although the earnings increase will not be as great as with severely disabled persons, many more persons will be affected.

*The severely disabled reported in the 1970 Census were those individuals who said that their disability keeps them from holding any job at all. (See appendix A.)

**It will take a number of years for the educational attainment of the entire stock of severely disabled persons 18-44 to rise to that of 6.0% having college degrees. The total number involved is about 22,000 individuals who will be earning about $4,500 per year more on account of having gotten a college degree. After 10 years about half of the $100 million figure will have been reached.

VI. HEALTH AND SOCIAL SERVICES (Subpart F)

Subpart F prohibits discrimination on the basis of handicap in the provision of health and welfare services. Comments solicited from within the Department suggested that Subpart F will not have a substantial effect on the cost of providing health and social services. This is because these service systems are already structured to permit the participation of handicapped clients.*

Although the requirements of this subpart may, in a few cases, necessitate initial additional expenditures for staffing or equipment, such cases are of minor proportions. They should not require any substantial operational changes in existing health and social service systems. Moreover, to safeguard against imposing overly burdensome requirements especially with respect to small providers of health and social services, this subpart allows such factors as the size of the recipient's program to be considered in determining the appropriate corrective action to be taken by recipients. The flexibility thereby built into this subpart should further minimize its cost impact.

The provision relating to the education of persons institutionalized because of handicap may also necessitate initial additional expenditures. These expenditures are, however, included in the estimates contained in Section IV of this statement.

The subpart also requires recipients to compensate a handicapped patient who performs work which is either non-therapeutic or for which the institution would otherwise have had to hire an employee. Since this provision does not force recipients to use the labor of the handicapped, any outlays that are incurred can be assumed to be covered by economic benefits obtained by recipients.

The alternative to this provision is to permit the recipient to utilize patient labor without compensation. Although this alternative would lower the costs of compliance it has been held to be unconstitutional (see Souder v. Brenner, 367 F. Supp. 808 (D.D.C. 1973) and, as such, cannot be considered an actual alternative to the compensation provision as drafted.

*Note again that the costs associated with making buildings accessible have already been covered in Section III.

VII. SUMMARY AND CONCLUSIONS

We have analyzed in some detail the costs and benefits of the three major subparts of the regulation that cover employment practices, building accessibility and the provision of elementary and secondary education. We found that in all cases there was evidence for pecuniary benefits that provide substantial offsets to the pecuniary cost involved. Indeed, even if non-pecuniary benefits are not added, the balance of benefits and costs appears in favor of implementation of the regulation.

The nature and quality of the evidence on benefits varies considerably. In some cases, it is more straightforward and convincing than in others, as in the case of cost reductions due to shifts to less restrictive settings. In others the empirical evidence is very sparse, but what there is, is highly suggestive, as in the case of benefits from eliminating discrimination in employment, and the benefits from reduced mislabeling and the improved quantity and quality of special education.

By far the most substantial source of cost increase comes from the extension of special education to all handicapped children not now served. We estimated that the annual gross cost increment could fall anywhere in the range $4.8 to $1.3 billion, depending on assumptions about cost factors, incidence of the condition "Learning Disabled", and the age range of the children covered.* The two other sources of possible significant cost increase are building accessibility and complying with the reasonable accommodation of subpart B. On the basis of our analysis it is doubtful that the additional annual cost from these two sources would ever exceed $100 million.**

If we take a simple average of our high and low side estimates for special education (i.e., $3.1 billion) then we estimate that these three sources together would create about $3.2 billion in annual costs. What magnitude of annual pecuniary benefits do we estimate? In our analysis of subpart D we estimated that as much as $800 million per year in special education expenditures might be saved because of shifts to less restrictive settings and reduced mislabeling of non-handicapped children. In the section on higher education, we estimated that the aggregate annual earnings capacity of the handicapped workers would be

*This range is slightly upward biased because of our treatment of very severely handicapped children in institutions. Since we analyzed this group separately (see discussion on page 40) we should net them out of our calculation of the annual gross cost increment. We have already assumed that these costs will be balanced by the special benefits involved. However, since the exact number of these children is not known we have not attempted this refinement.

**The total cost of making existing buildings accessible was estimated at about $350 million. This is approsimately equivalent to a perpetual annual cost of about $50 million. We estimated (appendix A) that perhaps a million disabled workers would be covered by subpart B. Even if we assume that the reasonable accommodation provision would result in an expenditure of $100 per year on one-half of them (which is probably an overestimate of numbers that would require special resources) that would only come to another $50 million.

increased by $100 million on account of the increase in college degrees among them. In our analysis of Subpart B we estimated that the elimination of employment discrimination might add as much as $1 billion to annual benefits. Thus a conservative figure would be $500 million. At this point benefits total to $1.4 billion, still $1.8 billion short of annual costs. We have not yet put a dollar amount on the increase in earnings capacity from the reduced mislabeling and the increased coverage of special education. It is likely that at any point in time at least 3 million individuals in the adult labor force were once handicapped children. Assume that on account of the achievement of full coverage and better labeling, about 1.5 million of them have their earnings capacity affected. If we further assume that on the average they all earn $1000 more per year, we then have another $1.5 billion in annual benefits, leaving a pecuniary cost deficit of only $.3 billion per year to be balanced against psychic benefits. This is the reason for our above conclusion on the near favorable balance even without adding in psychic benefits. Table 10 summarizes the above calculations.

TABLE 10

SUMMARY OF ESTIMATED ANNUAL PECUNIARY COSTS AND BENEFITS FOR ALL SUB-PARTS[d]
(Billions of dollars)

Sub-parts	(1) Costs[a]	(2) Benefits	(3) (1) − (2)
Employment practices	.05	.5	-.45
Program accessibility	.05	[b]	+.05
Elementary and secondary	2.3[c]	1.5	+.8
Higher Education	N.E.	.1	-.1
Health and Social Services	N.E.	N.E.	N.E.
Total	2.4	2.1	+.3

[a] For the parts other than program accessibility only non-accessibility costs are included.

[b] Benefits from program accessibility are included in the amounts for the other sub-parts.

[c] This is the average net increase (4.8 - .8)+(1.3 - .8)/2, where .8 is the reduction in cost due to shifts to less restrictive settings.

[d] This is before allowance for the effect of existing laws. See below.

N.E. = Not estimated, assumed to be negligible.

In using our analysis of overall benefits and costs the reader should keep in mind a number of factors that, although possibly significant to decisions about the impact of the regulation, are not highlighted by our analysis.

First, our estimates of costs and benefits measure only the "net" increment either in output gain (benefits) or resources used up (costs). They do not cover what economists call transfer and distribution effects. One important transfer effect in this case would be the (possible) reduction in income maintenance payments brought on by the increased earnings capacity of the handicapped. This effect is not added to benefits because the amount of saving to taxpayers is exactly balanced by the reduction in benefits of those who had been receiving the income maintenance payments. However from the taxpayers point of view it can be a significant consideration. Similarly an important distribution effect of the proposed regulation is reflected in the fact that the great bulk of the costs fall on state and local governments while the great bulk of the benefits accrue to private citizens -- handicapped persons.

Second, as already noted, this regulation duplicates and supplements to a substantial extent existing law. It would not be unreasonable to argue that, say, 50% of the elementary and secondary education effects and perhaps 25% of the remainder are properly attributable to existing laws. While it would be unrealistic to attempt to "fine tune" the estimates in Table 10, the final judgment on the effects of the regulation would have to be that both costs and benefits may be substantially below two billion dollars annually.

Third, there is one omission from the analysis that is perhaps worthy of note. No attempt has been made to estimate separately administrative and related costs of complying with its procedures (e.g., public notice, creation of new tests, preparing compliance plans, and the like). While such costs are certainly far smaller than the costs of providing services, they may well be in the range of tens of millions annually. It can be expected that public comments on the Notice of Proposed Rule-making will provide a basis for any changes necessary to assure that such costs are held to the minimum necessary to effectuate the substantive requirements of the law.

Finally, although we conclude that the regulation should be implemented, we do urge that consideration be given to some of the details of coverage, wording, and the dynamics of implementation. In particular we have highlighted the following areas: wording and content of the "reasonable accommodation" provision; precise coverage of the handicapping category "Learning Disabled;" decision on which agency of the State government should bear the non-educational costs of institutionalized handicapped children; the type and degree of flexibility in enforcing compliance and alternative timing and phase in strategies.

APPENDIX A

DISABILITY, DISCRIMINATION AND EARNINGS: A SURVEY/ANALYSIS

Tables 1-A through 4-A show data from the 1970 Census of Population on the numbers and characteristics of the disabled. The 1970 census asked the following question on disability: "Did you have a health or physical condition which limits the kind or amount of work you do?"

Many disabled individuals do not consider themselves limited in the amount or type of work they can do, so that the numbers in table 1 understate the number of disabled individuals that will be potentially eligible for protection under the proposed regulation. Data from the National Center for Health Statistics suggest that the number of adults with a disability is well over twice the number that responded to the 1970 Census question.*

However the disabled individuals reported in the 1970 Census may be more relevant for analyzing the impact of the proposed regulation. This is because the disabled workers who will be most helped by the regulation--those who are now suffering from employment discrimination--may make up a larger fraction of the individuals covered by the Census than they do of the total population of handicapped individuals.**

How many disabled individuals will have their earnings levels increased on account of the regulation? One can use the numbers in table 1-A and some additional assumptions to get a rough idea. For example, one possible set of assumptions and the corresponding estimates would be the following.

*Wilder, Charles S., Prevalence of Selected Impairments, United States 1971, DHEW Publication No. (HRA) 75-1526, National Center for Health Statistics, May 1975.

**Either of two conditions could produce this result: (1) the probability of experiencing discrimination was (as of 1969) positively correlated with severity of disability and/or (2) the experience of job discrimination increases the probability that a disabled individual will answer "yes" to the Census question.

TABLE 1-A

INCIDENCE OF WORK DISABILITY BY SEVERITY OF DISABILITY, SEX AND AGE FOR PERSONS 18-64 YEARS OLD: UNITED STATES: 1970

	(1)	(2)	(3)	(4)	(5)	(6)
Age	Partially Work Disabled (000)	Totally Work Disabled (000)	Incidence: Percent of Population Work Disabled %	Percent of Population Reporting Totally Work Disabled %	Estimated*/ Percent Totally Work Disabled %	Percent of Population Who Reported They Never Worked
Total (Both Sexes)						
All ages	7,160	4,931	10.8%	4.4%	4.0%	.9%
18-24	1,004	329	5.7	1.4	2.5	.7
25-54	4,185	2,358	9.3	3.3		
55+	1,972	2,242	22.8	12.1	11.5	2.1
Male						
All ages	4,356	2,010	11.7%	3.7%	3.2%	.5%
18-24	689	157	7.5	1.4	1.9	.4
25-54	2,470	911	9.9	2.7		
55+	1,178	941	24.2	10.7	9.9	.7
Female						
All ages	2,803	2,921	9.9%	5.0%	4.7%	1.3%
18-24	315	172	4.1	1.4	3.1	.9
25-54	1,694	1,448	8.6	4.0		
55+	793	1,302	21.5	13.4	12.9	3.4

*/Only counts those who both reported themselves totally worked disabled and said they were not at work or seeking work.

Source: U.S. Bureau of the Census, Census of Population: 1975, Subject Reports, Final Report PC (2)-6C, Persons with Work Disability, U.S. Govt. Printing Office, Tables 1 and 4.

TABLE 2-A

EMPLOYMENT STATUS AND EARNINGS IN 1969
BY DISABILITY STATUS, MALES 18-44:
UNITED STATES 1970

Employment status and earnings in 1969	Disability status: (1) Non-disabled	(2) Partially disabled	(3) (2)/(1)
Employment status:			
Total labor force (000)	28,689	1,811	-
Percent in total labor force	90.3	89.2	.987
Total employed (000)	26,886	1,735	-
Percent civilian labor force unemployed	3.7	5.7	1.540
Earnings in 1969:			
Mean earnings of those with earnings	$7,539	$6,065	.804
Percent with earnings	95.3	93.3	.979
Overall mean earnings	$7,185	$5,659	.788

Source: Same as table 1,
Census tables 4 and 9.

Assume that only the partially work disabled under 55 will have their earnings increased by the regulation. Also assume that only 1/2 of the partially disabled females under 55 would be affected in order to adjust for the sex differential in labor force participation. Finally, since State and Local Government and Medical and Health Services, which contain most of the grantees covered by the regulation, provide approximately 20 percent of total employment, assume that estimates can be made by multiplying combinations of the numbers in table 1 by .20 .*

These assumptions lead to an estimate of 833 thousand for the number of disabled workers that will have their earnings affected by the proposed regulation. If one includes all those under 55 (both partially and totally work disabled), the estimate will rise to 1.2 million; if we use a factor of .3 rather than .2 it also rises to 1.2 million, etc.

It is not clear if those who reported themselves as totally work disabled will be helped by the regulation. Almost all of these individuals reported no work experience during 1969

*Since the regulation also applies to subcontractors of covered grantees, a percentage greater than .20 is probably more appropriate. The fact that state and local governments also have a disproportionate number of "mental jobs" also indicates a factor larger than .20.

(compare columns 4 and 5 of table 1-A). On the other hand almost all of them reported that they had had work experience at some time previous to 1969 (compare columns 4 and 6 in table 1-A). Clearly some of these individuals will be in a position to be helped by the regulation as they recover somewhat from their conditions with time and rehabilitative services. However, it is not possible to conjecture, even roughly, how many this will be.

TABLE 3-A

OCCUPATIONAL STATUS BY DISABILITY STATUS
FOR EMPLOYED MALES 18-44
UNITED STATES 1970

Percent distribution	(1) Non-disabled	(2) Partially disabled	(3) (2)-(1)
Total	100%	100%	
Prof., tech. and kindred	17.0	13.4	-3.6
Mgrs. and admin. (except farm)	9.9	8.4	-1.5
Sales workers	6.6	6.7	-0.1
Clerical workers	7.9	9.4	+1.5
Craftsmen and kindred workers	21.3	18.9	-2.4
Operatives (except transp.)	14.4	15.6	+1.2
Transp. equip. oper.	6.3	6.7	+0.4
Laborers (except farm)	6.5	8.1	+1.6
Farm workers	3.2	3.9	+0.7
Service workers (except private H.H.)	6.8	8.5	+1.7
Private household workers	0.0	0.1	+0.1

Source: Same as table 1,
Census table 6.

By how much will the average disabled worker have his earnings capacity increased as a result of the proposed regulation? The data in table 2-A show that among those who report themselves as only partially work disabled, disability is not much of a barrier to employment per se. Labor force participation rates of non-disabled and partially disabled prime age males are very close. However, the quality of employment (both in terms of type and stability of the work) is another matter. Although the unemployment, occupational, (table 3-A) and earnings differentials between non-disabled and partially disabled are not enormous, they are still substantial and suggest that the proposed regulations might have a significant impact.

The data in table 4-A show that there is a moderate educational attainment differential between these two groups. This difference can account for about 3 percentage points of the

21.2 percentage point difference in overall mean earnings (last row and column of table 2-A).* Thus there is an 18 percent differential in earnings at the same educational level.** What part of this 18 percent is due to discrimination and therefore likely to be eliminated by the regulation? It is not possible to say precisely. But two other data sets, both relating to disabled veterans, give some further insight into the possible earnings effects of the regulation.

TABLE 4-A

YEARS OF SCHOOL COMPLETED BY DISABILITY STATUS, MALES 18-44: UNITED STATES 1970
(Percent distribution)

	Disability status		
School completed	Non-disabled	Partially work disabled	Totally work disabled
Less than high school grad	30.0%	39.0%	65.3%
High school grad	36.8	33.5	22.3
Some college or more	33.1	27.5	12.4
	100.	100.	100.

Source: Same as table 1, Census table 3.

Table 5-A presents some data from a special survey of disabled (and some non-abled) veterans. The purpose of the survey was to validate the earnings loss factors used by the Veterans Administration to determine the amount a disabled veteran receives as a disability allowance. Table 5-A shows both the actual earnings differential that existed in

*The three percent figure was estimated by using the method of "standardized averages." The earnings of all males, ages 25-34 by education cell were used to compute weighted averages of the two educational attainment distributions in table 4-A. These two averages differed by 3%. (See the 1970 Census of Population Subject Report, PC(2)-8B Earnings by Occupation and Education, table 1 for the earnings by education data used in this computation.)

**This is a very crude way of estimating the contribution of education differentials to earnings differentials by disability status. There is a large interaction effect between the earnings effects of disability and the level of education of the disabled person. (See below, table 8-A.) Thus although the average differential across all education cells is 18%, the differential among those with less than a high school education might be as much as 36% and that among college graduates close to 0%.

1967 between disabled and non-disabled veterans of the same age, education, and region of the country, as well as the rated percentage loss factor used by the VA at that time.

These loss factors represented the best judgment of medical people (around 1950) about how much earnings capacity was impaired by the particular type of disability. They reflect the mix of physical and mental requirements of the jobs available to veterans at that time. The fact that in 1967 actual earnings differentials were smaller than the rated loss factors (except for the mental disabilities) is probably related to the shifts in job content mix toward more mental and less physical tasks.*

Note the surprisingly small earnings losses for some of the very severe physical conditions. This suggests that many of the individuals who reported themselves as totally work disabled in the 1970 Census may be able to regain significant earnings capacity in later years.** Note also the striking difference in the relationship between rated and actual earnings loss percentages as between mental and physical disabilities. As noted above, this undoubtedly reflects differences in how much job restructuring can be used to accommodate these two types of disabling conditions. Any physical condition, no matter how severe, is specific and may only affect 10 or 15 percent of the tasks involved in most job categories. And physical disabilities need not effect the individual's ability to stand stress and deal extensively with individuals, both of which are key elements in most high paying job categories. Mental and emotional disabilities on the other hand are very general in character and may reduce one's capacity to perform under stress and in situations requiring extensive interaction with other people.

Our final data set although much less comprehensive does present some direct information on the effect of discrimination. It was obtained in a study of the employment problems encountered by disabled Vietnam era veterans. Information on employment status, earnings, experience with employers, etc., was collected on about 8,000 disabled veterans selected from the VA's Disability Record files. The typical disabled veteran in the sample had been out of the service for four years and was about 31-32 years old at the time of the survey. Detailed information on type and severity of disability were available from VA files so that all the material could be cross-tabulated by these variables.

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*Another factor here is that the VA is probably more concerned that the relative amounts received by different veterans corresponds to the relative severity of their disabilities, than they are about the match between earnings capacity loss and benefit amount.

**It is important to note that disabled veterans as a group have much stronger pecuniary work incentives than do disabled workers who are covered by other large federal disability programs. Disabled veterans, unlike beneficiaries under OASDI, do not stand to lose any of their disability benefits by working. Thus their participation and earnings performance may overstate what to expect from severely disabled non-veteran groups.

TABLE 5-A

RATING SCHEDULE EARNINGS LOSS FACTORS AND ACTUAL EARNINGS DIFFERENTIALS BETWEEN DISABLED VETERANS AND A CONTROL GROUP, BY SELECTED TYPES OF SEVERE DISABILITY CONDITIONS: SURVEY DONE IN 1969 AND EARNINGS ARE FOR 1967

Type of disability	(1) Rating schedule earnings loss factor (%)	(2) Observed earnings differentials: Earnings of control group ($)	(3) Observed earnings differentials: Earnings of Vets with disability ($)	(4) Observed earnings differentials: Percentage differential $\frac{(2)-(3)}{2} \times 100$
Physical and highly visible:				
Amputation: upper thigh	80.0	7,500	6,000	20.0%
Amputation: leg	60.0	7,404	5,975	19.3
Amputation: hand	90.0	7,517	5,540	26.3
Blindness - both eyes	100.0	7,403	1,177	84.1
90% blindness - both eyes	90.0	7,007	1,408	79.9
80% blindness - both eyes	70.0	7,209	3,518	51.2
Polio - 100% disabling	100.0	9,012	4,713	47.7
Polio - 60% disabling	60.0	9,041	7,287	19.4
Paralysis - both upper and lower - 90%	90.0	7,580	5,230	31.0
Paralysis - both upper and lower - 60%	60.0	7,195	5,612	22.0
Mental-Psychoneurotic:				
Anxiety state - 50%	50.0	7,045	3,945	44.0
Anxiety reaction - 70%	70.0	7,017	1,122	84.0
Anxiety reaction - 50%	50.0	6,984	1,676	76.0
Psychoneurotic reaction - 70%	70.0	7,166	1,218	83.0
Psychoneurotic reaction - 50%	50.0	7,222	2,022	72.0

Source: "Economic Validation of the Rating Schedule" Appendix in Veterans' Administration Proposed Revision of Schedule for Rating Disabilities -- Submitted to Committee on Veterans' Affairs United States Senate (U.S. Govt. Printing Office, Washington 1973).

Tables 6-A - 10-A contain some relevant findings from this survey. The data in tables 6-A and 7-A, although for a very different group, show the same patterns of labor force participation by age and severity of disability that we observed in the 1970 Census Data.*

TABLE 6-A

EMPLOYMENT AND LABOR FORCE STATUS FOR A SAMPLE OF DISABLED VIETNAM ERA VETERANS

Status	Percent
Currently employed	74.3
Looking for work	9.5
In school	7.8
No longer looking or never looked for work	8.3
(n = 7,728)	100.0

Source: Wilson, Richards and Bercini, Disabled Veterans of the Vietnam Era: Employment Problems and Prospects, HumRRO Technical Report 75-1, HumRRO Eastern Division, Alexandria, Va., Jan. 1975, p.26, Table III-1

Tables 9-A and 10-A contain some direct evidence on the effects of discrimination. Twenty-nine percent of those who had looked for work at some time since leaving the service reported at least one experience of discrimination. However, as table 10-A shows, holding constant severity level, the percentage who perceived discrimination varies sharply with the level of education. This fact combined with the striking difference by education level in the effects of disability on labor force activity (table 8-A), suggests that some of the instances of perceived discrimination may have occurred in situations in which the disabled veteran's productivity (even with reasonable accommodations) was lower than that of a non-disabled worker. The levels of perceived discrimination for the college graduate group are probably the most reliable since severity level has very little effect on employment opportunities for them.

It is difficult to translate the incidence of perceived discrimination into an overall average earnings differential. However, since so many veterans did not perceive discrimination, it is likely that some of the aggregative earnings differential by disability status (as in tables 2-A and 5-A) is not due to discrimination. However, the portion due to

*Note however that the labor force participation rate of young severely disabled veterans is still relatively high. This probably reflects in part the differential pecuniary work incentives confronting disabled veterans mentioned above.

discrimination (including the lack of making reasonable accommodations) could still be close to 100 percent. Many veterans may not have perceived discrimination in situations where the employer was not making some minor accommodation for his disabling condition.

TABLE 7-A

PERCENT NO LONGER LOOKING OR NEVER LOOKED FOR WORK BY AGE AND SEVERITY OF DISABILITY

	Severity of disability		
Age	Slight	Moderate	Severe
Under 30	2.5%	7.5	20.0
30-44	1.5	4.5	36.0
45 or over	13.0	15.0	53.0

Source: Same as table 6-A, p.32, table III-3, obtained by combining the percentages shown for "no longer looking for work since leaving service."

TABLE 8-A

PERCENT NO LONGER WORKING OR NEVER LOOKED FOR WORK BY EDUCATION AND SEVERITY OF DISABILITY, VETERANS UNDER 30 YEARS OF AGE

	Severity of disability		
Education level	Mild	Moderate	Severe
H.S. dropout	5.8	15.0	35.0
H.S. graduate	3.5	7.0	25.0
Attended college	1.5	6.5	12.0
College graduate	3.0	2.0	4.0

Source: Same as table 6-A, p.54. table III-24. Obtained by combining the percentages shown for "no longer looking for work" and "haven't looked for work since leaving service."

TABLE 9-A

PERCENT OF VETERANS WHO EVER LOOKED FOR WORK WHO THOUGHT SOME EMPLOYERS DISCRIMINATED AGAINST THEM, BY AGE AND SEVERITY OF DISABILITY

Age	Severity of disability		
	Mild	Moderate	Severe
< 30	22%	38	49
30-44	20	37	59
45+	16	11	46

Source: Same as table 6-A, p.214, table A-V-1.

TABLE 10-A

PERCENT OF VETERANS WHO EVER LOOKED FOR WORK WHO THOUGHT SOME EMPLOYERS DISCRIMINATED AGAINST THEM, BY EDUCATION AND SEVERITY OF DISABILITY: VETERANS UNDER 30 YEARS OF AGE

Education level	Severity of disability		
	Mild	Moderate	Severe
H.S. dropout	30.0%	48	60
H.S. graduate	23	40	48
Attended college	23	36	52
College graduate	12	19	25

Source: Same as table 6-A, p.215, table A-V-2.

APPENDIX B

COMPENDIUM OF STATE LAWS RELATING TO SPECIAL EDUCATION

STATE STATUTORY RESPONSIBILITIES FOR THE EDUCATION OF HANDICAPPED CHILDREN

July 1, 1975

This chart was prepared by The Development and Evaluation of State and Local Special Education Administrative Policy Manuals Project of the State-Federal Information Clearinghouse for Exceptional Children of the Council for Exceptional Children

STATE	TYPE OF MANDATION	DATE OF PASSAGE	COMPLIANCE DATE	AGES OF ELIGIBILITY	CATEGORIES EXCLUDED
Alabama	Full Planning and Programming	1971	1977	6-21	Profoundly Retarded
Alaska	Full Program	1974		From age 3	
Arizona	Selective Planning and Programming	1973	9/76	5-21	Emotionally Handicapped
Arkansas	Full Planning and Programming[1]	1973	9/79	6-21	
California	Selective			6-18[2]	"Educationally Handicapped" (Emotionally Disturbed, Learning Disabled)
Colorado	Full Planning and Programming	1973	7/75	5-21	
Connecticut	Full Planning and Programming	1966		4-21[3]	
Delaware	Full Program "Wherever Possible"			4-21	Severely Mentally or Physically Handicapped
District of Columbia	No Statute, Court Order: Full Program	1972	1972	From age 6	
Florida	Full Program		1973[4]	3-no maximum (13 yrs. guaranteed)	
Georgia	Full Planning and Programming	1968	9/75	3-20	
Hawaii	Full Program	1949		5-20	
Idaho	Full Program[5]	1972[5]		Birth-21	
Illinois	Full Program	1965	7/69	3-21[6]	
Indiana	Full Planning and Programming	1969	1973	6-18[7]	
Iowa	Full Program "If Reasonably Possible"	1974		Birth-21	
Kansas	Full Planning and Programming	1974	1979[8]	Developmentally Disabled: Birth-21	
Kentucky	Planning and Programming	1970	1974	9	Other than TMR
	(Petition for Trainable Mentally Retarded only)	1962		6-21	
Louisiana	Court Order–Orleans Parish only: Selective for Mentally Retarded, Otherwise, Mandatory	1972	1972	3-21[10]	Other than Mentally Retarded
Maine	Full Planning and Programming	1973	1975[11]	5-20	
Maryland	Full Planning and Programming	1973	1979[12]	13	
Massachusetts	Full Planning and Programming	1972		3-21	
Michigan	Full Planning and Programming	1971	9/73	Birth-25	
Minnesota	Full Program	7/72[14]	14	4-21, except MR (5-21) and ED (6-21) Birth-21	
Mississippi	Permissive				
Missouri	Full Planning and Programming	1973		5-21	
Montana	Full Program[15]	1974	7/79	6-21	
Nebraska	Full Planning and Programming	1973	10/76[16]	5-18	
Nevada	Full Program	1973		5-18[17]	
New Hampshire	Full Program			Birth-21	
New Jersey	Full Program	1954[18]		5-20	
New Mexico	Full Planning and Programming	1972	9/76	6-21[19]	
New York	Full Program	1973	1973	5-21	Profoundly Retarded
North Carolina	Full Planning	1974	20	Birth-Adulthood[21]	
North Dakota	Full Planning and Programming	1973	7/80[22]	5-21[3]	
Ohio	Permissive			Birth-21	Other than crippled or Educable Mentally Retarded, Deaf, Blind, Partial hearing or visio
	Selective Planning	1972	1973	23	Trainable or Profoundly Mentally Retarded
Oklahoma	Full Program	1971	9/70	4-21[24]	
Oregon	Full Program	1973		EMR: 6-21 Others: Birth-21	
Pennsylvania	Court Order: Selective (Mentally Retarded Only)	1972	9/72	6-21[25]	Other than mentally retarded
	Full Planning and Programming	1956	1956	6-21	
Rhode Island	Full Program		1964[26]	3-21[26]	
South Carolina	Full Planning and Programming	1972	1977	6-21[27]	
South Dakota	Full Program	1972		Birth-21	
Tennessee	Full Planning and Programming	1972	9/74[2]	4-21	
Texas	Full Program[28]	1969	9/76[28]	3-21	
Utah	Full Program	1969		5-21	
Vermont	Full Program[29]	1972		Birth-21	
Virginia	Full Planning	1972	30	2-21	
Washington	Full Program	1971		6-21[31]	
West Virginia	Full Program	1974	1974	5-23[32]	
Wisconsin	Full Planning and Programming	1973	8/74	3-21	
Wyoming	Full Program	1969		6-21	

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[1] Current statute is conditional: 5 or more similarly handicapped children in district. However, a 1973 Attorney General's opinion stated that the law mandating full planning and programming was effective July, 1973.. If the state activates a kindergarten program for 5-year-old children, ages of eligibility will be 5-21.

[2] Permissive for children 3-21, except MR: 5 yrs. 8 mos.-21.

[3] 3-21 for hearing impaired. Lower figure applies to age of child as of Jan. 1 of the school year.

[4] 1973 law did not include profoundly retarded; however, a 1974 amendment brought these children under the provisions of the mandatory law. Compliance date for full services to these children is mandated for 1977-78.

[5] Earlier (1963) law was mandatory for all handicapped children except Trainable Mentally Retarded.

[6] 5-21 for speech defective.

[7] Permissive 3-5 and 19-21.

[8] "Developmentally Disabled" means retardation, cerebral palsy or epilepsy. For other disabilities, the state board is to determine ages of eligibility as part of the state plan. Compliance date is 7/1/74 for DD programs.

[9] Permissive: 3-6.

[10] Residents over age 21 who were not provided educational services as children must also be given education and training opportunities.

[11] In cases of significant hardship the commissioner of education may waive enforcement until 1977.

[12] Court order sets deadline in Sept., 1975.

[13] Services must begin as soon as the child can benefit from them, whether or not he is of school age.

[14] Date on which Trainable Mentally Retarded were included under the previously existing mandatory law.

[15] Statute now in effect is selective and conditional: at least 10 Educable Mentally Retarded, 7 Trainable Mentally Retarded, or 10 physically handicapped in school district. *Full* mandation becomes effective 7/1/79.

[16] Acoustically handicapped: 10/1/74.

[17] Aurally handicapped and visually handicapped: birth-18.

[18] Date of original mandatory law, which has since been amended to include all children.

[19] Child must be 6 years old by Jan. 1 of school year.

[20] Implementation date to be specified in preliminary state plan to be submitted to 1975 General Assembly.

[21] Deaf: to age 18–or to age 21 "if need exists."

[22] All children must be served as soon as they are identified as handicapped.

[23] Deaf children to be served at age four.

[24] 2-21 for blind, partially blind, deaf, hard of hearing.

[25] When programs are provided for pre-school age children they must also be provided for mentally handicapped children of the same age.

[26] For mentally retarded or multiply handicapped. Others, as defined in regulations. Compliance date established by regulations.

[27] 4-21 for hearing handicapped.

[28] The Texas Educational Agency is operating under the assumption that the law is mandatory, and has requested an opinion from the state Attorney General on this question. Compliance date is as established by state policy if the law does not specify a compliance date.

[29] Within the limits of available funds and personnel.

[30] 9/1/76 established by regulations.

[31] Permissive below 6 years.

[32] Permissive 3-4.

Definition of the kinds of mandatory legislation used by states:

Full Program Mandate:	Such laws require that programs must be provided where children meet the criteria defining the exceptionality.
Planning and Programming Mandate:	This form includes required planning prior to required programming.
Planning Mandate:	This kind of law mandates only a requirement for planning.
Conditional Mandate:	This kind of law requires that certain conditions must be met in or by the local education district before mandation takes effect (this usually means that a certain number of children with like handicaps must reside in a district before the district is obliged to provide for them).
Mandate by Petition:	This kind of law places the burden of responsibility for program development on the community in terms of parents and interested agencies who may petition school districts to provide programs.
Selective Mandate:	In this case, not all disabilities are treated equally. Education is provided (mandated) for some, but not all categories of disabilities.

The work performed herein was done pursuant to a grant from the Bureau of Education for the Handicapped, US Office of Education, Department of Health, Education, and Welfare. The opinions expressed herein, however, do not necessarily reflect the position or policy of the US Office of Education, and no official endorsement by the US Office of Education should be inferred.

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[FR Doc.76-14326 Filed 5-14-76;8:45 am]

federal register

MONDAY, MAY 17, 1976



PART VI:

OFFICE OF MANAGEMENT AND BUDGET

■

RESCISSIONS AND DEFERRALS

Report to Congress

OFFICE OF MANAGEMENT AND BUDGET

RECISSIONS AND DEFERRALS

Report to Congress

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Impoundment Control Act of 1974, I report two new deferrals. One of the deferrals—in the Department of the Interior—postpones obligation of $688,430 for design of a Bureau of Mines research center. The other deferral sets aside $500,000 to begin accruing an American Revolution Bicentennial Administration scholarship escrow fund.

The details of the deferrals are contained in the attached reports.

Gerald R. Ford

THE WHITE HOUSE, May 13, 1976.

Contents of Special Message

(In thousands of dollars)

Deferral #	Item	Budget Authority
	Interior:	
	Bureau of Mines	
D76-110	Mines and minerals.....	688
	Other Independent Agencies:	
D76-111	American Revolution Bicentennial Administration.....	500
	Total.....	1,188

* *

Summary of Special Messages for FY 1976

(Amounts in thousands of dollars)

	Rescissions	Deferrals
Fifteenth special message:		
New items.....	---	1,188
Changes to amounts previously submitted.....	---	---
Effect of the fifteenth special message.....	---	1,188
Previous special messages.....	3,328,714	9,016,149
Adjustments to eliminate double counting.....	---	-242,023
Total amount proposed in special messages.....	3,328,714 (in 44 rescission proposals)	8,775,314 (in 111 deferrals)

NOTE: All amounts listed represent budget authority except for $125,565,331 consisting of two general revenue sharing deferrals (of outlays only). A supplementary report (D76-25E) was included in the fourteenth special message for one of these deferrals. The other deferral (D76-67) was reported in the seventh 1976 special message.

Deferral No: D76-110

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of the Interior	New budget authority (P.L. 94-165) $ 96,610,000
Bureau: Bureau of Mines	Other budgetary resources 8,596,675
Appropriation title & symbol: Mines and Minerals 14X0959	Total budgetary resources 105,206,675
	Amount to be deferred: Part of year $ -
	Entire year 688,430
OMB identification code: 10-32-0959-0-1-300	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program [ ] Yes [X] No	[ ] Other
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification

This action defers the obligation of $688,430 for designing a replacement facility for the Salt Lake City (Utah) Metallurgy Research Center. The replacement facility was authorized by Public Law 92-287. The deferred amount was appropriated in the Department of the Interior and Related Agencies Appropriations Act, 1975 (Public Law 93-404). These funds are proposed for deferral through September 30, 1976.

The funds are being deferred because:

- The estimated cost for architectural designs and construction of this facility is significantly greater than the authorization ceiling. The estimated cost is $11.5 million while the authorization ceiling is $6 million.

- The Department will try to find an alternative way to replace the current facility that will result in lower overall costs for Fiscal Years 1978 and 1979, since there are uncertainties about the level of budgetary resources that will be made available to the Department for these fiscal years. The Department wants to avoid creating a situation where it might have to choose either not to replace the existing facility due to lack of construction funds, or to pay for the construction by diverting funds from other, ongoing programs.

- Some local groups argued in preliminary "environmental impact" hearings that the height of the proposed facility will obstruct the scenic view from the "This Is the Place" Monument where Brigham Young first viewed the valley of the Great Salt Lake. It would be premature to award a contract for designing the proposed facility until after all interested local groups present their views in final hearings to be held at a later date during the upcoming summer.

The Department will seek to find alternative locations that will be suitable for a replacement facility in the Salt Lake City area. This deferral is made under provisions of both the Antideficiency Act (31 U.S.C. 665) and the Impoundment Control Act (31 U.S.C. 1403).

Estimated Effects

The contract for architectural plans will be delayed. During the delay, discussion will continue with the local groups that have expressed concern about the facility, the final "environmental impact" hearings will be held, and the Department will investigate other alternatives. If an alternative is subsequently proposed, then the $688,430 will not have been spent on unusable plans and the funds can be redirected in the future to support the alternative proposal.

Outlay Effect (estimated in millions of dollars)

Comparison with President's 1977 Budget:

1. Budget outlay estimate for 1976	58.9
2. Outlay savings, if any, included in the budget outlay estimate	0

Current Outlay Estimates for 1976:

3. Without deferral	58.3
4. With deferral	58.3
5. Current outlay savings (line 3 - line 4)	0
Outlay savings for the Transition Quarter	.1
Outlay savings for 1977	.6
Outlay savings for 1978	-.7

Deferral No: D76-111

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency American Revolution Bicentennial Administration	New budget authority (P.L. 93-179) $19,468,000
Bureau c/o Department of the Interior Office of the Secretary	Other budgetary resources 3,734,117
Appropriation title & symbol Commemorative activities fund 76X5077	Total budgetary resources 23,202,117
	Amount to be deferred: 1/ Part of year --- Entire year $500,000
OMB identification code: 31-03-5077-0-2-806	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program [X] Yes [ ] No	[ ] Other
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-year	Type of budget authority: [ ] Appropriation [ ] Contract authority [X] Other Permanent, Indefinite, Special Fund

Justification

Funds are being deferred in order to start accruing a fund of $2.5 million to endow a scholarship program for which plans are being initiated by ARBA. Subsequent apportionments in the transition quarter and fiscal year 1977 will add amounts to the fund as they become available from the sale and licensing of commemorative items, which produce the revenues for this account. This accrual process will ensure that other ARBA programs are not reduced while a Scholarship Escrow Fund is being accumulated. This Scholarship Escrow Fund will not be available for obligation until the scholarship program has been formally established and terms of the program's endowment and operation have been determined which is not expected to happen until after September 30, 1976. Funds will be eventually transferred to the State Department from ARBA for the management of the program since it will involve international studies and will continue after ARBA is terminated. The deferral represents routine financial management and is planned to extend through the transition quarter.

Estimated Effects

None; this amount will be fully available for obligation for the scholarship program, or for other program purposes should the scholarship program not be established by ARBA.

1/ This account was subject to another deferral (D76-27). The funds deferred by D76-27 were available for obligation on April 27, 1976.

D76-111

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Outlay Effect

Comparison with the President's 1977 Budget:	
1. Budget outlay estimate for 1976	11.0
2. Outlay savings, if any, included in the budget outlay estimate	1.0 1/
Current Outlay Estimates for 1976:	
3. Without deferral	15.0
4. With deferral	14.5
5. Current outlays savings	.5
Outlay savings for the transition quarter	---
Outlay savings for 1977	-.5
Outlay savings for 1978	---

1/ This amount relates to the deferral, D76-27, that was recently terminated.

[FR Doc.76-14482 Filed 5-14-76;11:15 am]

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